



# THE MOUNTAINEERING COUNCIL OF SCOTLAND

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Dear Sir / Madam

## **Consultation on Non-Domestic Elements of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

### **SUMMARY**

The national planning policy cannot be applied without a strengthened GPDO with respect to hill tracks. The interconnected regulations are complex and can be confusing for developers and ineffectual for planners due to the lack of clarity leading to the regulations effectively being unenforceable. There will be little following of the regulations until they are clear, specific, enforceable, and where necessary enforced.

A small number of highly environmentally-impacting tracks need to be included in the full planning process, and where necessary consent not granted. This is not restricted to designated sites as highlighted in national policy. Other tracks need to be mitigated through design and micro-siting. Yet another category is of little environmental concern. There is little reason to bring all tracks under planning control unless a distinction between these categories cannot be made clearly and easily understood. This is in order to achieve added value and focus resources. This categorisation needs to accord with national planning policy, easily integrated into the planning system and clear for potential developers. A verbal description will not be possible to implement through the planning system that is essentially map-led, hence our proposal of mapping, and to restrict resource requirements for the map, we propose use of an existing applicable mapping technique. Full enforceability will not be possible without also a database of where tracks currently are, as we recognise this is a significant amount of work.

The common requirement is that the first stage of a proposed development should be an outline proposal discussed with the planning authority, or else tracks will continue to be constructed with no control or mitigation and the planning authority will continue to try to play catch-up. No change should be made to the GPDO that results in a further slackening of control, or makes the existing controls even less enforceable. This would be the result of removing the "purpose" distinction and effectively permitting all tracks through a prior notification process that does not have the facility to not grant permission, or is effectively an advisory system for how to construct tracks.

Please accept these comments from the Mountaineering Council of Scotland (MCoS). The MCoS represents the interests of mountaineering in Scotland, including hill walkers, climbers and ski

tourers. We have 11,000 members, and are recognised by the Scottish Government as representing the interests of all mountaineers, of which there are estimated to be about 400,000. In respect of the GPDO, our comments will be restricted to those relevant to hill tracks; private ways or roads in wilder areas outwith intensive agricultural land. The current GPDO theoretically restricts permitted development to agricultural and forestry use and maintenance. Numerous examples exist of tracks being constructed primarily for other reasons. There is no baseline data of track locations so when reported in an ad hoc way by knowledgeable members of the public, the planning authority can do little. Hill track construction also occurs on designated sites with little or no penalty, and often a forced acceptance that once it is there little can be done. This equally applies to maintenance which is often in reality conversion from a footpath to a vehicle track. A tightening and accountability of permitted development of hill tracks is urgently required as their construction is almost exclusively a one way process and irreversibility meaning that the GPDO needs to be precautionary in its approach.

The MCofS is not looking for an extension of planning control where there is no added value or where permission would certainly be given anyway. We are looking for a process by which the most damaging tracks are not constructed where they have unacceptable impacts, and where some impact is acceptable it is ensured that mitigation by micro-siting and design is delivered. It is essential this occurs prior to construction rather than at present where the impacts are only realised, often after it is too late, when the track is effectively a permanent part of the landscape. Cases usually only come to light in an ad hoc manner by a knowledgeable member of the public makes a complaint.

## **GENERAL COMMENTS**

### **Introduction**

The MCofS welcomes the stated aims of this consultation and would hope to see consequent alterations to the GPDO to achieve these aims. Currently the hill tracks section is considerably out of date as identified as such 4 years ago in the Heriot Watt report. We welcome minimising bureaucracy as a method of increasing clarity and understanding of the function and purpose of the GPDO with respect to hill tracks such that the GPDO achieves a proportionate system to balance the needs of scrutiny while avoiding over-scrutiny producing needless bureaucracy. The cumulative impacts already evident across Scotland, particularly in wild areas, illustrate the necessity for urgent action to bring such developments under appropriate planning control. Control is required to align the GPDO with current policies of NPF2 (National Planning Framework 2, section 99) and SPP (Scottish Planning Policy, section 128). Both of these emphasise the high level of sensitivity of some areas that are not part of designated sites. As stated in the consultation document, the Parliamentary debate, “highlighted that inappropriately sited vehicle tracks have detrimental impacts on the visual landscape, particularly where they extend into remote wild land areas or are on higher ground. In addition, poorly constructed tracks can adversely impact on bio-diversity.” The debate therefore recognised that in some cases mitigation through micro-siting or altering design is not enough. Sometimes tracks are constructed in wholly the wrong place. Relying on directing landowners to guidance on how to construct tracks, or Prior Notification alone which does not allow a escalation to a requirement for planning permission is not sufficient to ensure that the problems highlighted in the debate are addressed. Permitted development still has a valuable role to minimise bureaucracy in developed and intensively managed lowland locations. Aligning the GPDO with the planning reform agenda as reflected in Planning etc (Scotland) Act 2006 would also improve understanding of permitted development through preparation of a plan-led, and therefore more predictable handling of track developments. This would also increase the transparency of the processes, the viability of enforcement if necessary and clarity in decision-making.

Although it is recognised that some hill tracks are not relevant to this consultation, such as those permitted under the Electricity Act 1989, all tracks may result in cumulative impacts, so decisions cannot be entirely separate as these other tracks form a contextual background. Developments, including tracks, consented through mechanisms other than permitted development, provide a much increased pressure on the land in wilder areas than that in existence when the GPDO originated, and has greatly increased even since the Heriot Watt report 4 years ago. Such impact is accelerating.

## **Background**

The concept of Sustainable Development (SD) (section 5) is distinctly different from sustainable economic growth and must also be delivered through any GPDO. The fundamental principle of SD is that it integrates economic, social and environmental objectives. This is not being contributed to by the current GPDO on hill tracks.

The MCoFS supports the need to avoid planning system involvement where there is no added value (section 6). In respect of hill tracks, there is great benefit to be had by righting the current overly wide scope of permitted developments as this breadth is resulting in inappropriate development, as also identified in the Heriot Watt report. This is what prompted the well-supported petition expressing grave concern which led to the Parliamentary debate. The MCoFS suggestion laid out in this response would provide wide-ranging added value by:

1. Significantly reducing the number of adversely impacting tracks that are in the grey zone between what is clearly permitted and clearly not
2. Significantly reducing the number of retrospective planning permissions
3. Significantly increasing the clarity of whether a track is permitted development
4. Introducing a mechanism by which hill tracks can be monitored
5. Significantly increasing clarity and consistency of how planning authorities handle cases
6. Ensuring that upgrades are not carried out under permitted development designed to permit maintenance
7. Minimise planning work where there is unlikely to be a significant impact
8. Better align the GPDO with planning reform
9. Contribute to the delivering the policies in SPP and NPF2

The MCoFS supports the Scottish Government view of the “purpose” of PDR as specified in section 8. These “purposes,” however are not currently being delivered by the GPDO as it stands.

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

### **Q1. Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?**

The MCoFS appreciates business concerns regarding potential costs of any changes to regulation, however regulation serves a vital function in protecting the environment. Any areas where regulation is essential, such as regarding hill tracks, may be compensated for through reduction in regulation in other areas. Hill tracks are rarely actually essential to business, but do permit some functions to be carried out more quickly. We consider that the adjustments to the regulations we are proposing go little further than the original GPDO intended, but has not delivered in its present form. PDR will always reduce costs to businesses. As the consultation document states, what we need is, “an appropriate level of planning control.” Greater control is appropriate to restrain the growing impacts.

## STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

**Q2. Please provide details of any significant environmental effects (positive or negative) which you think may arise in relation to the potential changes discussed in this paper.**

There is little specificity in the potential changes in relation to hill tracks. Hill tracks (private ways or roads in wilder areas) have negative environmental impacts on wildness, visual amenity, peat, landscape and water quality. The impact on wildness needs to be given the appropriate level of consideration and is a national resource valued in policy in the National Planning Framework 2 (NPF2) and Scottish Planning Policy (SPP), but often not in practice. Controlling hill tracks will therefore consequently minimise these negative impacts.

### HILL TRACKS

The MCoFS refers to “hill tracks” as shorthand for all “private roads and ways” in places that are outside land that is intensively managed, usually fenced and usually low altitude, but not exclusively. The best guideline to such land is high wildness value. Mapping has shown that there is some correlation with designated sites, but a significant proportion of these areas are highly sensitive (as noted in SPP and NPF2). The issues that have become evident over many years that are significantly adversely affecting these areas are:

1. Construction of numerous tracks for primarily non-PDR purposes (particularly field sports)
2. Lack of data of where tracks exist and no notification requirements meaning monitoring and / or enforcement of current regulations is impossibility
3. Upgrades and widening of paths to vehicle tracks under the guise of PDR
4. Lack of enforcement even in designated areas
5. Lack of consistent treatment of track works across different planning authorities
6. Lack of clarity of applicability of PDR with respect to purpose
7. No opportunity for design and micro-siting input from planning authorities
8. No opportunity for refusal of construction or upgrading where tracks are located in such sensitive areas that they cannot be designed or micro-sited to make them acceptable
9. No control of hill tracks in highly sensitive areas outwith designated sites

Although it can be argued that a proportion of hill tracks contribute to economic activity (section 77), it needs to be recognised that there already exists an extensive network of tracks throughout much of Scotland and any further construction will only be likely to offer marginal additional benefits while having significant impacts and loss of public benefit. Consideration must be made of this ever-increasing pressure pushing these developments into the shrinking areas of wild and remote areas and whether there are changes in patterns of land management that justify this progress towards an increasingly homogeneous landscape of modern human impact.

The MCoFS agrees with section 78 that the SNH guidance Constructed Tracks in the Scottish Uplands is useful particularly with respect to construction methods and design, but it is seriously lacking in addressing the issue of whether tracks are really necessary in many cases, or explaining sensitivity of land outwith designated sites, or indeed defining what forestry and agricultural purposes really mean. Distributing this guidance to those enquiring about the need for planning permission would be of benefit to highlight some of the potential impacts and to guide construction planning. It has little use however to promote understanding of what is or is not PDR through this method of distribution as there is no requirement to notify planning authorities of intentions to construct tracks if it is under PDR, so pro-active contact with planning authorities is rare. Nor does it address concerns that there are some areas in which tracks just may not be acceptable.

Section 81 raises the basic problem that planning authorities have in implementing PDR due to the GPDO reliance on purpose as the criteria for PDR. Purpose is effectively a measure of intention, and hence is extremely difficult to ensure appropriate application. The spirit of the current GPDO did not intend to permit the significant lengths of tracks constructed through wild areas to facilitate field sports, but which are claimed as PDR (and therefore effectively unchallengeable) as for agricultural reasons when it is used to service activities associated with a small number of sheep e.g. used as tick mops. The GPDO permitted development of agriculture and forestry had the objective of delivering solely greater productivity i.e. to deliver a public benefit. The tracks that were designed to be permitted development, within forestry and in intense agricultural land are not the tracks of concern through their impacts. To minimise bureaucracy, such tracks could be retained in permitted development without significant harm to the environment, however the GPDO must be worded in such a way as potentially highly impacting tracks do not benefit from this permitted development, as happens at present. The other difficulty of definition of purpose, and this equally applies to upgrading under the guise of improvement, is that there is no opportunity for the planning authority to offer advice prior to the works because of there being extremely rare contact between planning authority and manager prior to construction, irrespective of the theoretical expectation of EIA regulations may present. Once a track is constructed or upgraded it is even more difficult to ensure appropriate application of the PDR criteria, and often little redress due to the over-writing of what was previously on the ground. This highlights the need for front-loaded (modernised planning system) planning for tracks and an opportunity to establish primary use before construction. The alternative approach developed below is to regulate all purposes of tracks similarly based on the potential impact as reflected in the sensitivity (as described above as beyond designations) of the area to such development. Self-regulation (effectively the current system) has not worked, so planning authority involvement is needed at the start of a development and this can only be achieved through a requirement for notification of intention to planning authority (for less sensitive sites where design and micro-siting will satisfactorily reduce the impact) and planning permission where the impact may be such that conditions or even refusal of permission may be required.

**Q21. Do the existing controls on PDR in designated areas strike the right balance relating to the formation of private roads and ways?**

PDR in designated areas is theoretically addressed by the Nature Conservation (Scotland) Act 2004 and the Regulations listed in Appendix E. In practice however, many tracks are still being constructed with significant impacts on the site, but permissible as they do not significantly impact on the designated features, or where they should, through impact on such features, but do not go through the required processes. In both cases many of these go unnoticed for years then are effectively tacitly accepted due to lapse of time and lack of baseline data on which to assess what was constructed without adhering to the necessary processes. Some of these have been assessed as more damaging to restore than to remain and are retrospectively consented. As there is no baseline data or monitoring, it cannot be known whether these are just constructed through ignorance, or because most go unnoticed or because it is well understood that there is almost never a penalty, so no incentive to follow the regulatory processes. Over the past few years known instances have occurred on SSSI, SAC and NSA.

This highlights the need to bring all such tracks in designated areas under the GPDO and remove permitted development rights, as recommended by the Heriot Watt report, along with enforcement such as penalty use to reinforce the regulations. This should include all of National Parks rather than restricting control to the NSA sub-area, and withdrawal of PDR from NSAs should be incorporated into the Order. Both these measures are also recommended in the Heriot Watt report.

**Q22. Is there an approach or combination of approaches that would ensure the majority of the hill tracks of concern were subject to a consent procedure? If so can you suggest definitions for terms such as ‘hill tracks’ or the locations (e.g. ‘semi-natural areas’, ‘open hill land’) where they occur?**

The status quo is not acceptable. The de facto self-regulation is not delivering overall benefit and resulting in un-checked proliferation of tracks across sensitive areas in Scotland, including designated sites. This is despite the claim of no need for accountability expressed in a House of Commons Written Answer [21041] on the *19 Mar 1996 regarding Permitted Development Orders*. When the then Under-Secretary of State for Scotland, Mr. Kynoch was asked, “what measures he proposes to ensure the accountability of planning decisions taken within the areas covered by the permitted development orders.” The response was that, “no such measures are necessary,” and that, “it grants a form of general planning permission, known as permitted development, for certain types of non-controversial development.” As illustrated by the petition and Scottish Parliamentary debate 14 years later, the GPDO has resulted in highly controversial developments. The answer also claimed, wrongly as shown by experience in the interim that, “these permitted development rights are subject to various limitations and conditions to protect amenity and the environment.” Finally the answer concluded, so expressing the nub of the problem that, “provided a person is satisfied that a proposed development is permitted development there is no need to apply to the planning authority for consent and no basis for addressing the accountability of decisions not before the authority.” The lack of accountability of the existing GPDO was foreseen, but unfortunately not the consequences. Although "costs and challenges" exist in resolving this problem, to some extent these need to be accepted to deliver public benefit. The regulatory burden savings through the changes to the householder GPDO may offer enough savings to more than off-set any need for a slight increase in regulatory work by planning authorities due to resolving the problems posed by the limited number of “problem” tracks.

Until there are consequences for non-compliance with the processes attached to track construction and alterations, such as fines or court or foregoing of grants rather than planning authorities assisting developers to submit retrospective planning applications for tracks that would not have been permitted if an application were made before the development, then no regulations can be made to work. The research *Prior Notification Arrangements for Agriculture and Forestry Buildings in Scotland*, Scottish Executive Central Research Unit 2001 ([www.Scotland.Gov.Uk/Resource/Doc/156680/0042106.pdf](http://www.Scotland.Gov.Uk/Resource/Doc/156680/0042106.pdf)) illustrates the value of grant cross-compliance. The study found when looking at permitted development for agricultural and forestry buildings, that cross-compliance of grants is likely to have considerably contributed to procedure compliance in Scotland compared with England and Wales. This approach should be considered as a way to partially address problems with track monitoring and enforcement and offer an incentive to take the procedures seriously partially avoid costly enforcement, although of course will not close any loopholes. For this to be achieved there is a need for monitoring. This applies equally to designated and non-designated sensitive areas. The present system of permitted development with no requirement for planning permission or prior notification in some extremely sensitive areas makes monitoring enforcement or application of cross-compliance almost impossible.

As the consultation notes in section 88, outside designated areas there are thresholds triggering screening under EIA regulations, however they are frequently irrelevant as the regulations assume these trigger proactive approaches to planning authorities by prospective developers. There are many examples illustrating that this often does not happen, with only very rarely post-construction enforcement which is very difficult to implement due to the lack of data on which to contest the construction against the EIA criteria, hence they are often ignored with impunity. This is supported by planners who have reported no knowledge of any hill tracks on non-designated sites having

planning permission required of them after screening and EIA, indeed there appears to be no record of any EIAs. Against the background of a number of significant length single tracks, it seems unlikely the EIA process is being followed where required. Additionally, the threshold for EIA trigger outside designated sites does not take into consideration that even a short length of track in the wrong place can have a disproportionate impact. The EIA regulations therefore do not deliver the desired considerations of non-designated highly sensitive areas such as wildness as referred to in SPP and NPF2.

The MCoFS accepts that in some areas PDR may be perfectly appropriate. The issue is to define where it is or is not appropriate in order to balance the extra burden on developers and planners with the likelihood of unacceptable impacts. Based on the fact that one of the aims for the GPDO review is to better align it with planning reform aims, then the conversion to a plan-led system seems to be central and this would be best achieved through use of spatial mapping or defining concurrence with existing mapping such as LCA types if this is based on relevant measures of potential impact.

In the absence of comprehensive baseline data of locations and dimensions of hill tracks and a map of non-designated sensitive areas, we cannot envisage any option in section 89 being effective except removing all PDR for the formation of private ways for Agricultural and Forestry purposes and for this to be monitored and enforced where necessary. Unfortunately this would put an unnecessary regulatory burden on areas where the private ways have not been shown to be a concern, such in lowland intensive agricultural land and within forestry. One proposal that is not included, but would solve the difficulty of unnecessary regulatory burden where there has not been the significant adverse impacts would be to require all private ways works (construction or upgrade) would be notified to planning authorities in advance and for the authority to use a process to sift out those unlikely to have a significant effect on sensitive areas (designated and non-designated) at that stage. Note that sensitive areas would need to be defined within planning authorities and for this to be necessary non-designated sensitive areas would need to be mapped. Requiring notification, which would not be overly burdensome, would avoid the high number of constructions and upgrading that planning authorities are unaware of. The difficulty of relying on prior notification alone would be that is the rare occasions when a track cannot be re-designed or micro-sited to make it acceptable with the area for which it is proposed, there is no mechanism for refusal as prior notification is designed to reduce impact, without considering if this is possible to an acceptable level. This as a standalone measure would therefore extend permitted development to all tracks in some very sensitive areas that, at least theoretically are restricted to agricultural or forestry purposes at present.

We agree that the proposal in the second bullet point of 89 (removing PDR from certain land types) would only be effective with precise, easily understandable and enforceable definitions. The MCoFS would suggest that the best way to achieve the plan-led planning reform through the GPDO would be to map all sensitive areas. This would need to include all designated sites of national and local importance as well as areas of wildness. This is achievable through integrating designated sites mapping with a robust wildness mapping method such as is available as used by the Cairngorms National Park and currently being used for mapping by Loch Lomond and the Trossachs National Park, and Highland Council areas. The mapping factors are relevant to sensitivity to track development and primarily; naturalness of land cover, absence of modern human artefacts, ruggedness and remoteness. This mapping work is currently underway anyway, so the resource implications would be considerably reduced against a new mapping process. This method could be extended to cover the whole of Scotland with some further work. PDR would then be removed from the mapped sensitive areas. The result would be to require planning permission in the areas where this is desirable (designated sites and high wildness value areas), including what might be referred to as “hill tracks” as in the third bullet point, as such tracks would generally be encompassed within

the wilder areas. Track development (construction and improvements) could remain as PDR in other areas where they will have far less impact.

The option in section 89 of amending the definition of private road and private way so that they make a distinction between 'vehicular' and 'non-vehicular' road or way may prove not to be possible due to the variety of vehicles that may be used such as Land Rover type vehicles and Quads. Even some tracks not designed for vehicle use are capable of taking some vehicles. For this reason, track construction type is not an effective criterion nor is width, although the latter is indicative and therefore maybe the best available basis for definition. Unlike the Heriot Watt report, we would recommend that all "private ways" whether designed for vehicular or non-vehicular be maintained under the same regime. The failure of the current GPDO to deliver the intention of restricting PDR based on purposes of a track illustrates that this is not an effective definition for distinguishing what is or is not PDR. Attempting to rely on whether or not a "private way" was built for the purpose of vehicular use is therefore likely to be unworkable as the single criterion. It is simply too open to misinterpretation or re-interpretation and is unenforceable even if the will and resources were there. The Heriot Watt report reflected on this recommending that the, "GPDO should ultimately not consider the purposes for which a private way is formed. But we do not see how this goal can practically be implemented without mapping exclusion areas." The report concludes that, "should mapping prove worthwhile, PDR should be then withdrawn in exclusion areas." Treating all "private ways" the same but in combination with a wildness map to distinguish PDR based on type of land would be a much more effective way of managing hill track works without opening yet another potential loophole of claiming the purpose of a track capable of vehicular use was constructed for public access rather than for the vehicular access itself. Introducing the requirement of Prior Notification for hill tracks as the only measure may seem attractive, but in effect this would extend permitted development to a wider range of tracks, and particularly to those primarily for field sports which are often the most environmentally-impacting as generally require higher altitude and remoter access.

The altitudinal criteria option in bullet 5 of 89 would not be sufficient to ensure all PDR is withdrawn from sensitive areas. As the Heriot Watt report stated, "experience with the original 1980 National Scenic Area Direction showed this to be impractical because tracks dip over and under an altitude threshold." Additionally, sensitive areas can be high or low altitude; consider the Flow Country. Altitude is a factor in the wildness mapping referred to, hence if this were used as supported above, altitude would be taken into consideration but not overly so. This approach also avoids the difficulty of an altitude regulation such as dealing with track that contour at the altitude limit of PDR such that some of the track is and some is not requiring PDR. This boundary issue may be perceived as a difficulty for wildness mapping also, but because of the factor-based technique, tracks in the grey zone dipping in and out of the boundary could be addressed by modelling the overall impact on the sensitive land features.

Bullet point 6 of 89 offers an option of limiting the length of tracks. This would raise the problem of incremental increase and the difficulties of defining when extensions were separate operations would be nearly impossible, but at best arbitrary. However, length is more logical than the threshold of area as currently used in EIA regulations. A use of length criteria additionally still suffers from the current issue of defining whether the track was there before, and if so, its previous extent. For these reasons, the same as stated in the Heriot Watt report, track length as a criteria for PDR is likely not to deliver the desired outcomes and is also likely to be unworkable.

The seventh option in section 89 would not be effective in solving the problems noted above, primarily the lack of locational and dimensional data for tracks, lack of monitoring and lack of enforcement of existing EIA regulations. EIA regulations alone have been shown to be ineffective in designated areas, let alone non-designated sensitive areas.

**Q23. Would a restriction of the PDR for the improvement of private roads and ways help address the concerns about hill tracks? If so, what form should the restriction take?**

The current regulations have proved to be ineffectual in restricting PDR to maintenance and improving the condition of existing tracks and have been misused to “upgrade” from a narrower, rougher or non-surfaced, landscape-sensitive paths, which may or may not be surfaced, to a vehicle-capable track. As Heriot Watt report stated, this is likely to be primarily due to the confusion of what are repairs, maintenance and improvements respectively. Resolving this confusion, as recommended in the Heriot Watt report, is to “distinguish between maintenance, repair and improvement (possibly replacing the last by the term upgrading)” and to “make it clear that maintenance and repair are PD, whereas improvement from non-vehicular to vehicular way requires a planning application.” Although MCoFS would recommend that where planning permission was required (in sensitive areas based on wildness mapping), because of the difficulty of a reliable definition between vehicular and non-vehicular ways that on a case by case basis a comparison of the existing track and planned works would reveal whether or not it was repair / maintenance or an upgrade. Although this does increase the regulatory burden to some extent, it is only restricted to defined sensitive areas and therefore offers significant added value. The Heriot Watt report further recommends, and MCoFS supports, the addition of a, “general condition that any incidental or consequential damage to adjacent ground must be made good.”

Additional to this is the issue stated in section 91 regarding the widening and landscape-prominence increases in existing tracks. Due to the lack of reliable data and no monitoring of track works, restricting improvements to genuine maintenance would be extremely difficult, even if it were taken seriously within planning authorities. For this reason, restricting works to within the boundary of a track is unenforceable as also identified in the Heriot Watt report. A possible solution to this is a case by case assessment of a construction plan of change within the sensitive area identified in wildness mapping or a requirement for improvements to undergo Prior Notification process where they are in sensitive areas. Additionally, defining when a track is a track raises issues. Lines of erosion due to repeated use by vehicles have been surfaced and formed into tracks. Some such “green tracks” where they are on drier roust ground are considerably less landscape-impacting than surfaced constructed tracks. They can however, create significant damage to ground which is poorly-drained. Any alterations to the GPDO would need to acknowledge and resolve this issue as well as those noted in the consultation document. These new tracks constructed under PDR through the back door, need to be controlled in sensitive areas, and the mechanism for this could be defining surfacing of an existing line of use be treated as upgrading, which would be treated as requiring planning permission in sensitive areas. The subtleties of the difficult situation posed by “green tracks” could be addressed at that stage. The MCoFS agrees with the proposal in section 92 that altering or removing “improving” as PDR could help address the issue of confusion between and different potential impacts of repair, maintenance, improvements and upgrading.

Please do not hesitate to contact me to discuss these issues further.

Yours sincerely

Hebe Carus (Ms)  
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