THE WAY AHEAD FOR CONSTRUCTED PRIVATE TRACKS

A report by Scottish Land & Estates – March 2014

Executive Summary

In December 2012, following extensive consultation on the issue of permitted development rights for private roads and ways, the Government announced that it favoured promotion of a “best practice” approach. Scottish Natural Heritage’s (SNH) existing guidance “Constructed Tracks in the Scottish Uplands” would be updated and republished. This was duly done in the summer of 2013.

Scottish Land & Estates believes that the Government has found the right approach to this issue and are now working with the Moorland Forum and SNH on a programme which will promote use of the guidance to land managers across Scotland. It should help to ensure high standards of road construction in future without adding to the work of local planning authorities.

However, organisations under the Scottish Environment LINK banner are continuing to try to persuade the Planning Minister that further regulation is required. In summer 2013 they asked their members to submit photographs of examples of poor road construction, and collated them into a report entitled “Track Changes” which was published in November 2013. The thrust of the report was that these photographs provided evidence that permitted development rights for hill roads should be withdrawn.

Scottish Land & Estates accepts that not all hill roads have been built to best standards. Therefore the organisation has carefully analysed Track Changes and asked members for feedback on the photographs and commentary in it. During that process, it became clear that Track Changes had been written without the knowledge or the input of estates targeted in it and made some fundamental misconceptions as a result. Moreover, it used some incorrect information and out of date photographs. A number of general points in Track Changes about construction techniques, use of tracks and existing legal safeguards are also misleading.

The Track Changes report criticises eleven estates in detailed case studies. Eight of these are Scottish Land & Estates members who have now given feedback setting out why criticisms against them are poorly researched and unjustified.

Scottish Land & Estates believes that the Track Changes report has not been helpful in the debate. It should have been more closely scrutinised, especially as it makes allegations about specific estates and was written with public funding.

In contrast to the attempt by LINK to focus only on poor construction, this report by Scottish Land & Estates provides some examples from across Scotland of high quality and innovative hill track construction on private estates.

Scottish Land & Estates has set out how it will help to implement the Government’s stated policy on hill track construction and to help ensure best practice in future road construction.
1. Comment on “Track Changes”

There are a number of problems with the Track Changes report which call into question its validity:

1. It was compiled without input from the owners and managers of the farms and estates photographed, or of the eleven case studies; indeed it was researched and written without their knowledge. This included organising a site visit for the Planning Minister and his team without notifying the owner of the land that it would be taking place.

Not only have the estate owners had no opportunity to give their point of view, but the author of the report (Dr Calum Brown) was unable to check the facts behind his assumptions, particularly about the use of the tracks. It is one of the central arguments of the report that hill tracks are used primarily for purposes other than agriculture and forestry, but his assumptions in this regard are often incorrect.

2. A number of the photographs were taken during the construction phase of the track and in some cases the photographs used were considerably out of date (in one case decades out of date). This gives a misleading picture to readers of the report. Construction works obviously remove vegetation to expose soil and rock and, in all but the driest of conditions, create mud and leave evidence for a period of time of machinery tracks. This is unavoidable and if photographs are taken during or immediately post construction the impacts will appear to be much worse than will be the case when the work is finished and has had time to settle. All earthworks need time to settle. The level of the soil may drop in the first few months post construction and the work may need to be revisited after an initial period to correct levels, thereafter a further period is required for re-vegetation to occur. Track works should therefore be assessed a year or so after construction, and certainly not during.

3. The report does not represent an objective piece of work. No attempt was made to provide balance or perspective in terms of the scale of any issues. We know there are many miles of well-constructed and unobtrusive roads on the same estates and all across Scotland, yet there is no narrative or photographs to provide this context. Scottish Land & Estates also contends that many of the photographs do not back up the arguments in the report, indeed some show damage caused by not having a properly constructed track. We have attempted to redress this imbalance by providing some good practice case studies within this report – see section 4.

There are two further key points we wish to make in response to specific assertions within Track Changes.

**Method of Construction**
The argument that more powerful machinery has led to more damage in relation to track works in recent years needs to be looked at carefully. There have been very powerful
excavation machines around for many years and improved techniques combined with more sophisticated machines now enable much less disturbance rather than more. Constructing tracks with bulldozers was a method used in the 1940s and 50s, whereas hill tracks constructed more recently have used excavators. Machines are now designed so that their weight is more evenly distributed making them more stable, spreading downward pressure and reducing the depth of marks left by the machinery. Larger excavators also tend to have longer hydraulic arms which mean they need to move around less on site.

Safeguards
On page 10 of the Report, it is stated that there are no safeguards for track development in National Parks, National Nature Reserves or on Sites of Special Scientific Interest. That is not correct.

As the report correctly advises PDR is removed from tracks in National Scenic Areas. In addition to this and not mentioned in the report, the written approval of the planning authority is required if the proposal is likely to have a significant effect on a Natura site (such as an SAC, SPA) and consent from SNH may be required for operations likely to damage the protected natural features of a SSSI. Further, permitted development rights are removed for any track development requiring an Environmental Impact Assessment.

All National Nature Reserves are SSSIs and many additionally have at least one Natura designations, often they have both. Further, the main organisations involved in ownership and management of National Nature Reserves includes SNH, Forestry Commission Scotland, The National Trust for Scotland, RSPB, The Scottish Wildlife Trust and South Lanarkshire Council. Some Reserves are in private ownership, but in these instances SNH either manage the reserve or the owner manages it under agreement with SNH.

It is therefore very difficult indeed to envisage a situation where a track is developed on a National Nature Reserve without the involvement of both SNH and the planning authority. Many areas within our National Parks are either NSAs, Natura sites, SSSIs or a combination of these and in these instances again the planning authority and/or SNH would be notified. Cairngorms National Park Authority has also developed supplementary planning guidance in relation to upland tracks.

2. Feedback from Scottish Land & Estates Member Estates

This section of the report provides feedback from the landowners and managers featured in the LINK report.

Not all of the estates featured in the report are members of Scottish Land & Estates, but where possible responses have been obtained from those which have been openly and publicly criticised about their road use or construction. Eight responses were from estates profiled in the case studies and a further three from estates profiled in the other photographs or the general text.
It is not the intention of this report to respond in detail to each one, which is a matter between individual estates and the authors of the report. Indeed many of the photographs in the LINK report have little detail about exact location. Therefore the extent to which we can trace all of the landowners is limited. A number of the photographs in fact appear to be either repeats or of the same tracks taken from different angles.

Our summarised feedback shows that, not only were landowners not able to input to the Track Changes report, but that some key assumptions are also incorrect.

1. It appears to be assumed that tracks over moorland where grouse are present or which passes anywhere close to grouse butts must have been created or developed for sporting purposes. Nine of the estates who provided feedback to us confirm that this is not the case and the tracks are for either agricultural or forestry purposes.

As was discussed with the Minister when he visited Burncastle Farm in the Scottish Borders with us in the spring of 2013, it is common for hill sheep and grouse to be reared on the same area of moorland. When sheep are hefted to a hill they are gathered and worked on out on the hill and shepherds require to be able to get out to them with equipment and supplementary feeding on a regular basis. Particularly in wet or snowy weather, for their safety their vehicles need to be on a solid surface. Once these tracks are in place they will of course be used by others such as gamekeepers, recreational users, mountain rescue, those carrying out wildlife surveys and so on. This does not detract however from their purpose which is to enable the effective management of upland sheep.

Pages 12 & 13 of the Report highlights the author’s objection to the field sports industry benefitting from upland tracks. He points out that the “sporting industry is a major beneficiary of PDRs, despite not technically being subject to them” and that “PDRs, once established, are very difficult to delimit”. This seems to put forward a view that tracks should only be used for the purpose for which they are developed and no other. This seems to us to be a bizarre position to adopt in a report developed for organisations which promote recreational access and whose members benefit from routes into the uplands. Scotland’s world renowned access rights would make the delimiting of use not only undesirable but impossible.

2. The report portrays the present system of regulation as not fit for purpose. However as is demonstrated by those Estates whose tracks are for purposes other than agriculture or forestry, they have either contacted the local authority prior to work starting and been inspected once work was complete, or subsequently applied for planning approval which has resulted in further work to create a much improved finished product. Far from a system that is broken, this would suggest a system that is working as intended.
Below is a summary of the responses we have received to date.

Case study 2 – Dinnet Estate

- As Track Changes report highlights, the Estate sought the advice of Aberdeenshire Council Planning Department before proceeding with the work.
- There is a sheep farming operation on Dinnet and the moorland hill is used seasonally to accommodate 1800 ewes plus their lambs, along with 1000 hoggs and barren ewes.
- The Estate point out that the photographs were taken in 2013 when work was underway. This is confirmed by the presence of a construction lorry in one of the photographs.
- The borrow pits have been kept open in the meantime because it is anticipated that the road will “settle” over the winter 2013/14 and therefore require some further work in 2014. The borrow pits will be tidied up once this additional work is complete.

Case Study 3 – Bealach Horn, Sutherland, Highland

- The track was originally a pony path used to take deer off the hill. As is the case on most stalking estates, all-terrain vehicles have generally replaced ponies resulting in the gradual widening of the running surface to paths and tracks. The track therefore needed some remedial repairs to ensure that the vehicles did not cause further erosion or degradation of the route.
- The Estate agrees that SNH’s intervention was valuable and that they have now obtaining a better finished route than might have been achieved otherwise. They have learnt from the experience and have adopted the approach for other tracks.
- The Estate reports that the local SNH office is pleased with the final result and have referred other landowners to it as an example of good practice.

Bealach Horn track, a narrow route for ATVs, as it is today.
Case Study 4 - Dell/Glenbrein Estate

- Track Changes report assumes the track is for renewable developments.
- The Estate confirms the track is an upgrade of an existing route which was becoming eroded. The work consisted for improving the drainage and the surface to prevent further peat loss and ensure staff safety.
- As is commonly the case, the track provides access for sheep management and muirburn; it also enables gamekeepers access to the moor for deer and grouse management.
- The Estate employed a very experienced track construction firm to carry out the work.

Case Study 5 - Glendye

- The owner of Glendye states that most of the Glendye tracks that the report features are not new, but instead have been repaired and drains have been cleaned out.
- Photographs were taken before work was complete.
- Glendye track 1 was put in to allow a boundary fence to be built and permit a more efficient sheep gather. It is not, as the Track Changes Report suggests, for grouse shooting and is not anywhere near grouse butts.
- The reference to a golden eagle deserting and failing to breed because of the road construction is not the case. The eagle in question is still on the Estate, and only now reaching full breeding age.
- Glendye track 2 shows repairs to a track built in the 1950s. The council was consulted before work started and also inspected the finished work to this track and were happy with it.

Case Study 7 - Kyllachy

- The track is for the management of hill sheep.
- An experienced track construction firm was used.

Case Study 8 – Lynwilg, Aviemore

- The track was constructed sometime between 1930 and 1940 following adjoining land being sold to the neighbouring estate. The track became known as the Burma road and is a well known and frequently used route by mountain bikers and hill walkers.
- When the estate was purchased by the current owners around 2006 this hill track was repaired and has been maintained since. Work included ditches and culverts being cleaned out. The surface was hardened in some areas as it was being rutted.
by use when vulnerable due to wet conditions and frost coming out of the ground. Much of the damage caused has been the result of use by mountain bikers. The track was not widened.

- Since 2006 extensive hill fencing has been erected to contain the increased sheep numbers now summered on the hill. The estate now summers 700 ewes + 80 wethers + lambs on this hill.
- The Highland Council was aware of the repair and maintenance work and was consulted.
- The repair and maintenance work has reduced erosion, not increased it as claimed.

Case Study 9 - North Esk, Pentlands

- The track is required for farming purposes.
- The track is not yet complete. Since the photograph in the LINK report was taken earth was spread on some of the disturbed ground and the fence re-instated. It will obviously take a couple of years to settle and re-vegetate.
- The footpath is being re-opened, but discussions taking place with Midlothian Council about re-alignment.
- The new track is a safer way to access the reservoir.
- The alleged land slip has been like that for many years and is not new.
- The SSSI lies below the dam and below the fence. The only disturbance is some slight soil spill.

Case Study 10 - Pykestone Hill

- The landowner confirms that the track has been in existence as a vehicle track all of his life.
- Two very snowy winters and long wet summers washed a steep section of it out and it had become dangerous. Repair work was therefore carried out Summer 2011.
- Existing stone was used, with no “foreign” material brought in – as is considered best practice.
- The route is primarily used for farming purposes. It also provides access for occasional shooting, but it is not a route to grouse butts, although it passes close to a line of butts at the bottom of the hill.
- It is a designated core path and is regularly used by walkers and mountain bikers. It is the route of the historic “thieves road”. It can be seen as a track on maps from 1859.
• The repair design included run off hollows at intervals which have successfully withstood the last two winters and particularly the wet summer of 2012.

• The only section that is visible is on the steeper section where the spoil at the steep edge will take longer to cover over as soil is scarce.

Glenfeshie – photo on p7

• Glenfeshie Estate has been in direct contact with Environment LINK to advise that the photograph of paths work underway there is a very poor representation of the finished track. Glen Feshie is an estate operated with conservation as a primary objective. The current owner has gone to considerable effort and expense to improve not only the serviceability but the landscaping of the tracks on Glen Feshie.

Left: Track work underway some years ago at Glenfeshie Estate and Right: a finished, much improved, track on the Estate.

Beinn Bhuraich– photos on p9 and 13

• The track is used for sheep management – several hundred sheep are grazed on the moor.

• Again, as is common, grouse are also reared on the moor and keepers will make use of the access which is available.

• The photograph on p9 estimated to have been taken in 2009 when work was in progress, thus not depicting the final product.

Mar Estate page 12

• The Estate confirms the picture is very old. It appeared in The Scotsman about 1988.

• The road was constructed for timber extraction. It was in the main an upgrading of an old peat moss track which could not have borne the weight of timber lorries. The final section was new at the time and ends at a turning circle.

• The Estate say that the statement in the LINK report “used for shooting access” is completely untrue.
Scottish Land & Estates recognises the legitimate public views about hill tracks and the passion of many people about the uplands. However the poor research and the short cuts taken in the report have resulted in misrepresentation of a number of estates, in an attempt to generate public pressure on the Planning Minister.

Furthermore, Scottish Land & Estates is concerned that the report was compiled using funding from the Scottish Environment LINK Discretionary Project Fund but was not subject to effective scrutiny. LINK is partly funded by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts. It is a charity in its own right, as are most of its member organisations. Charities obtain Government funding in kind via tax reliefs and should be very conscious that the highest standards must be upheld in use of those funds. That was clearly not the case in this report.

4 Good Practice Case Studies

In contrast to Track Changes, the following are examples of high quality hill track construction and upgrade in different parts of Scotland:

1. “Typical Estate”, Highland

This actual estate is under relatively new ownership and is constructing/upgrading tracks as part of an investment programme to improve the estate and working conditions. The owner does not want to be identified, but having seen the “Track Changes” report he was keen to demonstrate that he was doing the best possible job.

Before commencing work the manager spoke with Highland Council to ensure that planning permission was not required and they received confirmation from them that the proposed tracks could be constructed under permitted development rights as they were for agricultural purposes.

The Company constructing the tracks were chosen for their experience in working in environmentally sensitive areas and the Cairngorm National Park in particular. Where borrow pits have been dug, and work completed, great care has been taken to restore the ground in a sympathetic manner, ensuring that turfs/hags are replaced grass side up in order to speed plant recovery.

In the past year the Estate has also taken considerable steps to improve road construction done by former owners. This is being done by reduce the height of the roadside ‘spoil’ banks and ensure there is a covering of peat over the majority of spoil to encourage plant regeneration.
2. **Craig Leek track on Invercauld Estate, Deeside**

The pictures below depict the Craig Leek track on Invercauld Estate. The track was being formed by vehicular use and, as can be seen in Photo 1, as one set of ruts became too deep and wet to use, another set was formed. The ruts made difficult walking for those going to the hills on foot, were not aesthetically pleasing and caused more erosion of the hillside than would be the case if a solid constructed route could be followed year round.

*Photo 1 – rutted track prior to construction work Craig Leek, Deeside.*

In collaboration with the Cairngorms Outdoor Access Trust a constructed track was put in place at Craig Leek. The photographs below show the finished result which provides a single, robust line for vehicles, a pleasant walking route and has notably opened up the route to mountain-bikers. The Estate also provide car parking facilities at the foot of the track to facilitate recreational access to the area.

*Photos 2 & 3 engineered hill track at Craig Leek*
3. **Burncastle Farm, Lammermuir Hills, Scottish Borders**

Burncastle Farm represents a typical upland sheep and grouse operation. It is situated on the south-western side of the Lammermuir Hills and is owned by Northumberland Estates. The farm covers 9000 acres, the majority of which is moorland with some in-bye land at lower levels. The land is farmed for sheep production and it supports a grouse shoot. The two activities have long worked in synergy. Burncastle also has a number of forestry blocks which are either at or close to maturity and will shortly require new timber haul routes to be built.

There are 2000 blackface ewes kept at Burncastle in 18 separate hefts. Most of the ewes stay on the moor year round. There are handling pens on the moor, which allow animal husbandry to be carried out in-situ. Only those carrying twin lambs are brought down to the in-bye land to over winter – typically this might be around 600 ewes, with the remaining 1400 staying on the hill over winter.

The furthest point of the farm from the farm steading is 7 miles away and this is reached by one of a number of hill roads on the farm. Trips are made across the moor all year round for sheep management. This management includes such tasks as animal husbandry work, the supply of supplementary feeding when required, controlled burning of old heather to encourage regeneration (muirburn), and predator control (for the benefit of both lambs and grouse).

It is particularly important that supplementary feeding is taken out to the ewes during the winter and this is increased in times of heavy snowfall. The farm manager at Burncastle points out that during snowfall he needs to take hay out to the sheep using a tractor and bale handler. It is vitally important in bad weather, on wet ground and with heavy machinery to have a constructed surface to cross the moor. Without it the journey would be much slower and the risk of getting the tractor bogged down, which subsequent risks to his safety, much greater.

Muirburn and predator control are advantageous not only to the sheep and grouse, but for other wildlife, particularly waders such as lapwing, curlew, oystercatchers and golden plover.
Many of the farms and estates in the Lammermuir Hills, including Burncastle, run a project to improve the habitat for Black Grouse thus improving the chances of this rare bird’s survival.

The farm employs 5 full-time staff to manage the sheep and grouse.

The Southern Upland Way (one of Scotland’s Great Trails) crosses the moor and is one of the hill routes.

*The photographs below were taken on Burncastle Farm in the Spring of 2013.*

*Photos 1 & 2 – demonstrate why constructed hill routes are needed. Not only are they safer for farm and estate workers, they prevent continued erosion of moorland and peat, improve drainage and often open up access to the hills for recreational users.*
4. **Langholm Moor Demonstration Project, Buccleuch Estates**

Langholm Moor is situated on the Eskdale and Liddesdale Estate owned by Buccleuch Estates. The Estates in-hand farming business employs four shepherds and works hand in hand with The Langholm Moor Demonstration Project (LMDP) over circa 25,000 acres of the Moor, employing an additional five gamekeepers.

**Why the new track?**

Limited access tracks had already been installed on both sides of the Langholm Moor using traditional methods to allow for improved extensive sheep farming, but with the advent of the LMDP in 2007 and the increased pressure to maximise the agricultural potential of the hill ground, it became apparent that to further extensify the farming operation and cater for habitat and wildlife management, the two tracks would need to be connected to allow for 4 x 4/quad bikes access over the full 11/12km of the Langholm Moor. In addition, the hill track offers a crucial benefit as an important fire break against wild fires and for access to previously inaccessible parts of the Moor to manage controlled burning as per The Muirburn Code.

**Track Use**

Predominantly, the track will be used to assist with the management of the habitat whilst there is an extended period of de-stocking during the LMDP, however, as the project develops stock are being re-introduced. The additional burden of extra shepherding whilst the sheep re acclimatisise makes the new track invaluable. Assuming LMDP is a success, there will potentially be a full re-introduction of sheep onto the Moor. Whilst the project continues the track will also be used by numerous scientific groups to collect data, and for the gamekeepers to carry out their work safely and effectively.
Planning Permission

The Scottish Borders Council was given Prior Notification and confirmed receipt of such, commenting that Planning Permission would not be required, with no further comment to make on the proposed construction. Due to the status of the land as a SPA it had already been endorsed by Scottish Natural Heritage, with the final specification also meeting with their approval. This aspect was key to the project's success given the importance of the habitat and the Estate worked closely with industry experts and civil engineers on a specification that would limit the environmental impact.

Track construction

In order to minimise damage to the peat below, an innovative “floating road” technique has been used. A bed of timber brash is spread on the bottom, where required, before rolling out a membrane upon which a layer of stone is spread to form the hard surface. Water percolates through the brash and membrane limiting the necessity for side drains and culverts. It is often traditional drainage works which make hill roads obvious in the landscape, so it is hoped that this technique will enable the road to blend in with the surrounding landscape more quickly, and minimise loss of peat.

It is recognised that not all moors are like Langholm and that this technique is to some extent experimental, but it demonstrates ongoing attempts by upland estates to develop new techniques and to minimise the impact of necessary roads on the landscape.

“Floating road” during construction at Langholm Moor, already blending in with the landscape. Protruding edges of membrane are cut off later.
5. The Way Ahead

The Government has made it clear that it wishes to use the SNH guidance “Constructed Tracks in the Uplands” as the template for all hill road construction and that it will monitor how that guidance is followed in future road building projects.

Scottish Land & Estates recognises the difficulty of building roads on such varied terrain, often with a short window of dry summer weather to work in, that no two projects are the same and there are many different techniques available. So, the SNH guidance is a practical checklist for anyone planning to build a hill road, and provides a consistent standard to work to.

There is no clear advantage to further regulation when the difficulties are largely practical, and it is highly unlikely that hard pressed planning authorities would be able to cope with an additional workload, or that they would have the necessary expertise to resolve practical problems.

Building hill roads is very expensive and no landowner will undertake it unless necessary, and they will have a strong interest in making roads which are unobtrusive in the long term. The key people in any roading project are the estate owner or manager and the road building contractor. We believe that the best way to ensure all roads are built to the highest standard is to give maximum advice and help to them.

SNH have delegated awareness raising about their revised hill tracks guidance to the Moorland Forum, a body which brings together all groups with an interest in upland management. This is part of the SNH “Sharing Good Practice” initiative and a small steering group has been set up to develop hill track training events which will be delivered in 2014 and 2015. Other ideas are being looked at which will ensure that the guidance reaches as many as possible of its target audience, ie those who are actually going to be undertaking road construction projects.

Scottish Land & Estates are part of that steering group and will continue to do what it can to draw the guidance to the attention of its members and to help with delivery of events and training. Many Scottish Environment LINK member organisations are also members of the Moorland Forum and we believe they should support the established Government initiative, rather than trying to pressurise the Government into a potentially huge new regulatory system which would have no clear benefit.

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