

# **AGENDA ITEM 5**

## **APPENDIX 2**

**2020/0068/DET**

**SUPPORTING STATEMENT**

My Ref: 19/0033  
19<sup>th</sup> December 2019



Walter Wyllie  
Planning Officer  
Development Standards  
Angus Council  
Place Directorate  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

Sent by email: WyllieWK@angus.gov.uk

Dear Mr Wyllie,

**THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED  
RETROSPECTIVE PLANNING APPLICATION FOR THE UPGRADE AND WIDENING OF EXISTING TRACK  
AT LAND AT CLOVA ESTATE, ANGUS (THE "DEVELOPMENT")**

Further to the S33A Notice (Appendix 1), please find attached the submitted Planning Application, as requested by the Cairngorms National Park Authority.

The applicant, notes that paragraph 4 of Annex C of Scottish Government Circular 10/2009: Planning Enforcement confirms that before issuing a notice under section 33A the planning authority "*should, as with any enforcement action consider whether the action is commensurate to the breach. There would be no purpose in issuing such a notice where the planning authority were of the view that permission would clearly not be granted.*"

The applicant respectfully requests that in accordance with Scottish Government advice contained in paragraph 3 of Annex C, that the submitted planning application allows the planning authority to consider the grant of planning permission, together with any planning conditions that may be considered to be appropriate in planning terms.

Having regard to the above the applicant would be grateful if the following supporting information is taken into consideration in support of granting planning permission.

**1.0 Determination of the Application**

- 1.1 Section 25 of The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006 affords the following status to development plans:

*"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."*

- 1.2 The following assessment identifies compliance of the proposal with the Development Plan, having regard to the details of the planning application and proposal (Section 2.0), the Development Plan



(Section 3.0) and Conclusions (Section 4.0).

## **2.0 The Planning Application + Proposal**

### **Background**

- 2.1 The Cairngorms National Park Authority (“the Authority”) served a S33A Notice, under the Town and Country Planning (Scotland) Act 1997, dated 23<sup>rd</sup> September 2019, on Mr Hugh Niven (“the Applicant”). The Notice, attached as Appendix 1, required the following:

*“... the submission of an application to Angus Council for planning permission for the Development to regulate the breach listed in paragraph 3 of this notice.”*

- 2.2 Paragraph 3 identifies the alleged breach of planning control as:

*“The surface of the existing track on the Land has been upgraded using imported material, widened and new drainage installed (“the Development”) without giving prior notification to Angus Council ...”*

- 2.3 A Screening Report has submitted by the Applicant to support a request for a formal Screening Opinion from the Planning Authority under Regulation 8(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”), to determine whether an Environmental Impact Assessment (EIA) Report would be required for the above proposal.

- 2.4 A response from the Planning Authority to make a judgement on the question “Would this particular development be likely to have significant effects on the environment”.<sup>[1]</sup>, is currently pending.

### **The Site + Location**

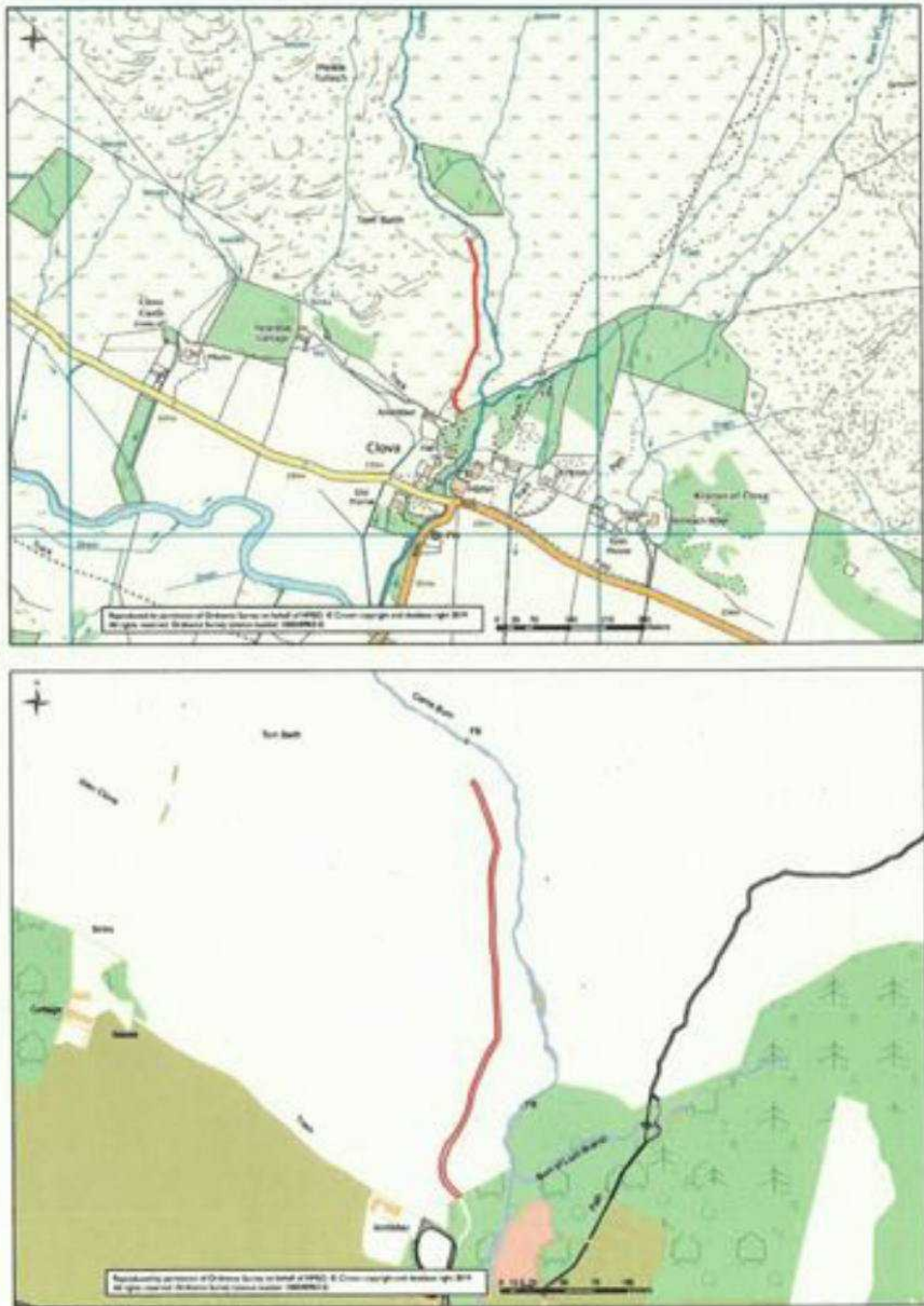
- 2.5 The existing track is well established and has been used as a vehicular route to traverse up this part of the hill for forestry and agricultural operations, noting that there are forestry plantations adjacent to the route and also approximately 1,700 ewes run on the Clova hillsides, and also for other Estate activities. More recently, the Applicant has extended the path in a northerly direction and this is subject to separate consideration under a planning appeal lodged with Scottish Ministers.
- 2.6 The Applicant simply sought to repair and improve this path, which had deteriorated over time, due to its continued use. The Applicant was not aware of the need for planning permission at the time of upgrading its surface.
- 2.7 The location of the site and route of the track is illustrated as edged red on the S33A Notice and is illustrated below under Figure 1: Location Plan. The track is located immediately to the north of Glen Clova Hotel, within the Clova Estate.
- 2.8 The track runs up the hillside for a length of approximately 450 metres, from approximately 260 AOD to 320 AOD. The track is approximately 10 metres in width, including drainage adjacent to its verge.

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<sup>1</sup> Scottish Government (2017) Circular 1/2017: Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017



**Figure 1: Location Plan**





- 2.9 Figure 2: Photograph 2019, from the B955, illustrates the visual impact of the upgraded track when viewed from the south, which is considered to have an insignificant impact due to the utilisation of the natural contours of the hillside, together with the fact that the path visually blend with the hues of the landscape.

**Figure 2: Photograph 2019**



- 2.10 Figure 3: Track Photographs illustrate the footpath proceeding northerly along its route, utilising indigenous materials.

**Figure 3: Track Photographs**





### **The Site + Environmental Characteristics**

#### **2.11 Landscape Impact**

- 2.12 The site is located within the Cairngorms National Park (CNP), which is a National Designation. The National Park was created through the National Parks (Scotland) Act 2000, which aims to:
- Conserve and enhance the natural and cultural heritage of the area
  - Promote sustainable use of the natural resources of the area
  - Promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public
  - Promote sustainable economic and social development of the areas' communities

- 2.13 The CNP Authority have identified a number of Landscape Character Areas (LCA) across the National Park, which are Local Designations. The track runs along the border of Upper Glen Clova LCA, and Mid Glen Clova LCA.

- 2.14 Upper Glen Clova LCA is described as:

"The relatively level floodplain along the strongly linear glen floor is flanked by evenly graded, steep slopes rising to craggy summits and corries, creating a very pronounced sense of enclosure. The retreat of glaciers has resulted in a rim of extensive rocky outcrops along the upper slopes, set above long screes and dramatic huge, bouldery rock falls. The River South Esk meanders across a floodplain which is largely planted with coniferous forest but also accommodates some improved fields. Well drained side slopes are dominated by grassland and regenerating or remnant birch woodland".

- 2.15 Mid Glen Clova LCA is described as:

"The side slopes of this part of the glen are less steep and more irregular than those of the Upper Glen. The upper slopes, steepened and roughened by glacial activity, rise above screes and boulder fields to a rim of dramatic loch-filled corries and cliffs, especially on the northern side of the glen".

- 2.16 The CNP Authority provide sensitivity maps to provide the following:

"Indicator of areas in the Park where landscape character is more or less sensitive to a particular change."

- 2.17 Tracks and footpaths are not addressed through the sensitivity maps. This highlights that the CNP Authority do not consider that new tracks, or in this case, an existing path's upgrade, merit assessment through the LCA assessment, or have the ability to have a 'sensitive' impact on the landscape.

#### ***Visual Impact***

- 2.18 The route of the track is well established and its upgrade is considered to be visually negligible. The viewpoint from the B955, illustrated in Figure 2: Photograph 2019, indicates the tracks concealed impact when experienced by visual receptors from this vehicular route. As a result of topography and existing mature vegetation, views to the development site are either non-existent or severely restricted.
- 2.19 Figure 3: Track Photographs illustrate the track proceeding northerly along its route. The construction is native to construction of rural tracks in this locality.

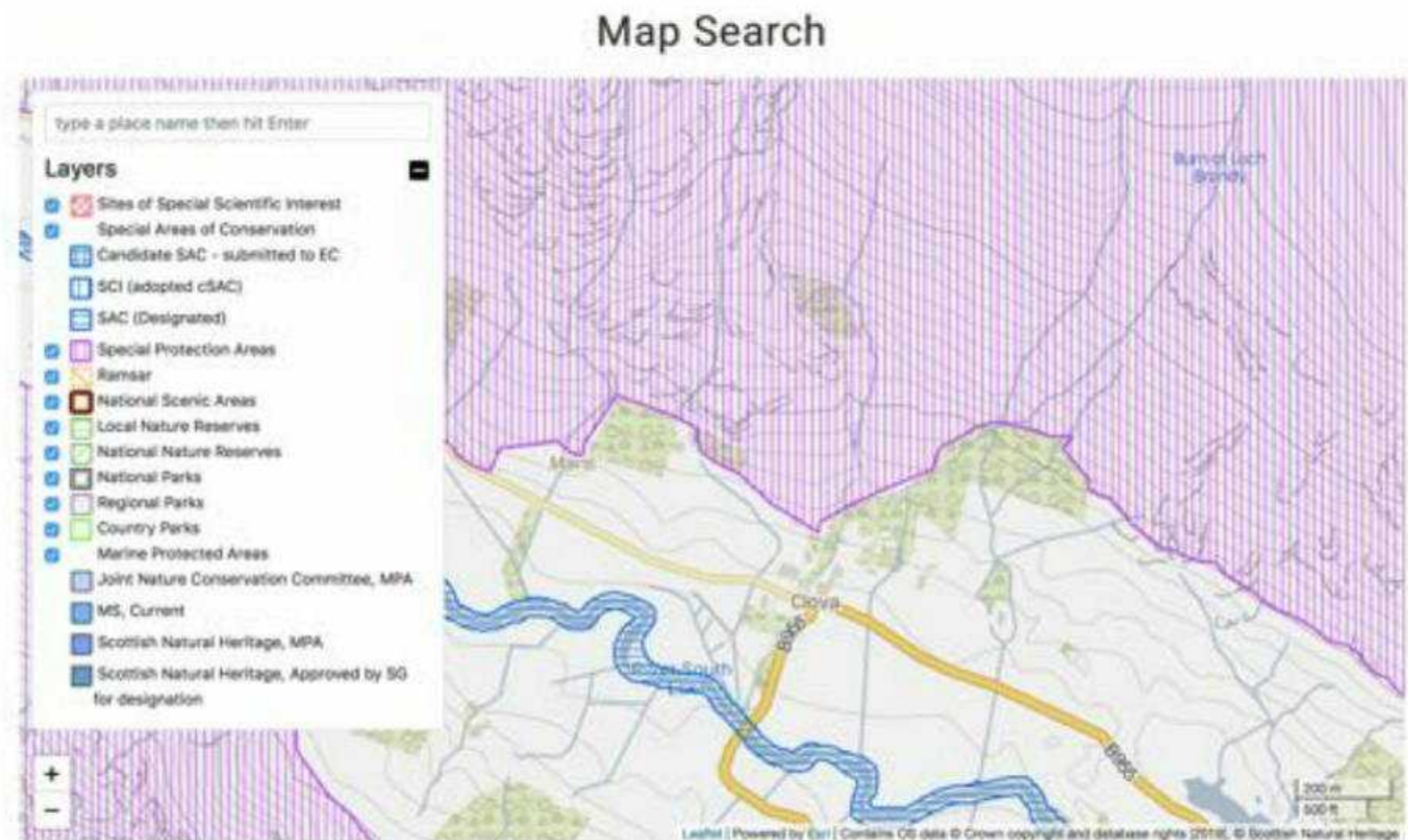


- 2.20 Having regard to the above, it is considered that the development does not result in landscape or visual impacts, which would conflict with Development Plan policies.

### **Ecology + Nature Conservation**

- 2.21 Figure 4: Special Protection Area (SPA) Designation identifies that the site falls within the Cairngorms Massif SPA. The River South Esk is a Special Area of Conservation (SAC), and lies approximately 800 metres to the south of the site.

**Figure 4: Special Protection Area (SPA) Designation**



(Source: <https://sitelink.nature.scot/map>)

- 2.22 Both the SPA and SAC are international nature conservation designations, with the following description and qualifying features, provided by SNH/JNCC:

### **Cairngorms Massif Special Protection Area (SPA)**

#### Site Description

The Cairngorms Massif Special Protection Area (SPA) is a large, upland site in the north east Highlands. The boundary of the SPA incorporates the majority of the Cairngorm Massif and the higher hills and mountains stretching to the west and south to the Dalnamein Forest, Beinn a' Ghlo, and Ben Vrackie in Perthshire; to the east to Caenlochan, Lochnagar, and the heads of the Angus Glens as far as Mount Keen and Glen Tanar in Grampian; and from upper Deeside north to Abernethy. The site rises from 270m to over 1300m and encompasses a diverse range of habitats including heather moorland/grouse moor, grassland, blanket bog, native woodland, freshwater lochs and lochans, extensive areas of montane heaths and exposed rock and scree. Many of these habitats are recognised at a European level and the SPA overlaps Beinn a' Ghlo, Caenlochan, Cairngorms, Ballochbuie, Coyles of Muick SACs along with the upper tributaries of the River Dee, River South Esk, River Tay and River Spey riverine SACs. The SPA overlays all or parts of Abernethy Forest,



Cairngorms, Forest of Clunie, Ballochbuie, Glen Tanar, Caenlochan and Lochnagar SPAs.

#### Qualifying Interests

The Cairngorms Massif SPA qualifies under Article 4.1 by regularly supporting a breeding population of European importance of the Annex 1 species golden eagle *Aquila chrysaetos* (26 active territories in 2003, representing approximately 5.8 % of the GB population).

#### **River South Esk Special Area of Conservation (SAC)**

##### General Characteristics

- Tidal rivers, Estuaries, Mud flats, Sand flats, Lagoons (including saltwork basins) (0.5%)
- Inland water bodies (Standing water, Running water) (75%)
- Bogs, Marshes, Water fringed vegetation, Fens (1%)
- Heath, Scrub, Maquis and Garrigue, Phygrana (1%)
- Humid grassland, Mesophile grassland (2%)
- Improved grassland (2%)
- Other arable land (5%)
- Broad-leaved deciduous woodland (4.5%)
- Coniferous woodland (3%)
- Mixed woodland (5%)
- Other land (including Towns, Villages, Roads, Waste places, Mines, Industrial sites) (1%)

#### Qualifying Interests

SCIENTIFIC NAME	COMMON NAME
Margaritifera margaritifera	Freshwater pearl mussel
Salmo salar	Atlantic salmon

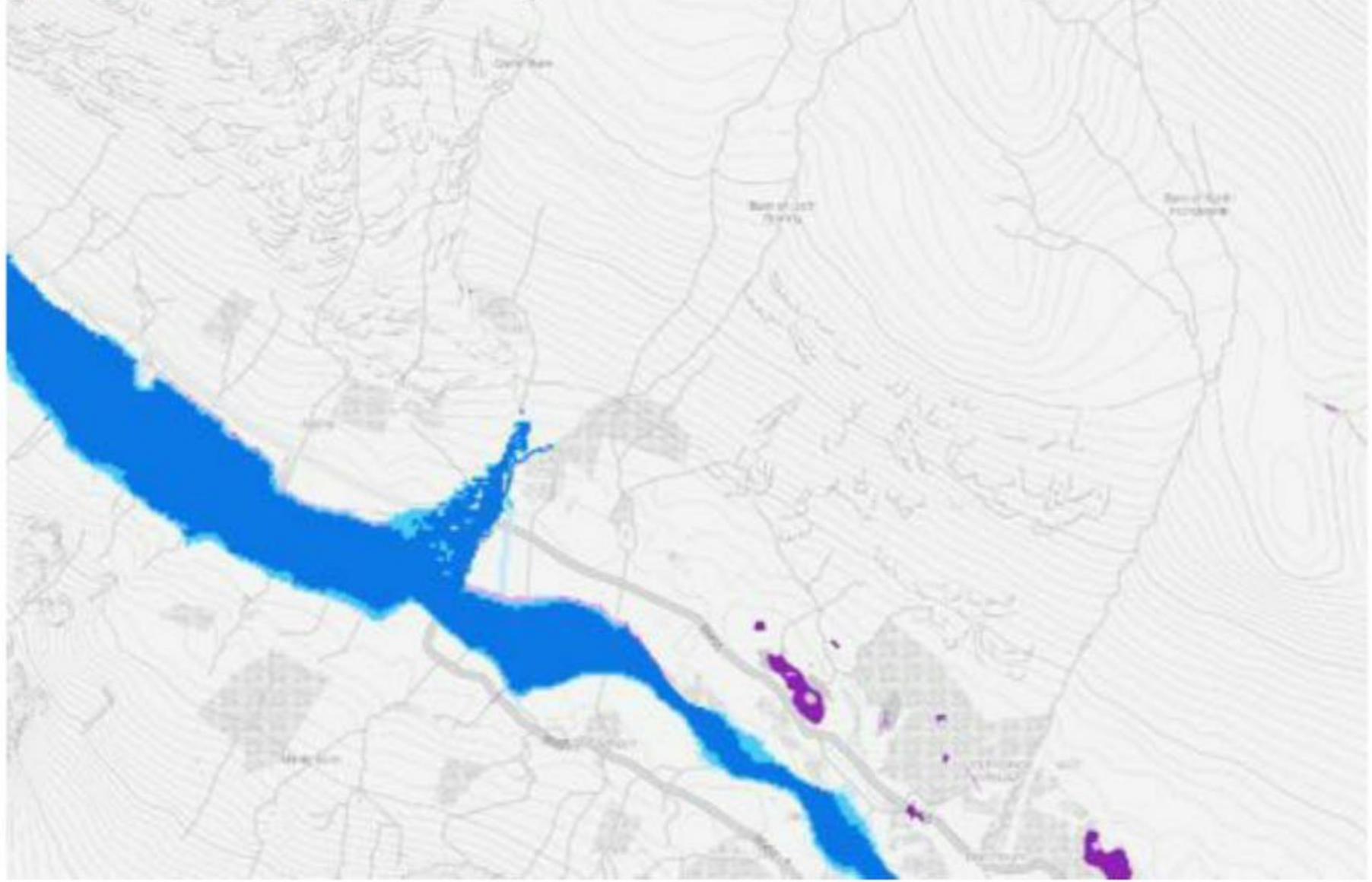
- 2.13 There are not considered to be significant ecological impacts associated with the development, as the proposal relates to the upgrade of an existing track.

#### ***Flooding***

- 2.14 Figure 5: SEPA Flood Map identifies that the development extends from the northern tip of the identified flood risk area.



**Figure 5: SEPA Flood Map**



(Source: <http://map.sepa.org.uk/floodmap/map.htm>)

#### ***Waste Emissions and Impact on Natural resources***

- 2.15 The proposal relates to the upgrade of an existing track, with such works also improving the drainage of the track, as a result, there are not considered to be significant flooding impacts associated with the development.
- 2.16 There are no known issues relating to residues and emissions associated with energy, light, water, soil and sub-soil pollution, or waste. There are no known issues relating to the use of natural resources, including soil, land, water or impact on biodiversity

#### ***Mitigation + Cumulative Impact***

- 2.17 The development provides mitigation in terms of flooding due to the drainage upgrades incorporated into the paths repair works.

### **3.0 The Development Plan**

- 3.1 The development plan comprises:
- The TAYplan, approved 2017;
  - The Angus Local Development Plan, adopted 2016;
  - Cairngorms National Park Local Development Plan, adopted 2015.



***TAYplan, approved June 2017***

- 3.2 Table 1: TAYplan, 2017 – Key Policies identifies the key relevant policies relating to the proposal:

*Table 1: TAYplan, 2017 – Key Policies*

Policy	Compliance
Policy 2: Shaping Better Quality Places	The development improves accessibility and makes the best use of existing infrastructure. The development is considered to comply.
Policy 3: A First Choice for Investment	The development supports the role of tourism and recreation. The development is considered to comply.

***Angus Local Development Plan (ALDP), adopted 2016***

- 3.3 The proposals map identifies that the site falls within the Cairngorms National Park Authority. Table 2: ALDP, 2016 – Key Policies identifies the key relevant policies relating to the proposal.

*Table 2: ALDP, 2016– Key Policies*

Policy	Compliance
Policy DS1 Development Boundaries and Priorities	The development is of a scale and nature appropriate to its location relating only to the upgrade of a hillside track, with the repairs ensuring a better use of the land, but supporting accessibility. The development is considered to comply.
Policy DS2 Accessible Development	The development allows easy access for people with restricted mobility and provides and enhances a safe and pleasant path for walking suitable for use by all. The development is considered to comply.
Policy DS4 Amenity	Figures 2 and 3 illustrate that the development does not have an unacceptable adverse impact on the surrounding area or the environment or amenity. The development is considered to comply.
Policy TC16 Tourism Development	The development will improve an existing tourism related facility, that is a track providing access to the countryside. There is a justifiable locational requirement for upgrading the track, since it exists already and is well utilised. Figures 2 and 3 illustrate that the development is of a scale and nature which is in keeping with the character of the local Landscape. There is not an unacceptable impact on the natural environment or surrounding amenity and the development positively contributes to accessibility. The development is considered to comply.

- 3.4 Figure 3: Strategy Diagram of the CNPLDP identifies that the development is located in an area “managed for sporting, agriculture, recreation, and nature conservation benefits” The development actively supports these management objectives and there is no know impact on nature conservation interests. Table 3: CNPLDP, 2015 – Key Policies identifies the key relevant policies relating to the proposal. Cairngorms National Park Local Development Plan (CNPLDP), adopted 2015



3.5 Table 3: CNPLDP, 2015 – Key Policies identifies the key relevant policies relating to the proposal.

**Table 3: CNPLDP, 2015 – Key Policies**

Policy	Compliance
Policy 3: Sustainable Design	The hillside track is already an established and traditional feature of the hillside and is a characteristic element of both farming and forestry operations in this area. The construction of the track is sympathetic to its countryside location and has been improved as requested by the Cairngorms National Park Authority to their satisfaction. The materials used are appropriate for the track's construction, and sustainably have been essentially derived locally. The development also contributes to the objective to "Maintain and maximise all opportunities for responsible outdoor access..." through providing an alternative and less onerous access up the hillside for public use. The development is considered to comply.
Policy 5: Landscape	The development does not undermine the requirement to conserve and enhance the landscape character and special qualities of the Cairngorms National Park. Part (b) of the Policy requires that "All the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction to the satisfaction of the planning authority." The Applicant has specifically carried out remedial works at the request of the Authority and to their satisfaction, thereby complying with this Policy, by ensuring that any potential adverse effects have been mitigated. The development is considered to comply.

## 4.0 Section 4.0 Conclusions

4.1 Having regard to the above, the Applicant would be grateful if Planning Permission is accordingly granted.

If you have any queries on this application or would wish to discuss any aspects further please do not hesitate to contact me.

Yours sincerely,



EMELDA MACLEAN MRTPI  
EMAC PLANNING LLP



S33A: Existing Track Upgrade  
Glen Clova

## APPENDIX 1



**THIS IS AN IMPORTANT DOCUMENT WHICH AFFECTS YOUR  
PROPERTY AND HAS IMMEDIATE EFFECT**

**TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997**

**NOTICE REQUIRING SUBMISSION OF A PLANNING  
APPLICATION FOR DEVELOPMENT ALREADY CARRIED OUT**

**To:**

Mr Hugh Niven (as presumed owner)  
Pellvie Farm  
Carnoustie  
DD7 6LU

**REFERENCE NO. 2017/0001/ENF**

Issued by the Cairngorms National Park Authority ("the Authority"), as planning authority in terms of paragraph 7(1)(a) and (b) of The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 for the purposes of Section 33A of the Town and Country Planning (Scotland) Act 1997 ("the Act").

1. **THIS IS A FORMAL NOTICE** under Section 33A of the Act which is issued by the Authority because it appears to them that there has been a breach of planning control, under Section 123 (1)(a) of the Act at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the Cairngorms National Park Local Development Plan 2015 and to other material planning considerations.

2. **THE LAND AFFECTED**  
**Land within Glen Clova Estate**

Land at Clova Estate, Angus, ("the Land") shown edged in red on the attached plans ("the Plans").

3. **THE BREACH OF PLANNING CONTROL**

The surface of the existing track on the Land has been upgraded using imported material, widened and new drainage installed ("the Development") without giving prior notification to Angus Council (such prior notification is essential before the works could potentially benefit from deemed planning permission in terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992). This constitutes a breach of Section 123(1)(a) of the Act. A copy of Section 123 is included in the Schedule of this notice.



**4. REASONS FOR ISSUING THIS NOTICE**

It is considered appropriate to seek to regularise the breach of planning control described in paragraph 3 of this notice which has occurred by requiring an application for retrospective planning permission for the Development under Section 33A of the Act. A copy of Section 33A is included in the Schedule.

Notice is hereby given that the Cairngorms National Park Authority, in exercise of their power in Section 33A of the Act, requires the submission of an application to Angus Council for planning permission for the Development to regulate the breach listed in paragraph 3 of this notice.

**5. WHAT YOU ARE REQUIRED TO DO**

Submit a valid planning application to Angus Council for retrospective permission for the Development unless the land has, upon receipt of this notice, already been reinstated to its state prior to the breach of planning control referred to in paragraph 3 of this notice occurring.

**The application required by this notice should be submitted to Angus Council no later than 23rd December 2019.**

**6. FAILURE TO COMPLY**

Please note that the issue of this notice constitutes enforcement action under Section 123 (2) of the 1997 Act. Failure to comply with the notice may result in further enforcement action.

**7. YOUR RIGHT OF APPEAL**

You do not have a right of appeal against this notice.

Dated: 23<sup>rd</sup> September 2019

Signed:



**MURRAY FERGUSON**  
Director of Planning and Rural Development  
Cairngorms National Park Authority  
14 The Square  
Grantown-on-Spey  
PH26 3HG



## SCHEDULE PART I

### Section 33A of the Town and Country Planning (Scotland) Act 1997:

#### 33A Notice requiring application for planning permission for development already carried out

Where there is a breach of planning control the planning authority may issue a notice:

- a) Requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
- b) Describing the development in a way that is sufficient to identify it,
- c) Specifying a date by which the application is to be made, and
- d) Setting out the terms of [section 123\(1\)](#).

### Section 123(1) of the Town and Country Planning (Scotland) Act 1997:

#### 123. Expressions used in connection with Enforcement

1. For the purposes of this Act:

- a) Carrying out development without the required planning permission, or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted, or
- c) Initiating development without giving notice in accordance with [section 27A\(1\)](#) of this Act, or
- d) Carrying out development without displaying a notice in accordance with [section 27C\(1\)](#) of this Act,

constitutes a breach of planning control.

2. For the purposes of this Act:

- a) The issue of an enforcement notice, or
- b) The service of a breach of condition notice,

under this Part constitutes taking enforcement action [ as does the issuing of a notice under [section 33A](#) ] .

3. In this Part "planning permission" includes planning permission under [Part III](#) of the 1947 Act and [Part III](#) of the 1972 Act.



These are the Plans referred to in the foregoing notice issued under  
Section 33A of the Act

