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## NORTH AYRSHIRE COUNCIL

4 September 2019

### Planning Committee

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<b>Title:</b>	<b>Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Construction access track on a designated area of Wild Land and Special Protection Area within Clyde Muirshiel Regional Park</b>
<b>Purpose:</b>	To seek authority to serve a notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 in relation to a construction access track on a designated area of Wild Land and Special Protection Area within Clyde Muirshiel Regional Park
<b>Recommendation:</b>	Agree that authority be given to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring the reinstatement of the construction access track to wild land following the construction of pipework to serve a hydro electric power generating plant near Holehouse Farm, Kilbirnie

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### 1. Executive Summary

- 1.1 An extension to an access track for construction purposes some 3.5m wide over a distance of between 2 and 3km has been formed in the designated Wild Land Area (WLA) and Special Protection Area (SPA) within Clyde Muirshiel Regional Park to the north of the former Pundeevon Reservoir near Kilbirnie. The track was intended to be temporary for the purpose of laying water pipes in relation to a 900kW hydro-electric power generator which has been built near Holehouse Farm (planning permission ref. 15/00683/PP). The turbine house itself is outwith the Regional Park by 0.2km, the WLA by 2km and the SPA by 4.5km.
- 1.2 The route of the construction track through the WLA had been agreed beforehand as a condition of the planning permission for the turbine house. However, a complaint was received from Scottish Natural Heritage in February 2019 which alleged that the track as formed differed to that illustrated in the documents associated with the planning permission. Site inspection has confirmed that the alignment of the track is significantly different to that which had been previously identified by the developer, with some 700 metres having been constructed within the SPA.
- 1.3 The matter was brought to the developer's attention in February 2019. A number of requests for the removal of the track have since been issued. However, to date, no action has been taken to reinstate the land to its former condition, nor has an application

seeking consent to retain the track been made. It is therefore recommended that authority is approved for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 (an Enforcement Notice). An Enforcement Notice would require removal of the track and reinstatement of the land to its former wild state within 18 months of the effective date. The Enforcement Notice would take effect not less than 35 days from the date on which it is served. During this 35 day period, there would be a right of appeal, but not on the grounds that planning permission ought to be granted.

## **2. Background**

- 2.1 Planning permission (ref. 15/00683/PP) was granted subject to conditions on 16<sup>th</sup> December 2015 for the erection of a 900kW hydro-electric scheme on land to the south of Holehouse Farm, Kilbirnie. The water supply for the turbine house lies outside of the planning application site, although both elements are within the same land ownership, which made it feasible to attach planning conditions. As such, conditions were attached which required the developer to put in place various mitigation measures during the construction phase in relation to ecology, habitats and the water environment. The laying of the underground pipework and diversion of existing ditches to supply water to the turbine required the extension of an existing track northwest of the former Pundeavon Reservoir. The reservoir itself has been decommissioned by Scottish Water and was drained several years ago. The track is constructed of crushed stone, mostly taken from borrow pits within the WLA and SPA, and laid on top of a geo-textile membrane. There are several culverts or minor bridge structures where the track crosses over watercourses. The track was not intended to be a permanent feature within the landscape, as it was developed only to facilitate the pipe laying and ditch digging works.
- 2.2 Planning Services received a complaint from Scottish Natural Heritage in February 2019. An initial investigation confirmed that a track had been formed north of the former Pundeavon Reservoir. Contact was made with the developer in February 2019 requesting confirmation that the track would be removed upon completion of the pipework for the hydro scheme. The developer advised at the time that it was anticipated that the works would be completed during Summer 2019.
- 2.3 The developer then requested, informally, that permission be granted to retain the track on a permanent basis, apparently based on a request from the landowner. However, to date, no formal application has been submitted either by the developer or the landowner.
- 2.4 Scottish Natural Heritage (SNH) made a further complaint in July 2019 advising that the route of the track differed significantly from the original details which had been submitted to the Council in 2015. SNH advised that over 700m of track has been built within Renfrewshire Heights Special Protection Area (SPA) in the absence of any form of assessment or approval. SNH also advised that the alignment of the amended route is also particularly intrusive in relation to the Waterhead Moor – Muirshiel Wild Land Area (WLA). A site visit has confirmed that this is the case.
- 2.5 The Renfrewshire Heights SPA was designated by SNH in 2007. It covers a total area of approximately 8,940 hectares. The published conservation objectives for the SPA are “to avoid deterioration of the habitats of the qualifying species” (hen harrier).

- 2.6 The Waterhead Moor – Muirshiel WLA was designated by SNH in 2014. It covers 5,016 hectares and is one of only three such designations to the south of the Highland Boundary Fault line. The WLA is described as “open, rolling plateau moorland which forms the high moorland core of the Clyde Muirshiel Regional Park” which provides a “surprisingly strong sense of naturalness with few human elements, in contrast to the surrounding landscape.”
- 2.7 Clyde Muirshiel Regional Park is described as a Special Landscape Area in terms of the adopted North Ayrshire Council Local Development Plan (LDP). Policy ENV 7 of the LDP commits the Council to paying “special attention to the desirability of safeguarding the character or appearance of the landscape in the determination of proposals”. Policy ENV 7 also states that “development should be sited so as to avoid adverse impacts on wild land.”
- 2.8 Being located within both a SPA and a WLA, it is considered that a permanent track designed for construction purposes would constitute an adverse impact within the Special Landscape Area of Clyde Muirshiel Regional Park. A planning application for the retention of the track would therefore not be supported.

### **3. Proposals**

- 3.1 In the interests of restoring the integrity of the SPA and WLA, it is recommended that the Committee approves the service of a Notice under s.127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-
- (i) Removal of the construction track north of the former Pundeavon Reservoir, including the removal of any associated, culverts and bridge structures; and
  - (ii) Restoration of the land and any associated borrow pits to its previous wild hillside condition.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 Should any requirement of the Notice not be complied with following expiry of the compliance period, the Council as planning authority may enter the land and carry out such steps to achieve compliance with the requirements of the Notice. The Council may then seek to recover from the person(s) who was the then owner or lessee any expenses reasonably incurred during the carrying out of these works.

#### **Human Resources**

- 4.2 None.

#### **Legal**

- 4.3 The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.

## **Equality/Socio-economic**

4.4 None.

## **Environmental and Sustainability**

4.5 The proposed Enforcement Notice supports the restoration of an area of Wild Land and the Special Protection Area within the Special Landscape Area of Clyde Muirshiel Regional Park which has been affected by the development of a construction access track.

## **Key Priorities**

4.6 The proposed Enforcement Notice would support the Council Plan priority: Inspiring Place – “North Ayrshire is a sustainable environment.”

## **Community Wealth Building**

4.7 The proposed Enforcement Notice would address complaints from Scottish Natural Heritage about the impacts on the SPA and WLA arising from the track.

## **5. Consultation**

5.1 Finance has been advised of the report in terms of its budgetary provision.



RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Mr A. Hume, Senior Development Management Officer**, on **01294 324318**.

## **Background Papers**

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# Clyde Muirshiel Regional Park

