

## **NATIONAL ACCESS FORUM**

### **Unauthorised Mountain Bike Trails: A Guide for Land Managers and Riders**

#### **Purpose**

This paper summarises the work of the NAF subgroup on Mountain biking and Enduro Activity since the last NAF meeting including the consultation phase of the draft guidance and the feedback received.

#### **Action**

- Members are asked to note the minutes of the two subgroup meetings (25/6/2018 & 20/8/2018) and the summary notes from the consultation workshops (Annex 1).
- Members are asked to approve the final draft of the guidance and forward action (draft guidance attached).

#### **Background**

The NAF sub group on Mountain biking and Enduro Activity has been very active since the last NAF meeting, progressing the draft guidance to land managers and riders through a series of stakeholder and consultation meetings. The first stakeholder event was held in June in Aviemore where enthusiastic feedback for the guidance was received along with helpful suggestions on clarity and content. Following various revisions three further workshops were held in Glentress, Birnam and Banchory with about 85 people attending. A summary note of these August Stakeholder meetings is provided in Annex 1.

#### **Outcome**

The consultation phase was intended not only to obtain feedback on the content of the draft guidance but also to start a conversation about the problems and solutions for unauthorised trail building across Scotland.

The final draft guidance is now attached for NAF members to approve. It contains;

- Background information on why we have developed the guidance
- Key messages
- Information on Scottish Access rights and the Scottish Outdoor Access Code
- Models for engagement and managing trails
- information on liability, risk assessment and insurance
- Planning and outline building guidelines
- Case studies
- Annexes of sample agreements, insurance, risk assessments, signs, etc

#### **Forward Action**

The sub group will make any final changes to the draft guidance and move towards publication. The guidance will be launched on the first day (22 November) at the Developing Mountain Biking in Scotland conference in Aviemore. The launch will be accompanied by relevant communication relating to the role of NAF in promoting responsibilities whilst exercising access rights.

Janice Winning – NAF Secretary  
September 2018

## **Annex 1: National Access Forum Sub-Group: Mountain Biking and Enduro Activity**

### **A: NOTE OF MEETING - NAF Mountain Biking Workshop – 25 June 2018, Aviemore**

1. Those present were:

National Access Forum (NAF): David Henderson-Howat (Convenor), Karen Ramoo (SLE), Kevin Lafferty (FCS), Graeme MacLean (Downhill Mountain Biking in Scotland), Angus Duncan (Falkirk Council), Paul Timms (Cycling UK).

Stakeholders: Al Gilmour (Senior Instructor, Glenmore Lodge), Anne Elliot (SNH), Ben Clinch (Moray Estates), Brian Duff (FES), Bruce Taylor (Scottish Woodlands), Craig Millar (FES), Cristian Pizarro (Laggan Forest Trust & Wolftrax Centre), David Keegan (Bothy Bikes), Douglas Carachrie (NTS), Douglas Stewart (Cairngorms NPA), Fiona Murray (FES), Frazer Coupland (No Fuss Events), Gordon Smith (Tweed Valley Trails Association), Graham Bell (Laggan Forest Trust & Wolftrax Centre), Hugh McKay (FES), John Ireland (FES), Nash Masson (Ride Cairngorm), Matthew Kirkwood (Rothiemurchus Estate), Philippa Grant (Rothiemurchus Estate), Robert Brown (NTS), Ross Watson (WTS), Will Anderson (Seafield Estate), Jess Tomes (RSPB).

### **Welcome**

2. David Henderson-Howat welcomed participants, He explained that NAF had been established by SNH to advise on national issues linked to Scottish access rights, and to complement the work of local access forums, which help to resolve local access issues. NAF membership is drawn from outdoor recreation bodies, land management bodies (including NFU Scotland and SLE), public bodies (including local authorities, National Parks, FCS/FES and Police Scotland), and other bodies (such as the Kennel Club and Paths for all).

### **Background**

3. In 2017, NAF had considered a paper from SLE and FCS highlighting concerns about the increased scale of unauthorised mountain bike trail (MTB) building. Subsequently, NAF members had visited Glen Tress and Innerleithen to view FCS-constructed MTB routes and unauthorised downhill trails. Following this initial discussion, NAF had agreed to establish an MTB sub-group to focus on this issue.

4. The purpose of the 25 June Aviemore workshop was to seek views from stakeholders on a draft guidance note prepared by the MTB sub-group (*Mountain Bike Trails: A Guide for Land Managers and Riders*).

5. Graeme MacLean, Karen Ramoo and Kevin Lafferty made brief presentations highlighting key issues from the perspective of mountain bikers, landowners and land managers.

6. During subsequent discussion, participants emphasised a number of points, including the increasing demand for more challenging trails as mountain bikers become more ambitious; the urgency of addressing the problem of unauthorised trails and to find creative solutions, drawing as relevant from experience in other countries; the environmental impact of unauthorised trails; the problem of funding; the prevalence of unauthorised trail building in peri-urban areas; importance of communication between MTB users and land managers;

and the distinction between building unauthorised trails (not covered by access rights) and using informal, non-constructed, trails (covered by access rights - provided that the user behaves responsibly, with consideration for other interests). It would be valuable to use social media to help communicate messages from the final version of the guide. Attention was also drawn to the SNH *Brief guide to occupiers' legal liabilities in Scotland in relation to public outdoor access*.

## **Draft Guide**

7. Participants were invited to consider the draft guide, which had been previously circulated, and provide advice on its structure, contents and presentation. There was detailed discussion in break-out groups about three potential management models for engagement and managing trails, namely (i) the land manager adopting trails, (ii) volunteering agreements and (iii) agreements with constituted mountain bike groups. It was noted that these management models are intended to provide a starting point for discussion between land managers and mountain bikers. In addition, the guide would contain case studies to provide concrete examples of attempts to address issues on the ground.

10. During discussions, a wide range of helpful comments and suggestions were made. These included:

*Land manager adopting trails* – supported in principle, but only one option in a range of possible approaches; useful to include case studies showcasing good examples of this; unlikely to be attractive as an option for land managers unless fully funded; importance of talking/good communication between land manager and users; need for agreed terminology (glossary of terms in the guide should help with this).

*Volunteering agreements* – general support, depending on location/local situation; depends upon relationships between land manager and MTB volunteering community (or communities); need to remember that managing volunteering agreements is not cost-free; can be useful in building credibility and confidence as a prelude to a more formal agreement with an MTB group; helpful to include templates/proforma/competency frameworks in the guide; need to take account of PVG (protection of vulnerable groups) requirements.

*Agreements with constituted mountain bike groups* – can represent a positive way forward to secure land manager/MTB engagement; a good way to develop a valuable tourism asset; communications can be difficult if there are a number of different MTB groups wanting separate arrangements in the same geographical area; need to allow time for the process of building trust and developing details of the agreement (including on, e.g., liability and insurance).

## **Closing Remarks**

11. The draft guide will be refined to reflect the input from this stakeholder workshop. It would then be discussed more widely with stakeholders at evening meetings on 6, 7 and 8 August (to be held in Glentress, Birnam and Banchory, respectively). The intention is to agree the guide at the NAF meeting on 26 September and launch it at DMBinS conference in November 2018. While this would not “solve” the problem of unauthorised trails the suggestions for possible management models and the case studies should provide a “tool box” to help inform constructive discussion between land managers and MTB communities.

12. Participants were thanked for their active input and positive contributions to this work.

## **B: Minutes of the fifth MTB sub group meeting –25<sup>th</sup> June 2018**

**Attendance** - David Henderson Howat (Chair), Graeme McLean (DMBinS), Paul Timms (Cycling UK, Scotland ), Karen Ramoo (SLE), Angus Duncan (Falkirk Council/LAs), Kevin Lafferty (FCS), John Ireland - Health and Safety Policy and Development (FES)

**Apologies** – Janice Winning (NAFsec), David Clyne (Cairngorms National Park), Helena Mauchlen (BHS), Alan Macpherson (SNH), Mike Brady (S Lanarkshire Council), Jamie Smart (NFUS), Simon Pilpel (S Lanarkshire Council/ LAFs)

### **1. Minutes of the last meeting and matters arising**

The minutes of 16 May were approved.

**AP 4/1,4/2,4/5,4/6 and 4/7** – already discharged.

**AP 3/2** (John Ireland to circulate legal advice previously received on forest roads and public use). This had been overtaken; however, John Ireland will provide comment, via Kevin, on the legal text in section 4 of the draft guide – discharged.

**AP 4/3 and 4/4** (brief for creative writer/designer): Kevin Lafferty confirmed that arrangements were in place to secure the services of a copy writer and a designer. It was agreed that a “pre-design” version should be circulated for discussion at the August workshops, and the “designed” version should go to the NAF September meeting – discharged.

### **2. Development of Guide following 25 June Stakeholders Meeting**

Section 3. Kevin, Karen and Graeme would amend, as necessary, the text on the management models to reflect discussions in sub-groups they had facilitated at the Aviemore workshop.

Section 4. All present would review text to consider whether improvements were necessary.

Section 5. Graeme would develop this section, including text on the need to take account of environmental considerations, as raised by SNH at the Aviemore workshop.

Section 6. Case studies. Existing case studies would be finalised, and consideration given to further case studies following the Aviemore workshop.

Templates/Examples of agreements, risk assessments, insurance certificates. All present would consider what they could usefully provide for the Annexes, including examples of insurance and volunteering agreements (Angus) and FE templates (John/Kevin).

**AP 5/1:** Karen, Kevin and Graeme to meet on Friday 29 June to take stock of progress towards meeting these needs and develop/seek further input as necessary.

**AP 5/2:** All further edits and input to be sent to David by Monday 16 July. David will then produce a further draft of the guide and recirculate it to the sub-group for any final tweaks prior to the August workshops.

### **3. Wider stakeholders engagement – evening meetings**

The dates for the wider stakeholder evening meetings (7:30 -9:00) were confirmed as: Monday 6<sup>th</sup> August – Glentress, Tuesday 7<sup>th</sup> – Birnam Arts Centre & Wednesday 8<sup>th</sup> – Barn Arts Centre, Banchory. It was agreed that the format should be roughly similar to the Aviemore workshop, though possibly without breaking into sub-groups. Participants should be asked to register beforehand, in order to get an idea of numbers.

**AP 5/3:** Graeme, Karen and Kevin to agree final arrangements on Friday 29 June.

**4. AONB-** None.

**5. DONM -** Janice Winning would be asked to arrange a further sub group meeting in mid August.

## C: NOTE OF AUGUST STAKEHOLDER WORKSHOPS

1. Three stakeholder meetings were held during August 2018, at Glentress, Peebles (6 August), Birnam (7 August) and Banchory (8 August). They were all open meetings, running from 7 pm to 9 pm, and they were all publicised through a press release and local contacts. They were attended by about 85 people (30 in Glentress, 25 people in Birnam and 30 in Banchory). Most participants were mountain bikers (including coaches, owners of mountain bike businesses, trail developers and journalists). In addition, all meetings had participants from the private landowning sector and from Forest Enterprise Scotland; the meetings in Glentress and Banchory were also attended by local authorities

2. Each meeting followed a common format. David Henderson-Howat NAF Convenor welcomed participants, outlining the role and composition of the National Access Forum and briefly explaining the work of the mountain bike sub-group and the importance of input from stakeholders. Graeme MacLean, Karen Ramoo and Kevin Lafferty highlighted key issues from the perspective of mountain bikers, landowners and land managers. There was then an open discussion, followed by group workshops focussing on three models for engagement (namely land managers adopting trails, volunteering agreements, and agreements with constituted mountain bike groups). Copies of the draft Guide (18 July version) were made available to all participants (email in advance and hard copy on the evening).

### General discussion

3. During the general discussion participants were invited to raise questions and contribute to providing answers in an interactive dialogue. The questions asked and points made included the following:

- What is an “unauthorised trail”? This will be defined in the Guide but, put simply, it is a trail developed using tools without permission from the land manager. The responsible right of access relates to access to land for recreation etc, but not the use of hammers, saws and spades etc. to build trails.
- What about trails developed along desire lines, deer paths etc? These are OK on land to which access rights apply, provided that they are used responsibly, complying with the principles of responsible access set out in the Scottish Outdoor Access Code (namely, respecting the interests of other people, caring for the environment, and taking responsibility for your own actions).
- Why is this issue causing concern/what is wrong with just carrying on as at present? The scale of unauthorised trails, the intensity with which are used when (e.g.) publicised through social media, and the rate at which new trails are appearing has caused concern about the risk of accidents to other users and inexperienced bikers, about environmental damage, and about potential liabilities faced by occupiers of the land if they fail to take action to prevent possible injury or environmental damage.
- What are the land manager’s liabilities? Attention was drawn to the recently updated SNH publication *A brief guide to occupiers’ legal liabilities in Scotland in relation to public outdoor access* – this outlines statute law, and provides summaries of relevant cases that have gone to court. It was also mentioned that many cases are settled out of court by insurers; and that, at any given time, the FC is typically facing claims totalling some £10 million across the national forest estate. In order to make successful claims, claimants must generally show that the land manager could reasonably be expected to know about the hazard, and that the land manager did

nothing about the hazard, and that this failure to do anything about the hazard caused the accident.

- What potential liabilities do bikers face? As with occupiers' liability, this is ultimately for the courts to decide, but bikers could face claims for causing injuries to third parties either when riding or as a result of building trails. It was suggested that, mountain bikers should take out personal liability insurance (for example by joining an association which provides insurance cover as a membership benefit). In addition, there is a need for insurance cover where mountain bikers undertake trail development or management work.
- What is a "safe trail"? There is no such thing as a safe trail, but the risk of injury can be reduced through careful design and by providing information about the level of experience needed by those tackling particular trails.
- How can bikers and land managers make contact with each other about trails? If local enquiries are unsuccessful, other options include seeking advice from the local authority access officer. (Where a land manager is concerned about unauthorised trails one approach is to put up signs inviting the builders to make contact in order to discuss their future.)
- Why are only three management models being discussed – are there any other options? Yes, there may well be other options that will work well in particular circumstances. The purpose of setting out the three management models is to help provide a starting point for dialogue between land managers and mountain bikers – and there is scope to adapt them to meet different needs and different situations.
- How can more bikers be made aware of the need to behave responsibly when exercising their right of access? This is a continuing challenge, requiring sustained communication effort. Important communication channels include the mountain biking press, social media, bike shops, mountain bike professionals (such as coaches) and peer pressure. It was noted that as mountain biking is maturing as a sport there are active mountain bikers in a position to show leadership by demonstrating the importance of responsible behaviour, at both the national and local level.

### **Workshop discussion of management models**

4. Three management models were discussed in workshop sessions. Suggestions and comments included the following:

#### Adoption of trails by land managers

##### *Advantages*

- Provides a good starting point for future dialogue, and reduces risk of unauthorised trail development.
- Creates facilities in the local area, with potential for increased variety. Means that trails will be built and constructed in accordance with recognised guidelines of good practice

##### *Disadvantages and challenges*

- Requires agreement from the land manager, and also likely to require funding by the land manager. To help overcome this, the land manager must see the benefits

(public & voluntary sector owners, and philanthropic private owners may be willing to recognise “public” benefits).

- While there may be opportunities to generate income (e.g. from car parks or cafes), such income is unlikely to cover all the costs of building trails, maintenance, risk assessment and inspections.
- Grants may be available – but this is not guaranteed.
- Once mountain bikers have grown used to these trails they may want more exciting and demanding trails.

#### *Moving forward*

- Useful to have case studies with examples of how this has worked in practice.

#### Volunteering agreements

##### *Advantages*

- Lots of existing experience with volunteering agreements, e.g. in relation to foot path construction, monitoring and maintenance. Lessons learned can be applied to mountain bike trails.
- Helps build mutual confidence and trust in developing a constructive relationship between mountain bikers and land managers.
- Carrying out work through volunteers reduces costs for land managers.

##### *Disadvantages and challenges*

- Can be difficult to get people to volunteer (e.g. where they have busy lives and want to use their spare time to bike rather than carry out voluntary work on trails). However, other people (e.g. active retired) may be able and willing to offer their time.
- Need to consider providing liability insurance for volunteers.
- There will still be costs for land managers, including e.g. materials, costs of planning applications, any additional liability insurance, time spent in dialogue with volunteers.

#### *Moving forward*

- Helpful to have access to templates of existing volunteering agreements.
- Undertake local pilots, making use of experience in other parts of Scotland.

#### Agreements with constituted mountain bike groups

##### *Advantages*

- Offers a mechanism for developing and maintaining trail networks, involving a wide group of people and making use of their different skills.
- Can reduce costs and help mitigate liabilities for land managers.
- Can be used to offer training and skills development, e.g. in trail construction, maintenance and risk assessment.

- Provides a vehicle for improved dialogue and communications.
- Constituted groups can apply for external funding, as well as having membership income.

#### *Disadvantages and challenges*

- Need to be clear about liabilities and insurance requirements. Landowners' insurers are likely to require mountain bike groups to have their own separate liability insurance policy.
- Mountain bike groups to be accountable for the work they undertake on trails.
- Important for groups to build trust with land managers about their long-term viability as an effective partner.
- Work must be carried out to necessary standards and, where required, comply with relevant legislation (such the Construction (Design and Management) Regulations).
- Takes time to establish groups. Need for patience. Also requires volunteers willing to come forward as leaders and put effort into setting-up and running groups. Danger of over-burdening a small group of individuals.
- Need to raise funds – for setting-up the group (e.g. legal costs) and running it (e.g. insurance, as well as costs of trail construction/maintenance).
- Might be seen as being “too organised”, and “no fun”. May not deter “rogue builders”.

#### *Moving forward*

- Establish more pilots, building on experience of current initiatives such as Tweed Valley Trails Association.

#### **Next Steps**

5. The next steps in development of the Guide will be a further meeting of the sub-group to consider feed-back from the workshops on 20 August. The final draft will then be considered by the National Access Forum at its meeting on 26 September. The intention is to launch it at the DMBinS conference, to be held in Aviemore on 22/23 November. Thereafter, the challenge will be to communicate the messages in the Guide so that effective action is taken to promote construction dialogue between mountain bikers and land managers.



## **D. Minutes from the sixth MTB sub group meeting: 20 August 2018**

### **Attendance -**

David Henderson Howat (Chair), Janice Winning (NAFsec), Graeme McLean (Scottish Cycling), John Ireland - Health and Safety Policy and Development (FES), Karen Ramoo (SLE), Angus Duncan (Falkirk Council/LAs), Kevin Lafferty (FCS).

**Apologies** – Helena Mauchlen (BHS), Alan Macpherson (SNH), David Clyne (Cairngorms National Park), Simon Pilpel (S Lanarkshire Council/ LAFs), Paul Timms (Cycling UK Scotland), Mike Brady (S Lanarkshire Council), Jamie Smart (NFUS).

### **AGENDA**

#### **1. Minutes of the last meeting and matters arising**

The minutes from the 25 June meeting at Aviemore were approved. Action points 5/1, 5/2 and 5/3 were discharged. A note of the Aviemore stakeholder meeting also 25 June was approved (see Annex 1), this had been circulated to all participants who attended the meeting.

#### **2. Feedback from the ‘Talk about Trails’ workshops**

David Henderson Howat thanked the subgroup for all the effort in organising the stakeholder event and subsequent 3 workshops held in August at Glentress, Birnam and Banchory. All events had been positive with significant support for the guidance from participants reflected in the enthusiasm expressed at and beyond the meeting. There was a readiness to get on with the practical delivery. The subgroup agreed that a brief summary of the progress following the workshops would be prepared for PR (MTB newsletter) and communication purposes (participants and general public).

**AP 6/1:** David Henderson Howat to produce a draft statement summarising the consultation phase and current plans to launch of the guidance.

The subgroup also discussed resources needed to implement the guidance on the ground especially for the regional MTB co-ordinators; including the need to lever additional funding support from the cycle governing bodies and Sport Scotland going forward. A new six year National Cycling Strategy is due in January which would be relevant to DMBinS and NAF.

#### **3. Update on design work**

Kevin Lafferty updated the subgroup on the design work to date and various design options were tabled. Overall there was agreement for more up to date photos/illustrations and more colour to be incorporated into the design to make it more contemporary.

**AP 6/2:** Kevin Lafferty to brief the designer on feedback received.

**AP 6/3:** Graeme. McLean to provide up to date images for the guidance document

#### **4. Guidance Document - remaining edits**

There were a number of smaller edits required to the main text arising from the workshop to improve clarity but the majority of the remaining work relates to developing the annexes (agreements, glossary, risk assessments, insurance, signage etc). David Henderson Howat agreed to finalise the main text of the guidance.

**AP 6/4:** All remaining comments on the wording of the main text to be sent to David as soon as possible.

**AP 6/5:** Karen Ramoo to draft a ‘Glossary’ with input from Graeme McLean and John Ireland

**AP 6/6:** Kevin Lafferty and John Ireland to finalise the annex on lease agreements (an existing lease agreement and a blank template).

**AP 6/7:** Graeme McLean and John Ireland to finalise the annex on risk assessments.

**AP6/8:** John Ireland to advise on the wording for the annex on insurance including the limit for public liability to be agreed.

**AP 6/9:** Angus Duncan to provide an example of an agreement for a constituted group.

**AP 6/10:** Graeme McLean to provide a management model template.

## **5. Communications/PR**

Future PR and communication ideas were discussed. An article for the MTB press would be produced. There would be PR opportunities surrounding the DMBinS conference in Aviemore in November, with the guidance launched on the first day, 22 November with possible site visits to look at examples on the ground.

Karen confirmed that the SLE would promote the guidance at a couple of events next year. Landward are also interested in doing a follow up piece for TV. Graeme McLean identified the regional MTB co-ordinators as being key to the on-going delivery of the guidance locally. Additional funding support as identified earlier would be essential. Local access officers would also be important in promoting the guidance.

**AP 6/11:** Angus Duncan to raise promotion of the guidance with access officers through SOAN.

## **6. Forward work programme**

The final draft guidance will be discussed at the next NAF meeting on the 26<sup>th</sup> September with a view to it being signed off ready to be launched at the DMBinS conference on 22 November. An anticipated print run of 500 copies would be made available for the launch.

**AP6/12:** NAF secretary to produce a short cover paper for the September NAF meeting incorporating the recent work of the subgroup to sit alongside the final guidance document.

7. **DONM** - To be confirmed following the November DMBinS conference.