



Way of Working between Scottish Forestry and Loch Lomond and Trossachs National Park Authority on Forest Road/Private Way Regulations

Relevant Legislation:

- Environmental Impact Assessment (Forestry) (Scotland) 1999 (with subsequent amendment Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017)
- The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014 and Planning Circular 2/2015: Consolidated Circular on Non-Domestic Permitted Development Rights
- National Scenic Area Circular 9/ 1987

Introduction

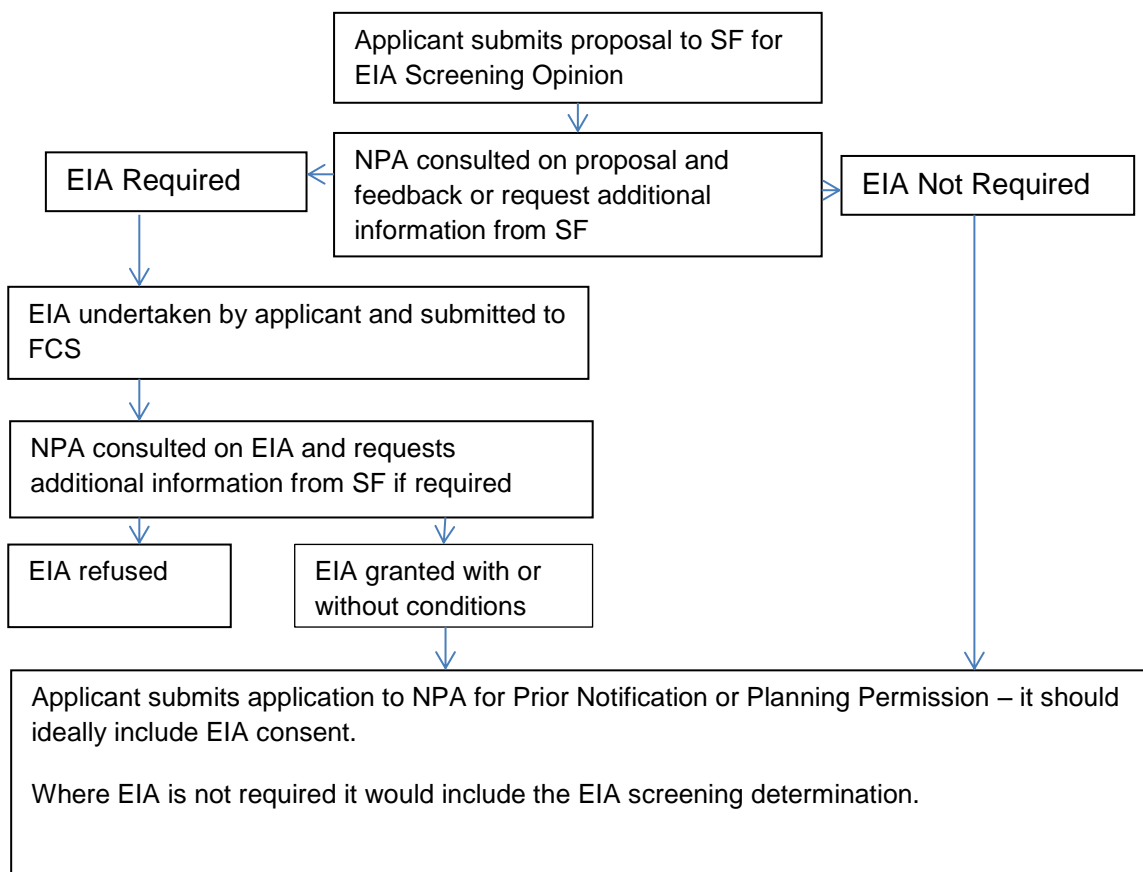
This paper seeks to introduce a proposed way of working that represents a pragmatic solution for both parties to align across the relevant procedures and will enable an efficient assessment of any forestry access proposal under both the EIA (Forestry) Regulation and the Planning system (in the majority of cases the requirement to submit a Prior Notification (PN)).

This attempts to develop the advice set out in Circular 2/2015 which recognises that there are opportunities for aligning planning procedures with other relevant consenting regimes.

In the National Park, any development proposal for a forest road or quarry must be screened by the FCS Conservancy under the EIA (Forestry) Regulation 1999. In addition, the prospective applicant must notify the National Park Authority as the Planning Authority of any private way for agricultural or forestry purposes under The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014. The principle of this way of working is that both regulatory bodies would use aligned information, in order to provide efficiencies in assessing any proposal having regard to both sets of regulation.

Forestry Environmental Impact Assessment (EIA) and Prior Notification process

The timing of the respective submissions for EIA screening and Prior Notification (PN) is up to the applicant. Ideally, the PN would be submitted on completion of the EIA process. Therefore the following flowchart is considered the ideal process.



It is therefore advised that the FCS EIA Screening process is undertaken first.

It is normally expected that the finalised EIA screening documentation would be sufficient to enable the notification to the Planning Authority to be assessed as 'Prior approval not required'.

In the above process when the National Park Authority (NPA) recommends additional information is required at the first step of EIA Consultation then Forestry Commission Scotland Conservancy (FCS – Conservancy) agrees to re-consult NPA on revised documentation.

Note: In proposals where quarries (still Permitted Development for forestry proposals) are proposed to be retained but used as passing places, then a close information exchange between FCS/NPA is required to ensure effective oversight and landscape mitigation is achieved without unnecessary delay to the applicant.

Forest Plan/Land Management Plan consultation

When the FCS consults the NPA under current consultation practice:

NPA agrees to include as part of its response, clear guidance regarding the planning process to be followed with regard to proposals to construct Forest Roads or other infrastructure within these plans. This will confirm whether or not planning permission or a PN is required.

The NPA opinion will take account of the scale and type of forestry private way and the location such as whether the proposal is in a National Scenic Area. The NPA may use a degree of discretion to recognise that small-scale infrastructure such as forwarder ramps, lay-bys and turning circles which are minor alterations to an existing forest road may reasonably be excluded from prior notification or planning permission. For example, forwarder tracks may not

require prior notification or planning permission where there is no laying of hard-core material. ATV tracks and forest roads are always likely to require prior notification or planning permission given they are a substantial track.

In addition the NPA's formal consultation response would also set out the scale and type of forestry infrastructure which they would wish to be consulted upon in relation to the required EIA screening.

If asked the NPA would provide such an opinion for any private way within forest with a current forest plan.

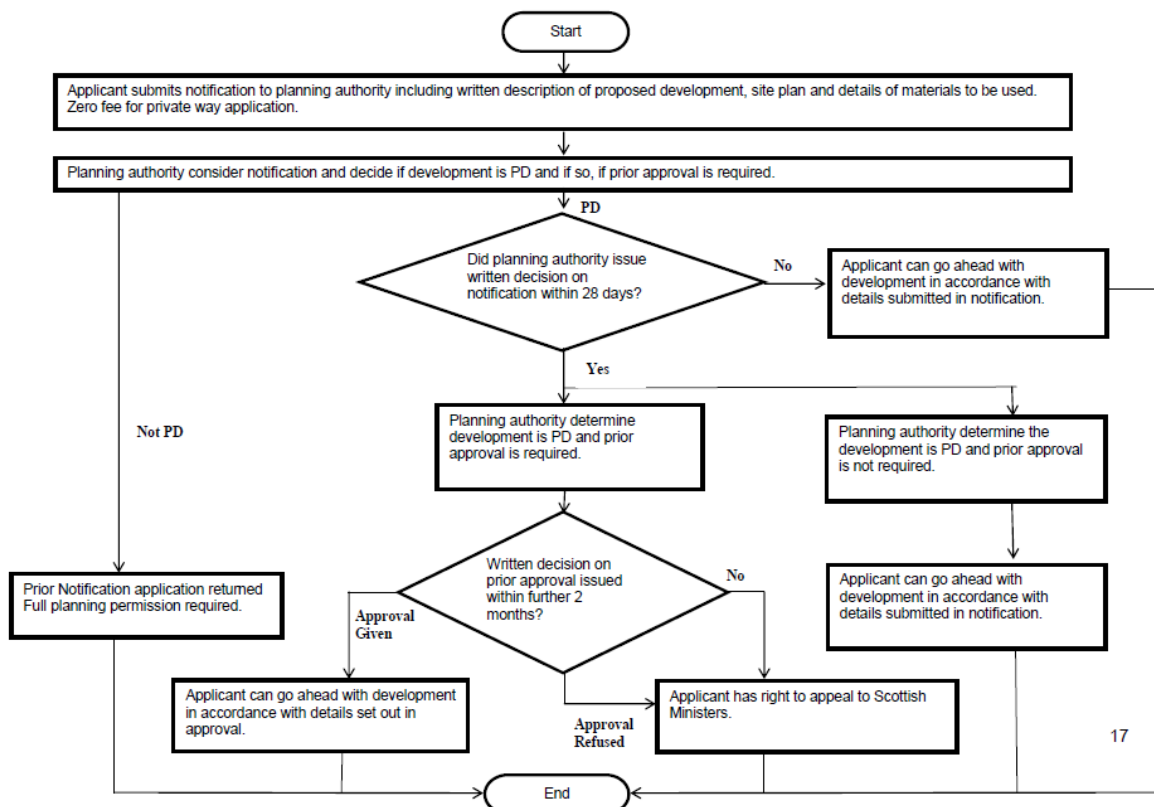
If NPA receive a PN application and is not aware of EIA screening then the NPA will consult the FCS on the 'forestry need' and inform the applicant that EIA screening is required. This is likely to result on a decision that **Prior Approval is required**. FCS may use the same information as submitted for Prior Notification for EIA screening.

Optimising the Prior Notification Process

As described in the previous section, a prospective developer should aim to complete EIA screening prior to submitting an application for Prior Notification to the NPA. This would be the most efficient way for all parties involved and would reduce the need for duplication of information. This is the approach we would encourage where possible.

If the PN application to NPA is submitted prior to the EIA screening process being undertaken by the Conservancy. The response to your application may be that **prior approval is required** due to additional information not being provided initially. In addition the proposal would still require screening by FCS so leading to additional delay to the applicant.

The following diagram is a useful reminder of the Prior Notification process and timescales:



Enforcement breaches of EIA and/or PN

Both forestry EIA regulations and planning law (Town and Country Planning (Scotland) Act 1997 and Circular 10/2009: Planning Enforcement) provide enforcement powers to respond to any unauthorised track construction, deviations from agreed plans, or any other breach of the regulations.

When such a breach is identified, early dialogue and agreement between FCS and NPA as to who will be the lead organisation will be required. The circumstances of each case will determine who is best placed as the lead organisation.

The NPA Planning Enforcement Charter is available online through the NPA website, and guidance for forestry enforcement is available from their office.

Note: it is not possible under the planning regulations to apply retrospectively for Prior Notification. In the event that a private way has been constructed without fulfilling the requirement to first notify the planning authority, it will be necessary to apply retrospectively for planning permission.

Conclusion

This paper has proposed a 'way of working' in order to foster better alignment between FCS/NPA and thereby enable efficient assessment of any forestry access proposals under the relevant legislation/regulation.

Whilst the timing and approach is ultimately for the applicant to choose; it is encouraged that a PN is only submitted to the planning authority after the completion of the EIA process with the Conservancy. The EIA Screening documents would generally be sufficient to allow applications to be assessed as 'prior approval is not required'. Where quarries form part of the proposal, a close information exchange between both parties would ensure effective oversight and landscape mitigation without unnecessary delay. The Conservancy has a role to play within this process in relation to re-consulting on revised documents in relation to EIA Screening.

The NPA, in return, agrees to include as part of its consultation response, advice on the planning process to be followed with regard to proposals to construct Forest Roads or other infrastructure as part of the consultation process on Forest Plans or Land Management Plans. The NPA advice will take account of the scale and type of forestry private way and the location: such as whether the proposal is in a National Scenic Area. In addition, the NPA's consultation response would state the scale and type of forestry infrastructure upon which they would wish to be consulted in relation to the required EIA screening. If asked, the NPA will provide this advice for any forestry private way within a current forest plan. If NPA receives a PN application and is not aware of EIA screening having first taken place, then the NPA will consult the FCS on the 'forestry need' and inform the applicant that EIA screening is required. This is likely to result in a decision that **Prior Approval is required** and associated delay to determination. FCS may use the same information as submitted for Prior Notification for EIA screening.