

Birse Community Trust

**FOREST OF BIRSE COMMONTY**

**Notes about the Current Boundaries**

Robin Callander

March 2021

CONTENTS

External Boundaries

Western Boundary

Southern Boundary

Eastern Boundary

Northern Boundary

Internal Boundaries

Ballochan and Auchabrack

Forest of Birse Kirk

Shooting Agreement

Grazing Agreement

North Hill Management Agreement

Attached Maps

External Boundaries

Internal Boundaries

Part of Northern Boundary

Ballochan Boundaries

Auchabrack Boundaries

Forest of Birse Kirk Feu Plan

Management Areas in Commonty

# FOREST OF BIRSE COMMONTY

## Notes about the Current Boundaries

### Introduction

The Forest of Birse Commonty covers an area of approximately 4,000 hectares that largely coincides with the upper catchment of the Water of Feugh.<sup>1</sup> The purpose of this paper is to note some points about the boundaries of the Commonty as background information.

The Commonty has external and internal boundaries, as shown on the first two maps at the end of this paper.<sup>2</sup> These boundaries are agreed between the three parties that currently have property rights and interests over the Commonty.<sup>3</sup>

The current boundaries are based on the 1755 Decreet Arbitral agreed between the Earl of Aboyne and the other heritors of Birse parish to settle their respective "*rights and interests in the Forest of Birse*".<sup>4</sup> The context to the Decree Arbitral is described in History in Birse.<sup>5</sup>

The Decreet Arbitral begins the list of points agreed between the parties by describing the "*meiths and marches*" of the Forest of Birse Commonty, with a '*meith*' being a Scots word for a landmark or other feature of a boundary and a '*march*' being a boundary.

### External Boundaries

#### Western Boundary

The 1755 description starts "*at the head or source of the burn of Auldinny*" (now Allt Dinnie). The Birse parish boundary comes up the burn from the River Dee to a small hill top (466m) at its head. This hill top, which appears to have no recorded name, is the north-west corner of the Commonty.

The boundary is then described as going "*south as wind and weather shears*" along the Water of Feugh catchment boundary "*to the place called the Stock*". This is the Slochd, the pass where the Fungle track crosses between the Forest of Birse and Glen Esk.

#### Southern Boundary

The boundary then continues to follow the Feugh catchment "*south and east till it reach to the Lairds burn or the Wester burn of Forkens*". The West Forkens burn (now the Glaspits burn) is one of three burns that come together to form the Laird's burn. The other two are the Mid burn and a burn that appears to have no recorded name, but which might have been known as the Easter Forkens burn.

#### Eastern Boundary

The boundary comes down the Glaspits burn and Laird's burn to the Feugh and then "*northward up the east sholder of the hill of Finlett to a cairn called the cairn of Glenfarich*".

---

<sup>1</sup> The external perimeter of the Forest of Birse Commonty is roughly 25 kilometres long.

<sup>2</sup> These maps are also on the BCT website.

<sup>3</sup> Birse Estate (Pearsons), Ballogie Estate (Nicols) and BCT. Estates are mentioned in this paper as if they are land owners, when they are management units. This is for convenience, rather than referring to the titleholders owning the land.

<sup>4</sup> A copy of the transcript of the Decreet Arbitral in the Reverend G.F.Browne "Echt-Forbes Family Charters 1345-1727, Records of the Forest of Birse, Notarial Signs 926-1786" (W&R Chambers, 1923), is on the BCT website.

<sup>5</sup> Callander, R 'History in Birse' (BCT, 2000): The Free Forest pp.88-92 and The Free Forest (Part 2) pp.124-128

The current Commonly boundary on the north side of the Feugh reflects that description - going up the Finlets burn to the Finzean Estate march dyke and up the dyke to a gate in the dyke just before the Moss of Garbett. The dyke is thought to have been built after 1755 in the late 1700s.

The location of the cairn of Glenferrick in the Decree Arbitral is not known for sure. However, the cairn might be the conspicuous patch of scree on a rocky bluff near the top of the slope, with the march dyke going directly over the bluff and scree despite the steep gradient.

### Northern Boundary

In the Decree Arbitral, the northern boundary of the Commonly is described after the cairn of Glenferrick: "*and from that westward to the hill of Greentoves to the westward of the moss of Garbett, dividing the lands of Finzean and Woodend from the Forest of Birse, and from the said hill of Greentoves north and west to the head or source of the foresaid burn of Auldinny*".

The western half of the northern boundary from where the track between Balloch and Glencat crosses the watershed between the Feugh and burn of Cattie, to the head of the Allt Dinnie is clear as it follows the catchment boundary of the Feugh.

However, the eastern half of the northern boundary is the least clear part of the external boundaries of the Commonly. The location of the '*hill of Greentoves*' is not known. The conspicuous green area west of the Moss of Garbett, is Bogturk at the head of the Bogturk burn.

That possible link appears supported by the reference to a 'green hillock' in the Bogturk area in a 1642 contract for cutting wood in the Forest of Birse.<sup>6</sup> It states "*...unto the burne of Logturk, high and low, with the little bush at the eist syd of the green hillock*".

The line of the current northern boundary to the west of the Finzean march dyke is shown on an old and apparently fragile estate map from the 1840s, that is held by Ballogie Estates. BCT has a photocopy of the relevant part of the map. The photocopy is dark because of the shading on the map and its age, as shown by the scanned copy of it attached at the end of this paper.<sup>7</sup>

In order to make the details on the 1840s map clearer, BCT produced its own version of the map as attached at the end of this paper. The following points might be noted:

- The line comes up from the Finzean march to the level of the current vehicle track to the south of Corybeg. The line then goes north to a cairn just south of Corybeg. There is a small pile of stones on the east side of the current track that appears to be that cairn.
- The line then goes north-west to a cairn and there is a small pile of stones on top of a large boulder a short distance to the north of the current track that appears to be the cairn.
- The line then follows a track going across the slopes of Lamahip and curving round to a 'stone' where the track turns north. The current track follows the same approximate line just above the upper reaches of Bogturk, though at the east end the signs of an old track are on the north side of the current track.
- The 'stone' has not been located, but appears to be around where there is now a offset crossroads with current tracks going north/south and east/west.
- The line follows the curve of the track from the east, to a cairn on the eastern side of the Auldenachie burn. That cairn has not be located in the deep heather there, nor have the five other cairns along the eastern side of the burn and two along the western side.

---

<sup>6</sup> A copy of the 1642 contract is on BCT's website.

<sup>7</sup> The word 'Arbiter' is written at the top left hand corner of the part of the 1840s map shown in the photocopy. This suggests that the map was produced as part of a legal dispute or settlement.

The current track going west from the off-set crossroads, which was constructed by BCT, is well to the south of the northern Commonty boundary near the Auldenachie burn until the track and boundary approximately coincide at the watershed at the top of the Auldenachie and Allachrowan burns.

West of that point, the current track follows a route to the Balloch-an-Glencat track that is considered to be south of the Commonty northern boundary line. However, there is a lack of clarity over the line of the boundary on the ground to the north of the track.

The reason that the northern boundary of the Commonty does not follow the Feugh catchment boundary from the Finzean march to the Balloch-an-Glencat track, is considered a legacy of the fact that Glencat and the current area known as the Forest of Birse were both parts of the more extensive medieval Forest of Birse hunting reserve held by the Crown and then the Bishops of Aberdeen.<sup>8</sup>

### **Internal Boundaries**

The map at the end of this paper of the internal boundaries of the Forest of Birse Commonty, shows six boundaries. These are:

- the property boundaries around the three individually owned properties of Balloch-an, Auchabrack and the Forest of Birse Kirk;
- the boundaries within the Commonty that have been agreed meantime between parties with rights and interests in the Commonty, and relate to carrying out certain land uses.

### **Ballochan and Auchabrack**

The 1755 Decree Arbitral also concluded that, firstly, the lands of Haugh Spittal and Cranna (now Balloch-an) had been encroached out of the Commonty and should be the exclusive property of the Earl of Aboyne and that, secondly, the land of Auchabrack should become the property of the Farquharsons of Finzean.

The 1755 document described the respective boundaries of these two areas and required that each should be enclosed by a dyke. The contract to build the dyke around Balloch-an in 1756 still survives, as described in History in Birse.<sup>9</sup>

The dykes from the 1750s are still there, although their poor condition means they are not stock-proof and have long since been succeeded by post and wire fences. These fences are along the outside of the dykes and in the interests of reasonably practical fence lines, do not follow every bend in the line of the dykes.

It appears that as fences have been renewed over the years, the lengths of straight fence lines has tended to increase and enclose some additional land between the fences and dykes. However, in discussions between BCT and Birse and Ballogie Estates, it was agreed that any land between the fence lines and dykes did not represent permanent encroachment of land from the Commonty.

The dykes are therefore still considered to form the boundaries around Balloch-an and Auchabrack, as shown in the respective maps of the boundaries of Balloch-an and Auchabrack at the end of this paper.

---

<sup>8</sup> History in Birse op.cit. p.127

<sup>9</sup> History in Birse op.cit. p.5

There was a particular issue over fences lines at Auchabrack in c.2004. Ballogie Estate informed BCT that it was going to be re-fencing much of the boundary of Auchabrack. The Estate asked if it would be okay to adjust some of the fence lines for practical reasons and BCT respond that it would alright, subject to minimising the enclosure of extra land.

BCT was then very surprised when the fences were erected and it saw the large extent of additional land that the Estate had enclosed on the east and west sides of Auchabrack. BCT complained to the Estate over this and sought assurance from the Estate that the Estate recognised that the additional enclosed land was still part of the Commonty, which BCT received.<sup>10</sup>

A particular feature of the boundary around Auchabrack is the bridge across the Feugh at Burnfoot, the northern end of which is the Commonty and the southern end on Auchabrack. This bridge was built in the early 1800s by Archibald Farquharson of Finzean Estate as the owner of Auchabrack.<sup>11</sup>

Ballogie Estate, which bought Auchabrack from Finzean Estate in 1937, can reasonably be considered to be the owner of the bridge. When some of the cope stones at the southern end of the bridge required to be re-pointed with lime mortar, Ballogie Estate consulted BCT before carrying out the work.<sup>12</sup>

### Forest of Birse Kirk

The history of the original Forest of Birse School that was built in the Commonty in 1791 with the agreement of the heritors in the Birse parish with rights in the Commonty, is described in History in Birse.<sup>13</sup>

The replacement of the original school by building the current Forest of Birse Kirk in 1891 is also described in History in Birse.<sup>14</sup> At that time, the land for the Kirk was removed from the Commonty.

The land was feued by the Marquis of Huntly as the owner of the solum in the Commonty to the Trustees of the Forest of Birse Kirk, who were the three other heritors with rights over the Commonty at that time.

A copy of the plan of the land feued is attached at the end of this paper and from which it can be seen that the Trustees were a Farquharson (Finzean Estate), a Nicol (Ballogie Estate) and a Cochran (Balfour Estate). The ownership of the Kirk and land subsequently passed to the Church of Scotland under the Church of Scotland (Property and Endowments) Act 1925.

The Church of Scotland then sold the Kirk and land in 1994 to Birse Estate, the feudal superior of the feu as successor to the Marquis of Huntly. The sale was a private sale in which the Estate paid a relatively low price for the Kirk and land in exchange for donating a larger amount of money towards repairs to the roof of Birse Kirk.<sup>15</sup>

BCT became owner of Birse Kirk in 2001 and in subsequent years, tried to buy the Forest of Birse Kirk from Birse Estate so that it could be managed for greater local community and wider public benefits. However, the discussions only got as far as the Estate offering to lease the Kirk

---

<sup>10</sup> The year when this occurred will be recorded in BCT's hard copy files in Finzean Old School.

<sup>11</sup> A copy of BCT's report on 'Stone Arched Bridges in Birse Parish' (2008) is on the BCT website.

<sup>12</sup> The year when this occurred will be recorded in BCT's hard copy files in Finzean Old School.

<sup>13</sup> History in Birse op.cit. pp.108-110

<sup>14</sup> History in Birse op.cit. p.131

<sup>15</sup> It is understood that the price was £5,000 and the donation £15,000.

to BCT for a £1 a year and BCT declining the offer as it did not want to take on the expense of maintaining someone else's building.

### Shooting Agreement

The history of shooting rights over the Commonty is described in History in Birse.<sup>16</sup> Court cases in the opening decades of the 19<sup>th</sup> century had settled that two of the parties with rights over the Commonty owned the shooting rights.<sup>17</sup> Those two parties each had shooting rights over all of the Commonty and this resulted in disputes between the parties in the 1850s.

In 1858, the two parties reached an agreement that they would each shoot over different parts of the Commonty. The agreement held until the 1890s, when there was a further dispute. This resulted in a new agreement in 1897 title 'Agreements defining Shooting Rights'.<sup>18</sup>

The 1897 Minute of Agreement still defines the boundary between the respective shooting areas of the two parties, Birse and Ballogie Estates. The boundary is shown on the map of the Commonty's Internal Boundaries at the end of this paper. The boundary should be more accurately described in the map's key as the Shooting Rights , rather than Sporting Rights, Agreement.

At the time of the 1897 Agreement, the boundary was marked with 17 dressed and numbered granite stones. The stones, which still define the boundary on the ground, start at Glencat farm and end on the summit of Gannoch, as shown on the Internal Boundaries map.

Part of Glencat was included because Ballogie Estate held (and still holds) the shooting rights over the area north of the Commonty between the Glencat-Ballochan track and Auldenachie burn. This is shown on the Ballogie Estate map that is the final map at the end of this paper.

As explained in History in Birse, this is a legacy of the Bishop of Aberdeen's medieval hunting Forest having included Glencat and the same applies to Ballogie Estate's shooting rights over the surviving Aven Commonty, where the solum of the land is owned by Finzean Estate.<sup>19</sup> The Aven Commonty covers the upper catchment of the Water of Aven on the north side of the river upstream of the Hawk's Nest Burn (as shown on the final map at the end of this paper).

### Grazing Agreement

The map of the Commonty's internal boundaries shows the 'customary' grazing boundary between Birse and Ballogie Estates. 'Customary' reflects that the boundary is a less formal one than the legal boundaries in the Commonty.

However, the boundary has had particular contractual significance as part of the defining the respective areas where the two Estates have claimed the public agricultural subsidies for the hill grazing land, either directly (Ballogie) or through a tenant (Birse).

The grazing grants come through the Scottish Government IACS scheme and the Ballogie Estate map at the end of this paper shows the Ballogie Estate and Birse Estate IACS grazing

---

<sup>16</sup> History in Birse op.cit. p.127

<sup>17</sup> In Scots property law, shooting rights, salmon fishing and minerals rights are the only land use rights that can be owned separately from the ownership of the land itself.

<sup>18</sup> There is a copy on the BCT website of the transcript of the Minute of Agreement in the book by the Reverend Browne referenced earlier.

<sup>19</sup> History in Birse op.cit. p.127

areas in the Commonty. In the Birse Estate grazing area, DP stands for Doug Petrie, the tenant of Glencat and Ballochan.

It is unclear how long this particular grazing boundary between the Estates has existed, but the pattern of livestock grazing in the Commonty has changed over time as the numbers of heritors and their tenants exercising their grazing rights has declined. Finzean Estate tenants, for example, used to graze sheep and cattle on the south side of the Commonty. The last tenant to do so continued until the late 1970s and possibly the early 1980s.<sup>20</sup>

Grazing is one of the most prominent ancient shared rights over the Commonty and, when BCT acquired rights over the Commonty in 1998, it could have sought to negotiate with the two Estates to established part of the Commonty where it could exercise its grazing rights on its own behalf.

However, BCT had no ambition to acquire its own sheep. Instead, as shown in the records of BCT's discussions with the two Estates, BCT made clear to the Estates that it would not seek to disrupt the existing pattern of grazing use.

The two information panels that have been installed in recent years near the entrance to the Commonty across the Finlets burn, describe the position with the grazing rights over the Commonty in a very misleading way. It is stated on the panels that "*Birse Estate owns the solum of the Commonty and both Birse and Ballogie Estates continue to own and actively exercise the sporting and grazing rights.*" That wording very clearly implies that the two Estates own the grazing rights, which is not correct.

It might be noted, firstly, that in Scots property law, grazing rights can not be owned as a property right separate from the ownership of the land over which the right exists. However, over and above that legal point, it can be demonstrated from the historical and legal records associated with the Commonty held by BCT and from BCT's records of its negotiations and discussions with Birse and Ballogie Estates, that grazing rights are a shared land use right over the Commonty.

The panels would have been correct if the wording had been re-ordered to state that both Birse and Ballogie Estates '*continue to own the sporting rights and actively exercise the grazing rights*'.

### North Hill Management Agreement

In 1998, ancient rights over the Commonty were vested in BCT by conventional property conveyancings and an associated legal process. The validity of the process and BCT holding the rights was endorsed by Birse and Ballogie Estates as the other two parties with rights over the Commonty.

The negotiations with the two Estates over BCT securing the ancient rights started in autumn 1995. The discussions also included agreement that BCT would manage the pinewoods in the Commonty and apply for funding to do that, with the terms of the applications to be endorsed by the Estates prior to submission.

During this period, BCT successfully applied for a large Forestry Commission (FC) natural regeneration grant and larger grant from the Millennium Forest for Scotland Trust (MFST) covering the pinewoods, Finzean Mills and other topics. BCT could not have been established without having these grants available when it started.

---

<sup>20</sup> John Gordon, Wester Clune

Another part of the jigsaw with the rights and grants, was reaching agreement over how the parties would exercise their respective rights over the Commonty in a consensual manner. Discussions initially focused on developing an agreement covering the whole Commonty, the 'Millennium Agreement'.

However, the pressure of deadlines resulted in the focus shifting to trying to reach an agreement just over that part of the Commonty covered by the FC and MFST grants schemes. These two funders were concerned at the unusual pattern of rights involved and required BCT to produce an agreement with the other two parties that would ensure BCT could implement the grants schemes successfully

An obvious concern was the need for reassurance that Ballogie Estate would exercise its shooting rights over the planned pinewood area, to provide adequate deer control to safeguard the pine regeneration.

The Estates themselves were also concerned that BCT might receive the grant money and spend it outwith the Commonty, so that there was not enough left for BCT to fulfil its responsibilities in the Commonty. More generally, the Estates were concerned whether BCT would prove a viable charity given the liabilities it was to take on (e.g. the Finzean Mills).

The outcome was the North Hill Management Agreement (NHMA), which was drafted and negotiated by BCT to produce an agreement that could be agreed by the three parties in time for the deadlines. The NHMA was thus a pragmatic document to meet the circumstances. There was also some associated Minutes of Agreement signed by the three parties to cover specific topics (e.g. over the Kirk Woods).

The terms of the NHMA and the area it covers evolved over time. The three parties signed Minutes of Agreement from time to time to update or amend some of the provisions. In 2006, an updated version of the NHMA was signed by the parties to incorporate agreed changes in the terms and to cover a larger area to the south of the Feugh.

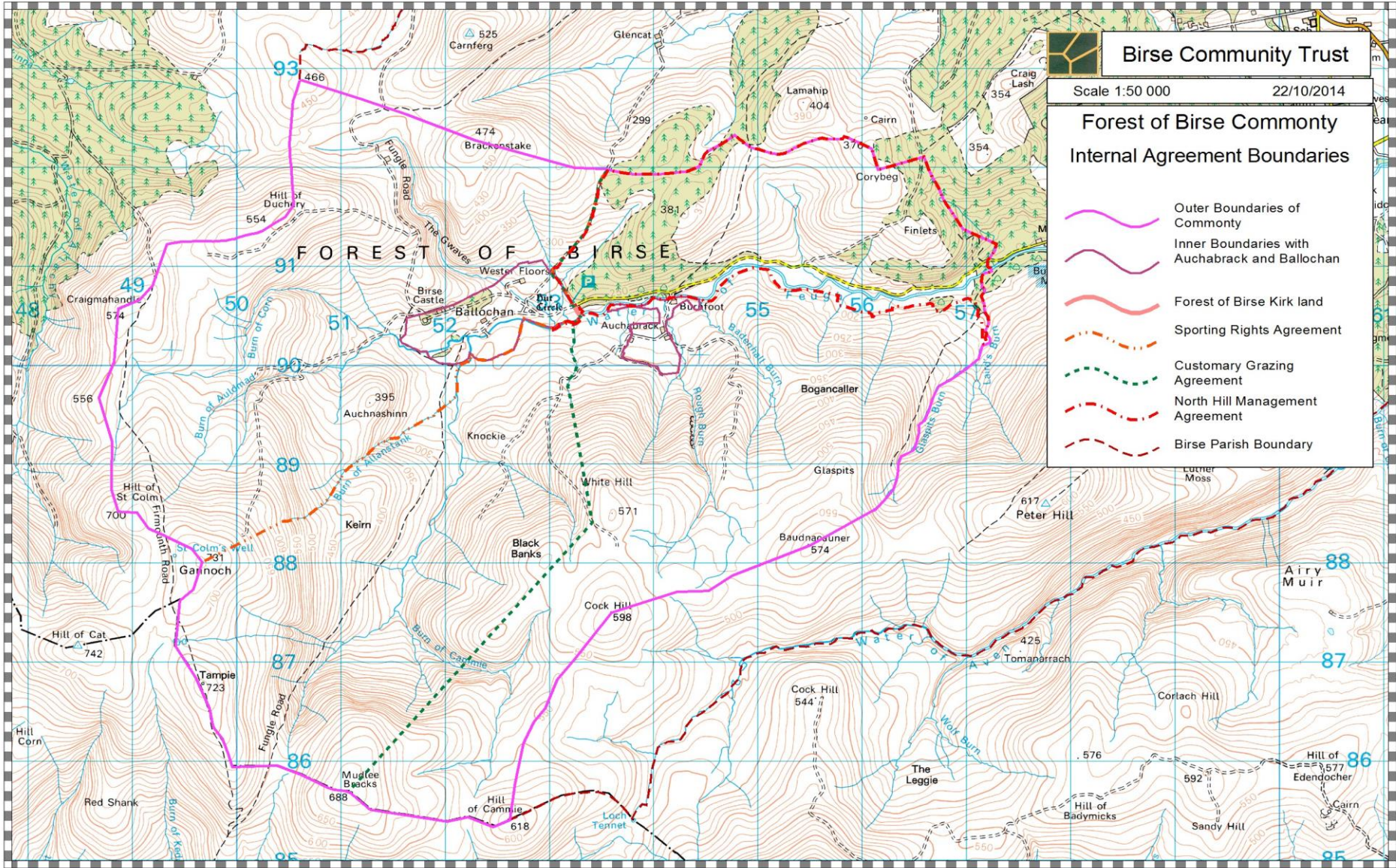
The original NHMA included the Laird's Burn woodlands and isolated birchwood to the west of that. However, to the west of that, the NHMA only covered as far as the south side of the woodlands along the south bank of the Feugh. The NHMA (2006) expanded the area to the current boundaries south of the Feugh. This enabled BCT to plant the areas of birch beside the Dry and Holland Burns, as well as the area across the Feugh to the west of the flat ground beside the lower Bogturk burn.

After 2006, one or two further adjustments were made to the NMHA through Minutes of Agreement. In 2015, the two Estates accepted a proposal from BCT that it would draft a revised Agreement for discussion that incorporated previous changes and aimed to update and clarify the NHMA more generally. However, due to a lack of time and then changes amongst the BCT Trustees, the opportunity was not developed.

The NHMA does not alter BCT's rights over the Commonty, which exist independent of the NHMA. However, it provided a useful framework for BCT exercising its rights to management the area covered by the pinewoods and for discussions with the two Estates about the management of the Commonty, including projects carried out by BCT elsewhere in the Commonty. There is scope to draw up a systematic account of the evolution of the NHMA from 1998 onwards from BCT's records.














**Birse Community Trust**

Scale 1:50 000

22/10/2014

**Forest of Birse Community  
Internal Agreement Boundaries**

-  Outer Boundaries of Community
-  Inner Boundaries with Auchabrack and Balloch
-  Forest of Birse Kirk land
-  Sporting Rights Agreement
-  Customary Grazing Agreement
-  North Hill Management Agreement
-  Birse Parish Boundary

KILOMETRES 1 0 1 2 3 4 KILOMETRES  
1:50,000

48.12

MIDSTRATH

LAMITTE

UNDEVELOPED

SECTION WITH LINEAR

Point

ROAD

WELL

CRATER

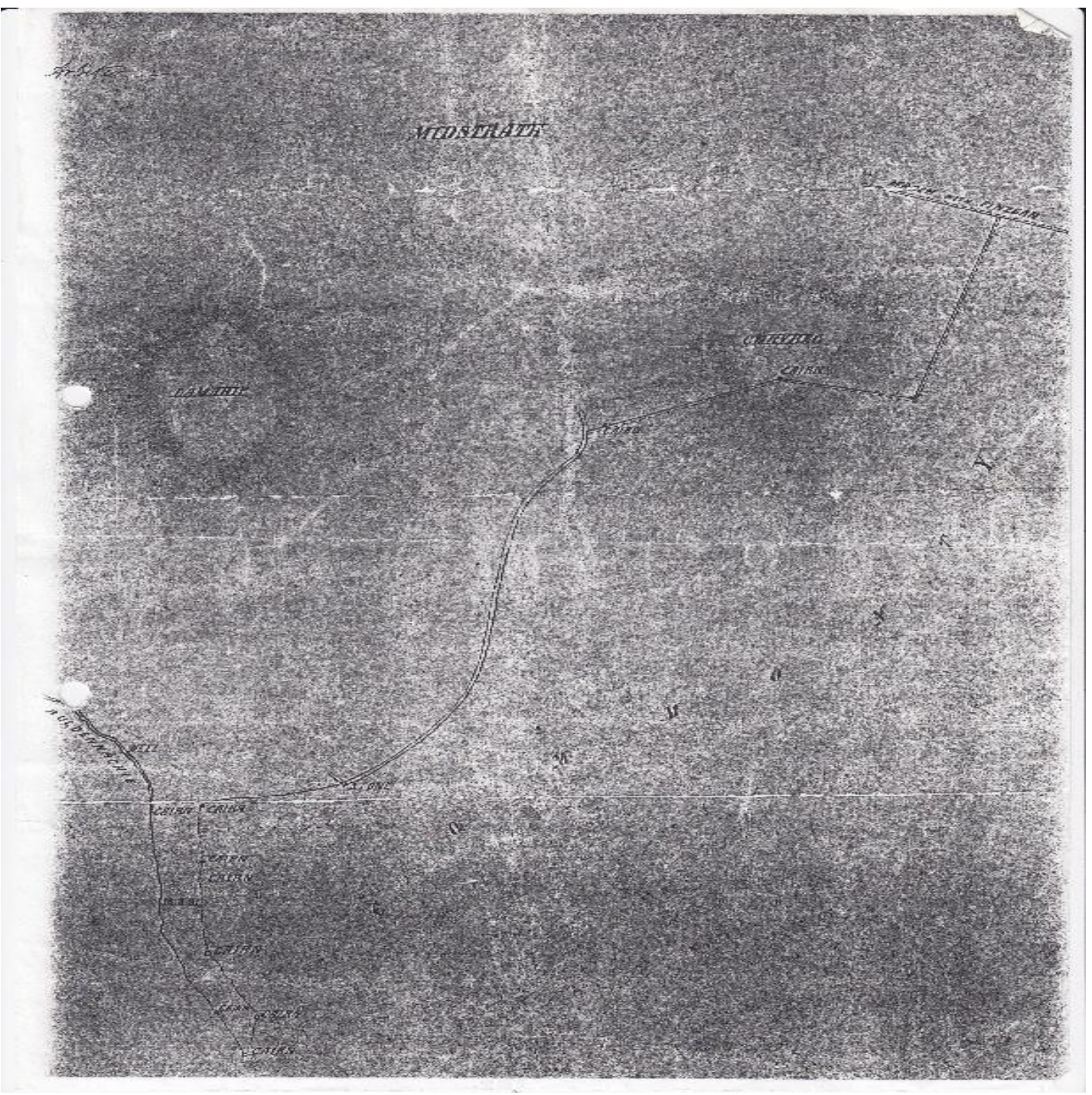
CRATER

CRATER

CRATER

CRATER

CRATER

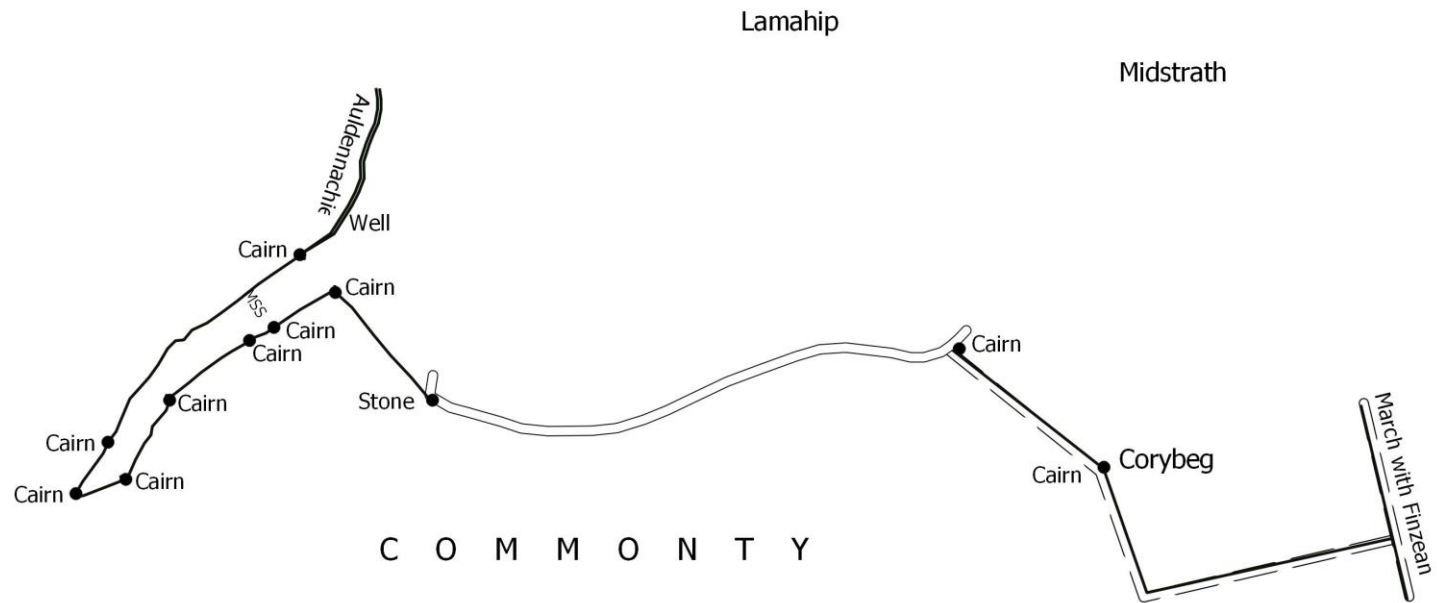


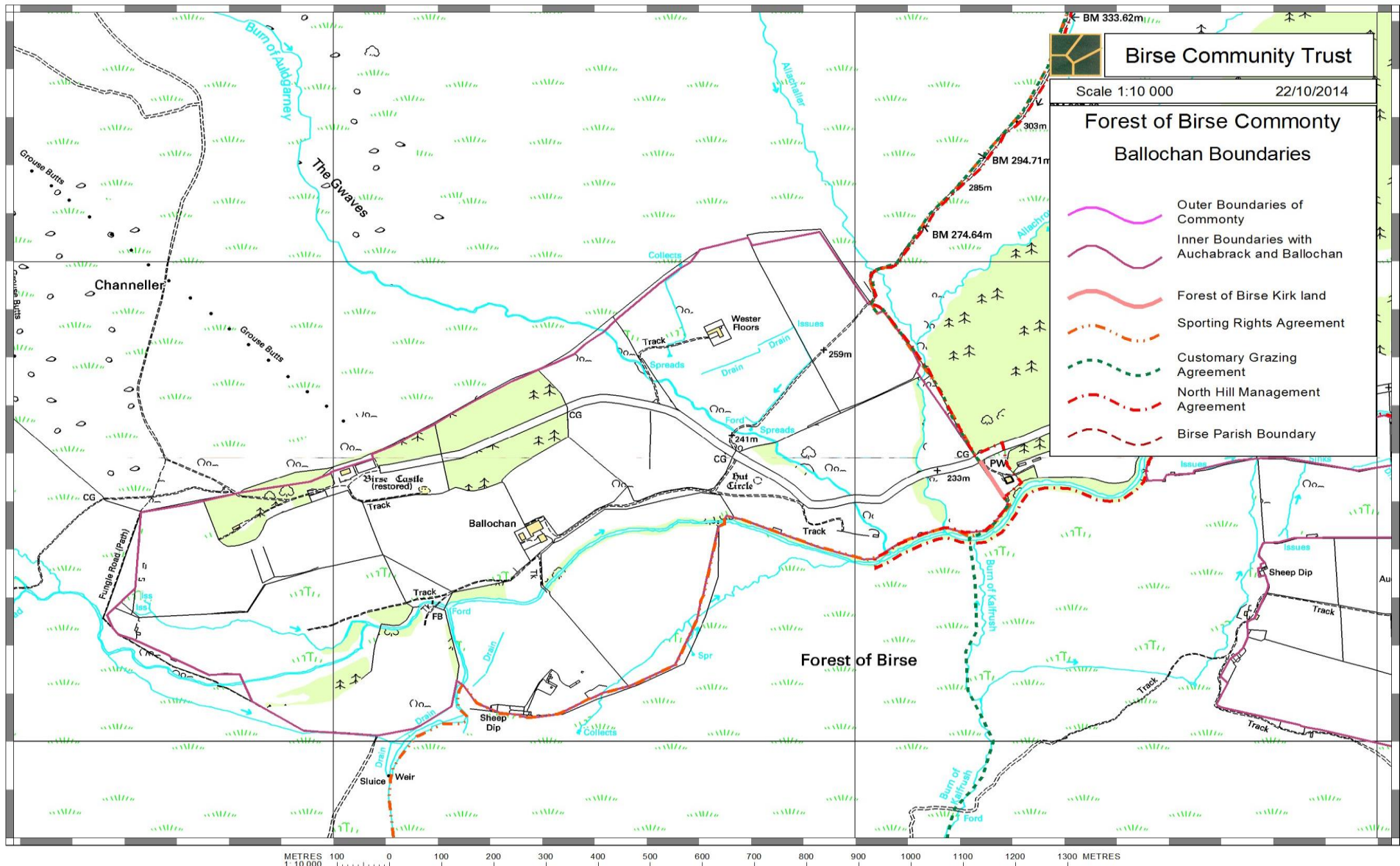


# Forest of Birse Commonty

Part of the northern boundary copied from an old map (c.1840s) belonging to Ballogie Estate

Scale approximately 1:10,000













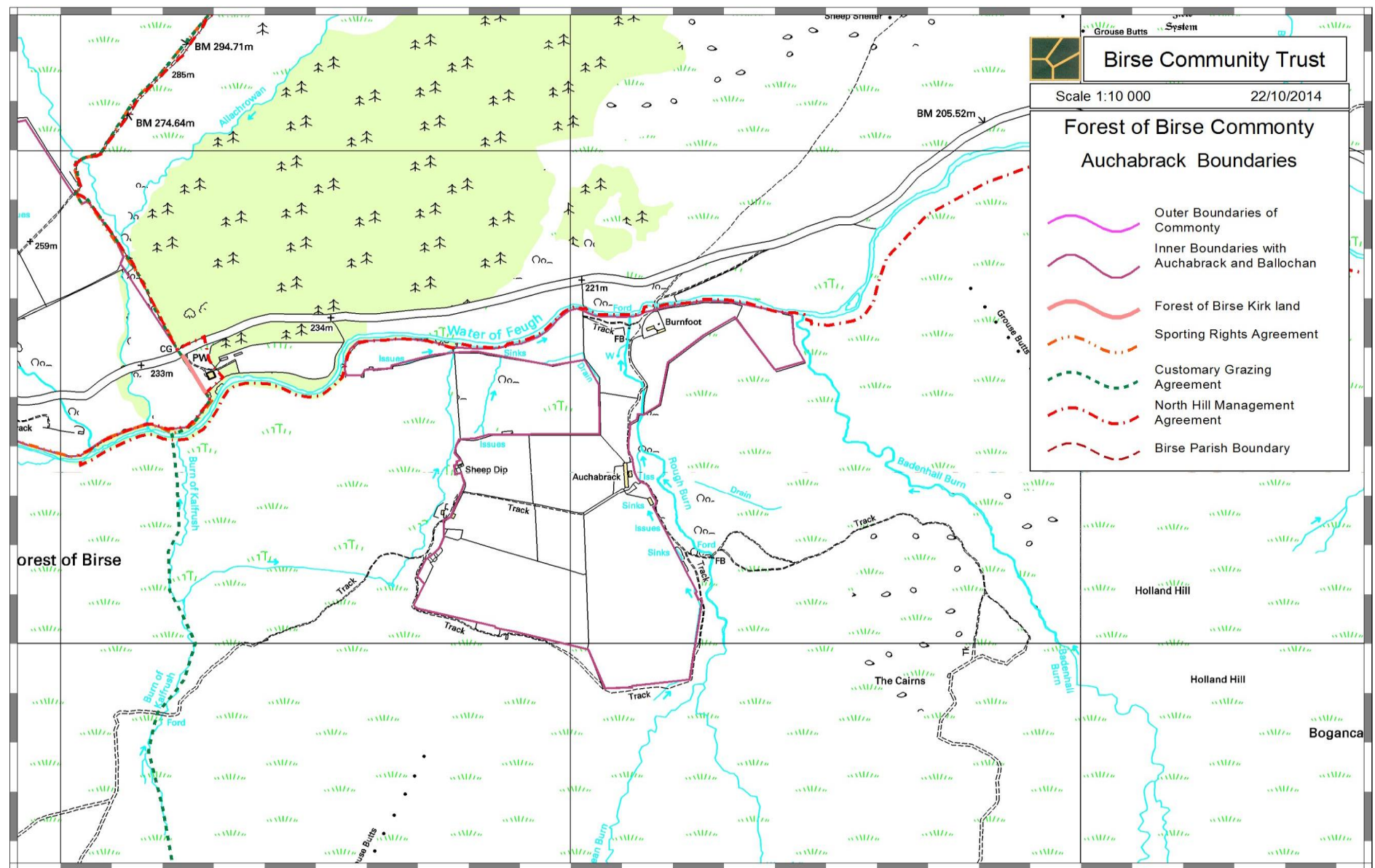
**Birse Community Trust**

Scale 1:10 000

22/10/2014

### Forest of Birse Community Auchabrack Boundaries

-  Outer Boundaries of Community
-  Inner Boundaries with Auchabrack and Ballochran
-  Forest of Birse Kirk land
-  Sporting Rights Agreement
-  Customary Grazing Agreement
-  North Hill Management Agreement
-  Birse Parish Boundary

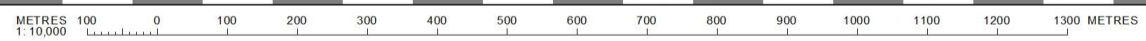


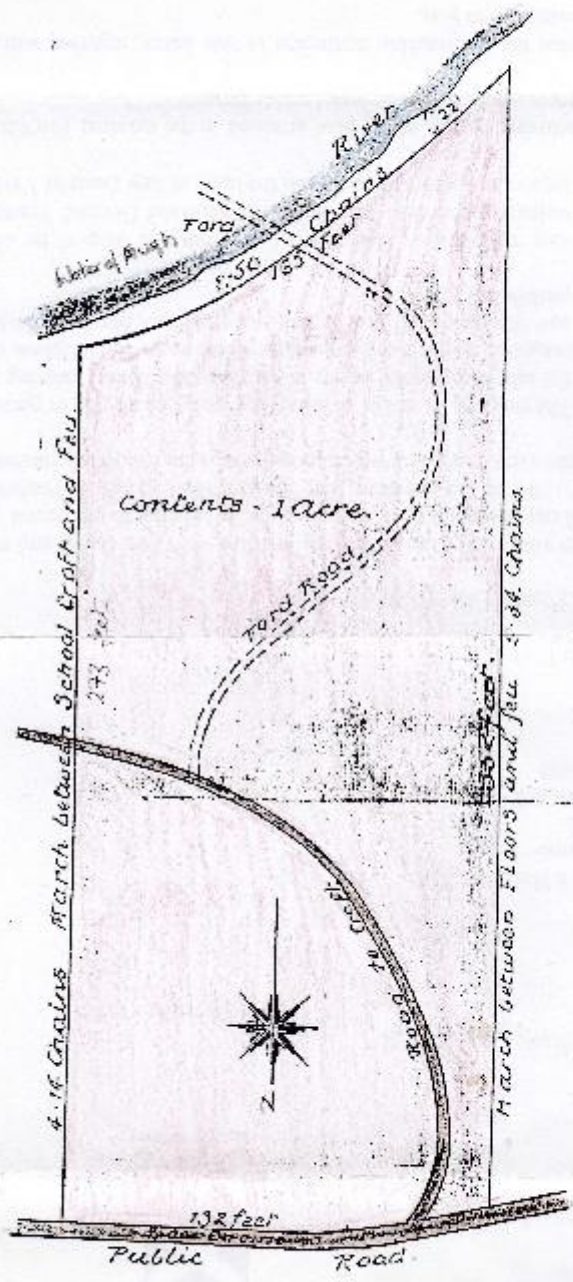
Forest of Birse

Holland Hill

Holland Hill

Boganca





This is the plan referred to in the foregoing For Charter by The Marquis of Huntly's Trustees with consents therein mentioned in favor of the Trustees of Forest of Birse Church.

{ Sgd }	CARUTHER HARRISON	{ Sgd }	ROBERT FARQUHARSON
{ Sgd }	JAS ALEX ROBERTSON	{ Sgd }	W.A. NICOL
{ Sgd }	HUMPHREY	{ Sgd }	ALEX COCHRAN

Fox

