

COUNCIL OF NORTHERN CAVING CLUBS

British Caving Association

Dear CNCC Committee

Over the past week I have received a letter of notification from three CNCC committee clubs (University of Leeds Speleological Society, Earby Pothole Club and Yorkshire Subterranean Society), requesting that an additional committee meeting be held, in advance of the BCA AGM on 15th June.

The aim of this is to discuss the CNCCs response to the recent discussions regarding the Countryside Rights of Way (CRoW) Act. In accordance with the CNCC constitution, I am organising this meeting and I am contacting you to give notification of this, the agenda, and relevant information.

The three clubs have also requested that this meeting is used to nominate/elect the Access Officer who will serve as a co-opted member of the group for the following year.

The date for this committee meeting is: **31st May 2014, at Hellifield Village Institute, 9:30am.**

I appreciate that this is less notice than usual for a committee meeting, however, given the importance of the matter to be discussed, and the potential significance for northern caving, I would urge all CNCC Committee clubs to discuss this matter and send a representative.

Please confirm with the CNCC secretary by Email that you will be sending a representative (just a quick reply to the Email in which you received this is sufficient).

Further information can be found in the following pages.

Please note that this meeting is additional to, and does not impact on the next planned committee meeting on 28th June (Hellifield Village Institute, 9:30am), for which a separate agenda will be circulated.

Please don't hesitate to contact me if you have any further questions.

Yours Sincerely



Matt Ewles, Secretary, CNCC, 28th April 2014

Background information relating to the additional CNCC committee meeting on 31st May 2014

ULSA have written the agenda for the meeting shown in **ATTACHMENT ONE**.

The CRoW Act provides access to land covered by the act for 'open air recreation'. There has been much discussion as to whether caving is covered by this term, and as such, whether caving should be allowable, without additional permission, on CRoW land. This is particularly relevant to the CNCC as both Leck and Casterton Fell are CRoW land, and the CNCC currently has established access agreements here.

An article published in Descent 237 by Tim Allen raises one perspective on this debate. There is also a lengthy discussion on the UK Caving forum which provides some alternative perspectives:

<http://ukcaving.com/board/index.php?topic=16409.0>

Since publication of this article the CNCC has met with the Leck and Casterton Fell landowners to discuss these matters, and has also contacted several bodies to obtain an official statement about caving on CRoW land. The replies received are presented in **ATTACHMENT TWO**.

The BCA has a CRoW Working Group who will be present at the BCA Annual General Meeting on the 15th June. It is expected that at this meeting, decisions will be made to decide the direction the BCA will take. Possible outcomes may include the BCA being mandated to seek definitive clarification or legal guidance to campaign for caving to be specifically recognised under CRoW. As a regional body of the BCA, the CNCC may send one voting delegate to the BCA AGM to influence this decision.

My understanding of the agenda is that the aim of this CNCC committee meeting will be to:

- (A) Establish a consensus within the CNCC of the current meaning of CRoW for caving
- (B) Determine what the CNCC representative attending the BCA AGM should vote for and against with respect to any discussions regarding CRoW.

The CNCC has always welcomed and pushed for greater access to caves, but has done so mindful of the fact that maintaining good relationships with landowners is critical to sustaining good access for cavers and diggers both on and off CRoW land. The possible outcomes of the debate could impact on access agreements, making this a particularly important issue for the CNCC Committee to consider. Therefore, I urge all committee clubs to discuss the matter, and send a representative to this meeting.

The representative should be adequately informed of your clubs views because parts of the agenda are open ended and may result in further motions being proposed at the meeting.

You will also see that the requested agenda covers the election of a co-opted Access Officer. I would be most grateful if candidates wishing to take on this post please make themselves known to me such that your candidature can be made known to The Committee ahead of the meeting. This is not compulsory, but it would help to ensure an informed decision about which person is best placed to take on this challenging and critical role for the following year.

Matt Ewles

University of Leeds Speleological Association



Proposals for a CNCC Committee Meeting

April 2014

Why do we wish to call a Committee Meeting?

The article published within the recent Descent magazine with respect to the Countryside Rights of Way Act (CRoW) 2000 and access to caves on CRoW land provides what could be a significant change to the way access agreements are managed and essentially, changes to the permit system. We (ULSA) consider it imperative that the CNCC and its representative committee member clubs meet as soon as possible to discuss how the CNCC are seen to be managing this in order to ensure we are representing the member clubs and northern cavers.

Proposed Agenda for the CNCC committee meeting

1. Discussion on matters relating to the CRoW Act and access to caves
 - (1a) Firstly we wish to provide the means for the CNCC club representatives to consult with their members on whether they broadly support the ideas laid out in the article written by Tim Allen and published in Descent 237 (pg 30-32), mainly that CRoW applies to caves at least in part and consider the potential implications?
 - (1b) There needs to be a decision made on whether the CNCC should support motions at the BCA AGM, to be held on 15th June that are to seek for greater clarity on whether CRoW applies to caves and/or encourage the BCA to campaign for the inclusion of caving under the CRoW Act?
 - (1c) It is important that all member clubs and northern cavers should be encouraged to contact the CNCC to make their representations known and/or attend the next committee meeting. Whilst they will not have a vote, all the membership and northern cavers should be encouraged to be involved in this debate.
2. Election of Access Officer

Following discussion of the issues highlighted for the CRoW Act and access to caves and the decisions that will be made, it will be useful to elect the Access Officer.
3. Any other business

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Attachment two: CNCC Fact-Finding to Support the Recent CRoW Article in Descent

In Descent magazine (issue 237) an article was published regarding the Countryside Rights of Way act (CRoW) and its implications for caving on CRoW classified land.

Further to this, the CNCC has consulted with various parties including those with which it has established access agreements within land covered by the CRoW Act 2000. The aim of this was to ascertain (A) whether there is any official recognition or acceptance of the views and interpretations put forward by the author, and (B) if there is any scope for increased or changed access as a result of the arguments put forward. These parties were already aware of the Descent article and the UK Caving forum debate on the matter.

These parties were:

Natural England (Open Access Centre) Bristol

Whelprigg Estate (Casterton Fell) and Kay Shuttleworth Estate (Leck Fell)

CLA (Country Land and Business Association, a rural landowner's organisation)

BCA (British Caving Association)

The aim of this document is to share the responses and reactions received by the CNCC. For context, much of the debate has centred upon the fact that access to land mapped within the CRoW Act is determined by the phrase 'for open air recreation'

The CLA response:

The CRoW Act states that there is a right of access for open air recreation. The Descent article implies that open-air means 'outdoors' and that "outdoors" means within a cave. This does not appear to give the term its natural meaning (natural meanings being the normal interpretation of statute).

The dictionary defines "open air" as "a free or unenclosed space outdoors". This does not correspond with an underground cave which, by its very nature is not a free and unenclosed space outdoors.

We cannot see how the Act could be interpreted to provide a statutory right of access to caves given that they are underground and not "open air". The writer mentions that caving is not specifically prohibited; however, given that the normal interpretation of the Act is that the right of access would not include access to such underground systems, it is also logical that there would therefore be no explicit need to exclude it.

Having CRoW access land does not prevent you making arrangements for other activities and this may include licensing caving. Landowners may wish to make a reasonable charge to cover the costs associated with such licenses. Bear in mind, however, that if good arrangements are already in place, over-zealous charging may serve to stir up resentment.

The response from Natural England (NE), Open Access Contact Centre:

The open access rights under the Countryside and Rights of Way Act 2000 are for "open air recreation" – see section 2(1). For that reason, even where land is shown on the CRoW maps, the legislation does not in our view create any new public rights to use cave systems beneath or within the mapped land. The exception to this may be some large open caves on the side of mountains etc. In such cases the experience may remain essentially an open air one, depending on the configuration of the cave.

However, this does not prevent cavers (whether land is CRoW-mapped or not) continuing to use particular cave systems, for example where this has been traditional, so long as the landowner continues to tolerate this or has given specific permission to do so.

The response from British Caving Association CRoW Working Group:

At present the legal advice coming to BCA from NE via a 3rd. party is effectively that there is no access to caves because they are not "open air" and caving is not an "open air recreation".

The CNCC Access Officer has spoken with both Estates in person about the article to ensure they are fully aware of the debate and the potential impacts on cave access on their land. Their responses were in line with that from the other parties and it is their wish to continue with the managed access that BCA member clubs have via the established permit system. The Estates reminded the CNCC that there are other measures apart from access agreements that could affect caver's access to caves which included SSSI status, ground nesting birds and bat roosts, which could still remain a prohibition to access even under CRoW.

Summary of Findings

All bodies contacted by the CNCC are of the opinion that caving does not constitute 'open air' although Natural England highlight that there are some caves where that 'open air recreation' can be gained (Victoria Cave for example). The exact point at which a cave ceases to be 'open air' is ill-defined, however it appears quite likely that most sporting trips in the North of England on CRoW land would exceed such a boundary.

The BCA CRoW Working Group will be present at the BCA Annual General Meeting to be held on the 15th June 2014. At this meeting, all BCA members will have the opportunity to debate and vote on the direction that the BCA will take regarding the interpretation of the CRoW Act. If the BCA members wish they will be able to task the BCA with seeking redefinition or clarification of the Act, or potentially challenging the Act, to have it extended to cover all forms of caving.

As the CNCC is a constituent regional body of the BCA, we are currently guided by the BCA on this matter of national significance (rather than pursuing our own separate path). The CNCC will therefore act accordingly with the outcomes of the BCA Working Group.

However, as a regional body of the BCA the CNCC does have a voice and a vote in how the BCA handles this matter, and the CNCC will be consulting its Committee to determine how best to utilise this influence for the interests of northern cavers.

Les Sykes, CNCC Access Officer