



**Argyll and Bute Council**  
**Comhairle Earra-Ghàidheal Agus Bhòid**

*Executive Director: Douglas Hendry*

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13 January 2021

**NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held **BY SKYPE** on **WEDNESDAY, 20 JANUARY 2021** at **11:00 AM**, which you are requested to attend.

Douglas Hendry  
Executive Director

**BUSINESS**

**1. APOLOGIES FOR ABSENCE**

**2. DECLARATIONS OF INTEREST**

**3. MINUTES**

- (a) Planning, Protective Services and Licensing Committee 14 December 2020  
(Pages 5 - 20)
- (b) Planning, Protective Services and Licensing Committee 16 December 2020 at  
11.00 am (Pages 21 - 26)
- (c) Planning, Protective Services and Licensing Committee at 16 December 2020 at  
2.00 pm (Pages 27 - 30)
- (d) Planning, Protective Services and Licensing Committee 16 December 2020 at  
2.30 pm (Pages 31 - 34)
- (e) Planning, Protective Services and Licensing Committee 16 December 2020 at  
3.00 pm (Pages 35 - 38)

**4. KEITH AND DENICE PUNLER: REMOVAL OF PLANNING CONDITIONS 2D (PATH IMPROVEMENTS) AND 4 (FOOTPATH LINK) RELATIVE TO PLANNING PERMISSION 17/02052/PP - ERECTION OF 1800MM HIGH DEER FENCE (RETROSPECTIVE): LAND SOUTH-EAST OF CASTLE TOWARD, TOWARD, ARGYLL (REF: 19/00447/PP)**

Report by Head Development and Economic Growth (Pages 39 – 70)

**5. THE SCOTTISH GOVERNMENT ON BEHALF OF SLR CONSULTING LIMITED: ELECTRICITY ACT SECTION 36 CONSULTATION RELEVANT TO SHEIRDRIM RENEWABLE ENERGY DEVELOPMENT: LAND AT GARTNAGRENACH FOREST, WHITEHOUSE, ARGYLL (REF: 19/02424/S36)**

Report by Head of Development and Economic Growth (Pages 71 – 84)

**6. BRITISH TELECOM'S PUBLIC PAYPHONE RATIONALISATION CONSULTATION**

Report by Executive Director with responsibility for Development and Economic Growth (Pages 85 – 94)

**7. PLANNING PERFORMANCE FRAMEWORK 2019/20**

Report by Executive Director with responsibility for Development and Economic Growth (Pages 95 – 106)

**REPORT FOR NOTING**

**8. UPDATE ON CALL IN DECISION - 17/01205/PP - SITE WEST OF TAIGH SOLAIS, LEDAIG, TOBERMORY**

Report by Head of Development and Economic Growth (Pages 107 – 148)

**EXEMPT REPORTS FOR DECISION**

**E1 9. ENFORCEMENT REPORT REFERENCE 18/00197/ENBOC3**

Report by Head of Development and Economic Growth (Pages 149 – 154)

**E1 10. ENFORCEMENT REPORT REFERENCE 18/00198/ENBOC3**

Report by Head of Development and Economic Growth (Pages 155 – 158)

The Committee will be asked to pass a resolution in terms of Section 50(A)(4) of the Local Government (Scotland) Act 1973 to exclude the public for items of business with an "E" on the grounds that it is likely to involve the disclosure of exempt information as defined in the appropriate paragraph of Part I of Schedule 7a to the Local Government (Scotland) Act 1973.

The appropriate paragraph is:-

**E1 Paragraph 13** Information which, if disclosed to the public, would reveal that the authority proposes -

- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
- (b) to make an order or direction under any enactment.

**Planning, Protective Services and Licensing Committee**

Councillor Gordon Blair  
Councillor Mary-Jean Devon  
Councillor Audrey Forrest

Councillor Rory Colville (Vice-Chair)  
Councillor Lorna Douglas  
Councillor George Freeman

Councillor Kieron Green  
Councillor David Kinniburgh (Chair)  
Councillor Roderick McCuish  
Councillor Alastair Redman  
Councillor Richard Trail

Councillor Graham Hardie  
Councillor Donald MacMillan BEM  
Councillor Jean Moffat  
Councillor Sandy Taylor

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**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the BY SKYPE  
on MONDAY, 14 DECEMBER 2020**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Kieron Green
Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Roderick McCuish
Councillor Lorna Douglas	Councillor Alastair Redman
Councillor Audrey Forrest	Councillor Sandy Taylor
Councillor George Freeman	Councillor Richard Trail

**Also Present:** Councillor Jim Anderson

**Attending:** David Logan, Head of Legal and Regulatory Support  
Iain Jackson, Governance, Risk and Safety Manager  
David Moore, Senior Planning Officer  
Sandra Davies, Team Leader - Major Applications  
Paul Farrell, Technical Officer  
Douglas Whyte, Team Leader, East  
David Cameron, JBL Consulting  
Brian Stewart, Applicant's Agent  
John Melling, Applicant's Agent  
Colin Anderson, Applicant's Agent  
Willie Lynch, Dunoon Community Council  
Kenny Matheson, Objector  
James McCrossan, Objector  
Kenny MacDonald, Objector

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Donald MacMillan and Jean Moffat.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest intimated.

**3. D.HILL PROPERTY LTD: RESIDENTIAL DEVELOPMENT COMPRISING 101 DWELLINGHOUSES INCLUDING FORMATION OF VEHICULAR ACCESSES, LANDSCAPING, OPEN SPACE AND PLAY AREAS: LAND WEST OF ALEXANDER STREET, DUNOON (REF: 19/01456/PP)**

The Chair welcomed everyone to the hearing which was being held on a virtual basis in light of government guidance and Coronavirus legislation on public gatherings in response to the Covid-19 pandemic. For the purposes of the sederunt, Mr Jackson, Clerk to the Committee, read out the names of the Members of the Committee and asked them to confirm their attendance.

In advance of the meeting interested parties had confirmed that they would make presentations to the Committee. Mr Jackson read out the names of those representatives and asked them to confirm their attendance.

The Chair, having explained the hearing procedure that would be followed, invited the Planning Officer to present the case.

### **PLANNING**

David Moore, Senior Planning Officer presented the application as follows on behalf of the Head of Development and Economic Growth.

Slide 1

As members will be aware from the Officers report and online application details

(i) *Development Requiring Express Planning Permission*

- *Erection of 101 dwellings*
- *Associated internal and external roads infrastructure to include footways and parking;*
- *Provision of SuDS compliant drainage infrastructure.*
- *Provision of landscaping,*
- *Provision of formal and informal and amenity areas*

(ii) *Other specified operations*

- *Connection to public water supply*
- *Connection to public sewage system*

This indicates the red line boundary of the site it is bounded by Alexander Street to the east, Gordon Street to the south and east and the top part of Nelson Street to the south.

Slide 2

The application is on an allocated housing site (H-AL 2/3) which has been determined to be suitable for 100 Units. As the application proposes 101 units on the site the application, on point of principle for housing development accords with the LDP in terms of land use site allocation and scale.

Slide 3

This indicates the red line boundary of the application site and shows the relationship of the site to adjoining residential properties.

The site is currently used by local residents for informal recreation. It is clear that the site is valued by the local community, demonstrated by the large number of objections which have been received to the current planning application from local residents resulting in members deciding that a hearing was appropriate to determine this application.

Slide 4

This slide shows the site boundary marked on an aerial photograph of the site. Due to the current covid hearing procedures not allowing for a site visit a larger number of photographs than normally would be the case have been added to the presentation. This is to provide members with a clearer understanding of the character and appearance of the site and its surroundings.

The following slides 5 to 25 will provide a record of walking through and around the site to provide a greater understanding of the character and appearance of the site and its surroundings.

### Slide 26

This indicates the proposed layout of the application and shows the formal and informal amenity space areas in green. With the smaller rectangles indicating the proposed location of the formal play areas. The provision and maintenance of these will be subject to conditions as is normal practice.

Members are requested to note that the overall density and size of the plots and footprints of the proposal are large for a modern housing development. The overall scale and density of the proposals is considered to be acceptable and in character with the local area.

The two vehicular access and egress points are indicated in grey, one to Alexander Street and one to Gordon Street. A Transportation Assessment dealing with roads and junction capacities has been submitted in support of the proposals and the Area Roads Engineer raises no objections to the proposals.

### Slides 27, 28, 29 House types proposed

The following slides indicate the mix of detached and semi detached houses proposed as part of the application, indicating that on some of the plots they will be a mixture of single storey and two storey reflecting the sloping nature of this site.

### Slides 30 and 31

The 3D renders offer additional clarification of the how the mix of single and two storey elements of the development will relate to the streets to be formed.

Members are requested to note that layered landscaping, to include tree planting within the plots will be required as part of landscaping the site in order to assist in in the houses into the rising hillside.

### Slide 32

Referring back to the general layout arrangement, The applicant has provided details of the slope of the site through four cross sections AA to D-D as shown of this plan. These cross sections form the next slide.

### Slide 33

These sections indicate the general arrangement for developing the site and addressing slopes within it and also the relationship between the existing houses on Gordon Street /Alexander Street and the proposed houses.

As set out in the Main report. Window to window distances meet required standards and in many cases considerably exceed them. Officers have also conditioned that

full details of any retaining walls are submitted and approved prior to construction as well as all other external materials proposed on the site.

### Slide 34

This is an extract from the submitted drainage and flooding proposals which shows the complex flow patterns which currently exist across the site. This is considered by officers an important matter in determining the current planning application as this is a site of known flooding problems and many objector have correctly raised flooding as an important material consideration in respect of determining the current planning application.

Members will also note that the main report clarifies that the area is identified in the Dunoon Surface Water Management Plan (Dec 2019) as an area which has existing flooding issues.

Lengthy discussions between the applicant and the Councils flooding advisor have ensured that the housing proposals will address existing and projected flows of water through the site and therefore the current flooding problems for residents should be addressed by the implementation of these housing proposals.

The proposals will therefore bring a community benefit in terms of addressing known flooding problems.

### Slide 35

These proposals will provide planning gain in addressing the existing flooding issues.

A small section of the western boundary and a SuDS pond is outside the defined housing site within the LDP. However these matters are considered acceptable and of no planning consequence.

These will be landscaped and will form attractive biodiversity and landscape features as part of the scheme.

### Slide 36 – Back to Aerial picture leave on screen

### Conclusion

This an allocated housing site within the adopted LDP where housing development of an appropriate scale is acceptable on point of principle subject to compliance with necessary policies and standards. All LDP policies and standards are considered to be met, or can be addressed by conditions and the layout and design of the housing site is considered to be in accordance with Place making requirements.

It is therefore recommended by Officers that Planning Permission be granted as a minor departure from policy LDP DM 1 in respect of the SuDS pond being outside the application site boundary but on land controlled by the applicant.

### **APPLICANT**

Brian Stewart of Stewart Associates, who was the agent for the applicant, advised that his presentation was short due to the recommendation for approval by planning officers in accordance with the local plan. He gave some background to the application advising that the site had been purchased at the tail end of 2017 and that the applicant was an established commercial and residential developer throughout the UK with a reputation for using local design consultants and contractors. He



advised that Stewart Associates had been successful in the interview process and had been accepted on the basis that they had been involved in large developments throughout Argyll and Bute.

Mr Stewart advised that the applicant had purchased the site in the knowledge that part of it had been designated for housing within the adopted Local Development Plan. He advised that the extent of land purchased was larger than the development site itself and extended to a large area of land to the top of the site. The site already had planning permission for 40 houses, which was live, with one house already built on Gordon Street which had been approved in the late 80's with reserved conditions in the early 90's and he advised that the development was significantly closer to the gardens in Alexander Street and Gordon Street. Mr Stewart told the Committee that both the designers and the developer were conscious that this was a major economic and social development and the first large scale private housing development in the area for many years. He highlighted the developer's enthusiasm to invest and build in the local community despite the Covid-19 pandemic.

Mr Stewart then provided some information on the pre-application and detailed planning application process. He advised that the formal process had started in 2018 with a series of meetings with Brian Close of Planning and Paul Farrell of Roads which enabled them to submit a pre-application to the local office. Thereafter a pre-application consultation had been held in the Queen's Hall in October. Mr Stewart spoke of the Scottish Government tests for designing places which required developments to be distinctive, safe and pleasant, easy to move around, welcoming and adaptable and resource efficient explain how the applicant had met each of these requirements. Mr Stewart advised of the pre-application consultation event that had been held in the Queen's Hall in October 2018. He said there had not been a particularly large turnout but the comments from those who did attend had been considered as part of the design. Amendments had been made including a reduction of houses from 114 to 101 and the open space provisions had been increased to more than the suggested requirement. Mr Stewart told the Committee that there had been extensive and rigorous technical design discussions had with Argyll and Bute Council technical team and consultants on roads, engineering and flood risk which had resulted in further production of design information beyond normal planning expectations. He added that in 30 years plus experience he had never had to provide such detailed technical design information and that this would be of use if and when the application received consent. He advised that the scheme had been robustly tested and he urged the Committee to support the application. He then showed the Committee a photograph from the pre-application consultation held in the Queen's Hall and one showing a general view from the site looking toward the firth. He thanked the Chair for the opportunity to speak.

### **CONSULTEES**

#### Dunoon Community Council

Mr Willie Lynch advised that Dunoon Community Council were unanimous in their objection to the application. He advised of the strong feeling within the community who were worried about the development and especially those who lived close to the site. He referred to the intimation made about mixed support advising that this was untrue given that there had been 130 objections and only 2 in favour of the application. He referred to use of the local workforce and advised that this would be minimal due to the size of the project. Mr Lynch advised that there were several

issues with the development one of which was flood water. He said that the change from soil to concrete could increase the flooding issues already present in that area, he referred to a recommendation made in March 2020 for improvement to flood prevention measures advising that he couldn't see any alterations. Mr Lynch then referred to the second issue which was roads. He referred to the many side streets which were reduced to single lane in many parts and which could pose difficulty to residents from increased traffic and would not be suitable for construction traffic. He referred to the traffic survey that had been taken along Victoria Street advising that HGVs travelling along this street would cause immense problems to drivers and the problem would be the same on Alexandra Parade. He advised that the survey did not take into account Sandbank Road which was one of the busiest roads, as a vast number of traffic used this road for access to the town centre. He advised that Victoria Road was a narrow road with on street parking and that an increase in traffic could increase congestion and pollution. Mr Lynch advised that many of the residents had concerns over privacy and visual intrusion due to the close proximity of the development to existing houses. Mr Lynch told the Committee that there were also concerns regarding GP services and that an increase in population could affect the service which was already stretched due to a number of GP vacancies.

### Roads

Mr Paul Farrell advised that he had no presentation to make but would be available to answer any questions the Committee may have.

### Housing

Mr Douglas Whyte advised that he had no presentation to make but would be available to answer any questions the Committee may have.

### Flooding

Mr David Cameron advised that he had no presentation to make but would be available to answer any questions the Committee may have.

## **SUPPORTERS**

There were no supporters present at the meeting.

## **OBJECTORS**

Kenny Matheson began by saying that the number of objectors for a development said a lot. He advised that residents were very worried and that he agreed with what Willie Lynch had said. He advised that he was disappointed that the Committee could not see the site for themselves and the surrounding roads. He referred to the flooding saying it was horrendous and the fact that the developers had said they would fix it, questioning what would happen if they didn't and there was more flooding. Mr Matheson referred to transport, in particular buses and ferries, he advised that there were only 4 buses daily that covered that area and that the ferries held the worst record for service in the western fleet. Mr Matheson said that they

were working for the residents of Alexander Street and asked the Committee how much influence was given by the views of objectors. He advised that the application should not be approved and thanked the Committee for his opportunity to speak.

Mr James McCrossan advised that the consultation process had been flawed. He advised that the Local Plan in 2003 had identified the area for housing yet there had been no neighbour notification carried out. He advised that the first neighbour notifications had been issued when this specific application had been submitted. He advised that the objections lodged would have been raised at the time the site had been identified for housing had the opportunity been given. He asked how one house built on site could be justification for 101 houses with no neighbour notifications issued and said that this did not constitute best practice. Mr McCrossan advised that objectors were at an unfair disadvantage and that it was unreasonable to proceed with such a high level of objection from people who had not been notified at the appropriate times.

Mr Kenny MacDonald advised that his main objection was flooding to the area. He advised that he lived in the house where culvert 2 comes through the garden. He advised that the first he knew of this application was through word of mouth and on social media, he had received nothing through the door. He advised that he had then checked the Council website for details of the application. Mr MacDonald said that there was a serious amount of run-off water diverted to the stream which ran through his garden and a series of 4 photographs were shown to the Committee of flooding in the garden where the culvert had been blocked and the water was running through the wall into Alexander Street. Mr MacDonald advised that this happened 3 or 4 times per year and that sometimes he unblocked the culvert himself although the last time he had called the Council to assist. He advised that he had lived in the house for 12 years and there could be possible damage to the foundations to the house from the flooding. He referred to the revised drainage plan which showed a change in direction of the run-off and asked who was going to police the direction of the run-off as things were not always installed the way the plans showed. Mr MacDonald then referred to the Japanese Knotweed which was on the site and which would be disturbed through the construction process. He advised of the risk of this knotweed being disturbed and sent down the burn through countless gardens and into the Clyde. Mr MacDonald concluded by saying that the photographs had shown the damage caused due to flooding and that the development would cause more damage to his land.

Councillor Jim Anderson advised that he was deeply concerned for his constituents who were worried about flooding issues and the development overlooking existing properties. He advised that the flooding plans had been based on estimates and referred to the evidence of the flooding already on Alexander Street saying that the risks were too high as no one could guarantee the impact of future flooding. He advised of the greater proportion of flooding which was happening advising that plans could not be based on previous events. He referred to the regular maintenance that would be required to be carried out to the culverts and asked who would guarantee that this would be carried out. He asked if the flood prevention measures would be carried out prior to the development as there was a strong risk of flooding during development work. Councillor Anderson then advised that the planned houses were too close to the existing houses and suggested that the application be refused and resubmitted with a larger gap between the older houses and the newer houses.

## QUESTIONS

Councillor Trail referred to the concerns around flooding and asked Mr Cameron what was being done off site to address how the water would be brought down to the sea without flooding. Mr Cameron advised there were two elements, the first was an increase in hard standing concrete and the requirement for sustainable urban systems to be put in place to ensure that the run off from the site is either the same as before or less than before. He advised that the SuDs basins would collect and release water at a controlled rate and that it should not be any more than what was currently there. He advised that it would require regular maintenance to function properly. He then said that the second element was the existing flooding and that the applicant had done a number of studies and had taken into account climate change and a 1 in 200 year flooding event, which had been included in the proposals. He advised that flooding could never be completely eliminated and that this was the same for any development across Scotland.

Councillor Trail asked where the current flooding issues were from. Mr Cameron confirmed that the current issues came from the existing water courses and run-off from the existing site. He advised of blocked culverts and blockages at the forestry road in which the water found its way onto Alexander Street.

Councillor Forrest asked why the SuDs ponds were located at the sides of the development and how the water would get to the ponds when a lot of the flooding was in the middle of the site. Mr Cameron advised that the water was collected in sewers and fed into the SuDs ponds, once the ponds reached a certain volume the water would be released in a controlled manner. Councillor Forrest asked how it could be guaranteed that the SuDs ponds wouldn't flood. Mr Cameron advised that a sensitivity test had been done on larger rainfall. Councillor Forrest asked the same question to the applicant's agent.

Mr Stewart advised that the development pattern followed existing pattern of houses and that the roads ran north to south with the hill running from east to west. He advised of a series of site platforms for each house which would pick up run off from the garden space, driveway and from the roof and which would then go through drains running along the main principle roads and through series of filter trenches. Anything left would then be discharged to SuDs ponds, anything in suds ponds was then slowed down and let into existing drainage. He advised that currently the flood system was unmanaged and that the water was running down and through gardens and that this system would manage it. He advised that this was a robust design which had been held back to take into consideration the Dunoon flood plan as well as climate change

Mr Colin Anderson added that the ponds would capture and store the run off and put it out at a controlled rate. He advised that the existing ditch was blocked and would be reformed. He advised that the reforming of green spaces would also assist in soaking up water along with the use of filter strips and therefore would be better than what was on site currently. He confirmed the position of ponds was due to the topography of the site.

Councillor McCuish asked planning to outline the process for neighbourhood notification for the application. Mr Moore advised that notification had been carried out as it would for a normal application and that neighbour notification had been carried out as well as press notices. In terms of the Development Plan he advised that the matter had been raised a while ago and had been forwarded to Mark Lodge who had issued a briefing note. He read out the briefing note to the Committee. He

confirmed that neighbour notification had been carried out as it should have been for this application.

Councillor McCuish referred to the consultation event carried out in the Queens Hall and asked the applicant if they had taken further steps to get folk involved other than what was the standard requirement. Mr Stewart advised that procedure had required them to advertise the meeting in advance and that attendance had been in the low 30s, including 2 Community Council representatives and 30 or so visitors. He advised that they then used feedback to inform aspects of design in consultation with planning. In response they had moved the position of the lower west most road further east which had increased the space between the new housing and the existing housing on Alexander Street. He advised that the closest distance was now 30m as they had noted that privacy was an issue. Councillor McCuish asked for confirmation on whether they had done any more than what was required as standard. Mr Stewart confirmed that they hadn't done any more consultation work than what was required as standard.

Councillor Devon asked planning if the Local Development Plan had designated the area as an area for housing in 2003 or 2009. Mr Moore referred again to the email from Mr Lodge and confirmed that the area had been in the Cowal Local Plan previous to the Local Development Plan being adopted in 2009.

Councillor Devon referred to the designation of the site for housing within the Local Development Plan since 2009 and asked Mr Lynch if the Community Council had made a representation about the designation prior to the submission of the current application and if they had ever tried to have the designation changed. Mr Lynch advised that he had been a member of the Community Council for 7 years and the first they knew of the application was in 2018 when they got notification from the Council. He advised that he could not advise on what had happened before that time. Councillor Devon asked him to confirm that they had not asked for the designation to be changed prior to that time. Mr Lynch confirmed that they had only made a representation when the current application came forward.

Councillor Colville referred to the difficulty with the blocked culvert in Mr MacDonald's garden and asked if the scheme would reduce the water flowing through the culvert or increase it. He then referred to the further ground that had been purchased and asked if there were any plans to divert the water off that ground as well. Mr Stewart said that it was his understanding that the design of the flow of water into existing culvert would be at a reduced level to what the culvert could accommodate. In terms of the additional land he advised that there had been primary discussions about use of the land for leisure and recreation. He added that the design took account of the water course to the north and as the area was way north of site boundary there has been no discussion regarding the diversion of water from that part of land.

Councillor Colville referred to the roads construction consent and lack of pavements and sought assurance from Mr Farrell around the traffic calming measures and maximum speed limit of 20mph. He also asked Mr Farrell to comment on the objectors point about the suitability of the surrounding streets for use by HGVs and heavy traffic. Mr Farrell advised that the roads infrastructure for the scheme was based through Scottish Planning Policy and had been designed to limit speed and make a safer space for all road users. He advised that the road would be set up as shared surface for pedestrians, cyclists and cars. He advised that a TRO would be required to enforce a speed restriction on the site and would include the surrounding areas as well as the application sites.

Councillor Colville asked Mr Farrell if permission was granted, if that was a process that he would start. Mr Farrell confirmed that it was and that a condition had been added which required this to be discussed with the developer. Mr Farrell advised that the roads surrounding the site were suitable for additional traffic and for heavy goods vehicles. He advised that the agent's traffic consultation had proven that the surrounding network had capacity for all vehicles, both on construction and at the finished stage. He added that a lot of the streets to the north had waiting restrictions, which would maximise the space available for heavy vehicles coming in to gain access to the site.

Councillor Colville commented that he could not recall anything in the conditions about applying for a TRO and restricting the speed limit to 20MPH and asked Mr Moore if this was something that could be added. Mr Moore advised that there was no specific condition as it would be a matter for a roads act and not a planning act. He advised that the situation was similar to other applications where safety was prioritised, would be picked up as part of the roads construction consent and therefore was not something to be added as a planning condition.

Councillor Colville advised that it was likely that the new Development Plan would take into account the use of electric vehicles and new schemes would require to provide charging points. He asked that even though this was not something included in the current Development Plan, if it was a consideration that could be included for this development given the long timescale of the development. Mr Moore advised that there were draft policies in the new plan for electric vehicles, however, as this application had been considered under the current plan there was no requirement for the developer to provide charging points. He added that some developers were offering the options of having charge points put into the garages of new builds. Councillor Colville said that his concern was that in future there would be a requirement to dig up the roads to install charging points if this was not done during development. He asked if any consideration had been given to this by the applicant. Mr Stewart advised that in terms of sustainable design all of the houses would be fitted with modern heating systems and it was proposed to add charging points for electric vehicles at the visitor parking spaces which would correspond with the large areas of recreational space and play.

Councillor Taylor referred to the prior consent for 40 houses and asked Mr Moore if it was for the same site as was being applied for now or just part of the site. Mr Moore confirmed that it was for part of the site, specifically the lower section of the site closest to the existing houses. He advised that the application site was larger.

Councillor Taylor noted that the responsibility for maintenance of the flooding system was not included in a planning condition and referred to the current drainage from the hill which was not currently well maintained. He referred to the confirmation from the flooding expert that the system would require ongoing maintenance and asked whose responsibility the maintenance would be. Councillor Taylor advised that he had an awareness of SuDs and had seen them in sites, and on motorways, and sometimes in urban settings covered over with a hard finish. He asked if there was a safety consideration where there were open ponds where children would be. Mr Moore advised that the maintenance was covered by standard conditions 9, 10 and 11. He advised of discussions with roads in order that the Council did not have to take on the maintenance of drainage and advised that the SuDs points remained the responsibility of the owner until they had been signed off and adopted by Scottish Water. In terms of safety, he referred to condition 11 which dealt with the safety around the SuDs ponds confirming that these were areas they did not want any party

to have access to and that there was a duty of care placed on the developer. He advised that the post and rail fence had worked well on the Persimmon site in Helensburgh as an example.

Councillor Taylor asked what would be done to control flooding and pollution during the construction phase. Mr Moore advised that flooding was often an issue on construction sites and the developer would be required to submit a Construction Environment Management Plan (CEMP) which would bring together safety and environmental matters for the construction process and a traffic management plan. He advised that there was a requirement that a development does not cause pollution to existing water courses which was controlled by SEPA. This was also built into the CEMP, to ensure there was no pollution or discharges into water courses.

Councillor Freeman noted that as per the report of handling, the only statutory consultee that had objected to the application was the Community Council. He asked the Community Council how they had obtained the views of the community. In terms of their objection, he asked who had confirmed that Post Office and Council services were already stretched. Councillor Freeman noted that roads had no objection subject to conditions and that the negative financial impact on housing market was not an appropriate planning objection.

Mr Lynch confirmed that the Community Council had obtained the views of the community through social media as they did not have a hall big enough to call a meeting. In terms of the view that the post office was over stretched he advised that they had spoken to the head postmaster who had felt that things were tight. In terms of the Council he advised that amenities had been cut back through various budget cuts and Supervisors had felt things were stretched. In respect of the market Mr Lynch advised that before Covid-19 the housing market was not buoyant and property had been on the market for some time. He advised that Covid-19 had encouraged people to buy houses and no one knew if and when that would change. Councillor Freeman reiterated his point that the housing market was not a relevant reason to reject planning.

Councillor Freeman referred to the Section 75 agreement and noted that it only related to the finance arrangement. He asked if a Section 75 agreement could be placed on the SuDs area as it was out with the boundary of the site and to ensure that it was in place prior to development. Mr Moore advised that in terms of the Section 75 agreement that Dunoon was unique as a moratorium had been placed on affordable housing and they had to decide in consultation with policy and housing needs and demands if the funding would be an appropriate way of bringing forward affordable housing. Councillor Freeman advised that his concern had been that it was only the finance agreement that had been put under the Section 75 agreement and why the SuDs area had not been included or included with conditions as it was out with the boundary of the site.

Mr Moore confirmed that the land where the SuDs would sit was within ownership of the developer and therefore there was no need for a Section 75 agreement. He added that the requirement for the SuDs was already included in the conditions. Councillor Freeman asked if this was required to be in place prior to construction. Mr Moore advised that this was something that could be included in the CEMP. Councillor Freeman said that he believed it should be included and in place prior to occupation. He referred to page 33 of the report and advised that he could not see where the SuDs area would sit. Mr Moore explained where the SuDs area would sit. Councillor Freeman then asked if that area would have permitted development rights

and if these should be removed. Mr Moore confirmed that the area would remain as countryside as it was on the outside of the boundary and that he was not aware of any permitted development rights that would affect the function of the suds pond.

Councillor Green referred to the transport assessments and asked how these conclusions were arrived at and if there had been flow analysis done. He asked if the capacity of residential areas had been factored in. Mr Farrell provided Councillor Green with the figures from the report on traffic analysis which had concluded that there would not be a significant impact on the surrounding network and that it could take the increase in traffic from this development with capacity for more vehicles. He confirmed that the traffic flow in Dunoon was light compared to other areas in Argyll and Bute, such as Helensburgh.

Councillor Forrest asked if the spread of Japanese Knotweed would be included in the CEMP and if there was there a plan for the removal of waste from the building site. Mr Moore confirmed that a special plan was required for the removal of knotweed from the site and that this would be included as part of the CEMP. He advised that the removal of building waste would be included as well, although rather than remove the waste from the building site, developers tried to incorporate the waste into the site due to avoid landfill charges. Mr Stewart confirmed that they would be happy to comply with any statutory requirements.

Councillor Blair asked if the preventative measures for flooding could be increased and if there were any other areas of the town that could be affected by an increase in traffic such as the ferry terminal. He then asked if checks had been done around education capacity. Mr Moore advised that it would be unfair to the applicant to increase the standards for the flooding measures given that the applicant had met the standards set by national guidance. He added that the applicant had held off drawing up the SuDs plan until after the Council and SEPA had drawn up a new flooding plan. Mr Farrell confirmed that there would be minimal effect on traffic elsewhere in Dunoon due to the development, advising that the further away from the site the less the impact.

Councillor Hardie asked Councillor Anderson to provide more detail on the strength of feeling against the application by residents. Councillor Anderson advised that he had received emails, texts and telephone calls from countless people who had made representation. He advised there was a very strong feeling in Alexander Street that there was a threat to people's homes and futures and nervousness around flooding. He advised that in his time as a councillor he had never received so much representation over something. He advised that he felt that had a full hearing been held in Dunoon the Members would have been able to gauge the strength of feeling better and would have been able to view the site and surrounding roads themselves.

Councillor Kinniburgh asked Mr Cameron if it was his opinion that the development would improve the flooding issues. Mr Cameron confirmed that it would improve as long as the system was maintained.

Councillor Kinniburgh referred to the presentation made by Councillor Anderson and sought clarity from Mr Cameron that a larger gap between the older houses and the new houses would not make any difference in terms of flooding. Mr Cameron confirmed that it would make no difference.



## SUM UP

Sandra Davies summed up on behalf of the Head of Development and Economic Growth as follows –

The planning act is clear as to the approach to be adopted by decision-makers in the determination of planning applications. The development plan should always be the starting point in assessing the merits of development proposals. It is clear that in determining an application, it should be decided in accordance with the development plan unless material considerations indicate otherwise.

In this case the adopted local development plan is the 2015 local development plan. The forthcoming LDP2 current carries little weight as we do not have sufficient clarity about the detail of the objections relating to the policies of this plan. However it should be noted that this housing allocation is also contained within LDP2.

The proposed houses are all located within the boundary of the allocation with the only exception being that the smaller SUDS pond at the northern end of the site is located outwith the allocation and lies within the countryside zone. This is considered by officers to be a minor and justifiable departure from LDP policies as the SUDs facility will have an undeveloped appearance with landscaping appropriate for a countryside location.

In all other respects the proposal accords with the policies of the local development plan.

The issues discussed today mainly relate to flooding and drainage and roads issues. We have heard from the Council's flooding consultant that the proposed drainage system for the site will be built in accordance with current standards and will provide attenuation of water on site. This provides a managed solution for run off which it was previously unmanaged and this will be an improvement on the current situation.

We have also heard from the local roads officer who has advised that he is satisfied with the proposal and that the addition of this development will not cause problems for the existing road network.

Officers and their technical consultees consider that these issues have all been adequately addressed. It is therefore recommended that planning permission for this housing allocation be approved.

Mr Brian Stewart advised that when they started looking at the site they had recognised it would be controversial as residents had been there for many years with an open hill at back of their properties. In respect of this he advised that the design had been well thought out, would provide new housing for Dunoon and was good for the economy. He advised that he knew flooding and road capacity were big issues but what they had proposed respected accessibility and safety, respected the core path network and provided lots of open space. The design and whole scheme would help the local economy and would resolve the problems that had been suffered over many years.

Mr Willie Lynch advised that he stood by everything he had said and that the roads would be a problem. He referred to the high volume of traffic already on the roads and that there were already difficulties crossing roads and driving through streets due to parked cars. He reiterated that the increase in traffic would be a problem.

Mr Paul Farrell confirmed he had no further comment to make.

Mr Douglas Whyte confirmed he had no further comment to make.

Mr David Cameron confirmed he had no further comment to make.

Mr Matheson referred to the comments made by Mr Farrell advising that he did not agree. He advised that his mother in law stayed in Alexander Street where there were cars parked on road and sometimes it could take 5 minutes to get along the road due to cars parked on both sides. He advised that he could not cross roads at some points due to the volume of traffic. He advised that the views of the objectors should be approved and the application not approved.

Mr McCrossan asked members to give careful consideration to the completely inadequate notification given to neighbours during the process.

Mr MacDonald referred again to the flooding and the retention basin which was to be built to the north end of the site advising that the piece of land subject to fly tipping at moment and asked that it be ensured that this was monitored if the application was approved.

Councillor Anderson advised that his views had not changed since the beginning of the meeting. He advised that addressing the flooding issues did not give him or the residents any comfort. He advised that on Alexander Street only one car could be driven down the street due to parked cars on both sides and that there was no doubt that there would be traffic congestion. He advised that he stood by his objection.

The Chair confirmed that everyone had received a fair hearing. In terms of the Councillors' National Code of Conduct, Councillor Jim Anderson, objector, left the meeting at this point.

### **DEBATE**

Councillor Trail said that having listened to the discussion and following the presentations given he was reassured in respect of flooding and that the plans would improve the situation for residents along Alexander Street. Given that there were very few other material planning issues he advised that he had no problem in supporting the application.

Councillor Freeman advised that as the proposal complied with the LDP with a minor departure he could not justify refusal. He advised that he still had concerns surrounding the safety issues Councillor Taylor had raised and would prefer the fencing to be in place around the SuDs prior to the occupation of the houses.

Councillor Taylor advised that he had no doubt that the houses would lead to significant change which would be difficult for residents, but nevertheless, the site benefited from prevailing consent and the impact of the new application was no different to the impact from the prevailing development. He added that there would be an improvement in the current draining problem and on that basis he was content to support the application.

Councillor Colville advised that he had been reassured by the questions that had been asked and that officers had addressed any issues. He advised that he had to go by the professional opinion provided by officers and he believed this was a development by an established developer that would bring economic development to

Dunoon. He said that he had taken into consideration the views of objectors but would be going with planning and supporting the development.

Councillor Green commented that it was clear from the hearing that there was a lot of feeling from the community. He said it was good that a lot of evidence had been given and substantial answers given to questions and on that basis he was minded to support application.

Councillor Forrest said that on the basis of the information presented she had been persuaded that the application should be refused. She advised that as she had only just come to that decision she did not have a Motion to that effect. She advised that should there be a Motion to approve the application she intended to move an Amendment that the hearing be continued to allow her to seek advice in relation to framing a competent Motion for refusal.

Councillor Blair said that having listened to the comments and the reassurance provided about flooding he supported the application, however, he advised he still had concerns around traffic.

Councillor Redman thanked all contributors for their presentations advising that good arguments had been given on both sides. He advised that he supported the application as due to trying economic times and demand for housing he believed that the development would benefit the fragile economy.

Councillor Devon advised that as the application agreed with policy and as she felt that concerns had been more than addressed she would be supporting officer's recommendation.

Councillor Douglas advised that she had held concerns but felt that everything had been covered well and in that respect she was happy to support the application as it stood.

Councillor McCuish advised he had nothing to add.

Councillor Kinniburgh commented that a number of questions had been covered by all parties. He advised that his main concerns had been around flooding but he was satisfied they had been addressed. He referred to the point made by Councillor Freeman regarding the inclusion of the SuDs in the Section 75 agreement and advised that he was satisfied that this point had been covered by conditions. He moved the following Motion which was seconded by Councillor Colville.

### **Motion**

I move that planning permission is granted as a minor departure from Policy LDP DM1 subject to the conditions and reasons detailed on pages 18 to 24 of the pack before the committee subject to the conclusion of a section 75 agreement between all necessary parties to secure the appropriate level and timing of the affordable housing contribution by means of a commuted payment within 4 months of today's date or within 4 months of the determination date of the value per unit of the commuted sum by the District Valuer, whichever is the later.

Moved Councillor Kinniburgh, seconded Councillor Colville.

### **Amendment**

I move that the hearing be continued to allow me to seek advice in relation to framing a competent motion for refusal.

Moved Councillor Forrest, seconded Councillor Freeman.

As the meeting was being held on a virtual basis in light of government guidance and Coronavirus legislation on public gatherings in response to the Covid-19 pandemic the vote required to be taken by calling the roll and members voted as follows –

### **Motion**

Councillor Blair  
Councillor Colville  
Councillor Devon  
Councillor Douglas  
Councillor Green  
Councillor Hardie  
Councillor Kinniburgh  
Councillor McCuish  
Councillor Redman  
Councillor Taylor  
Councillor Trail

### **Amendment**

Councillor Forrest  
Councillor Freeman

### **Decision**

The Motion was carried by 11 votes to 2 and the Committee resolved accordingly.

(Reference: Supplementary Report 1 dated 22 September 2020 and Report by Head of Development and Economic Growth dated 4 September 2020, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY SKYPE  
on WEDNESDAY, 16 DECEMBER 2020**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Donald MacMillan BEM
Councillor Mary-Jean Devon	Councillor Roderick McCuish
Councillor George Freeman	Councillor Alastair Redman
Councillor Kieron Green	Councillor Richard Trail
Councillor Graham Hardie	

**Attending:** Fergus Murray, Head of Development and Economic Growth  
Stuart McLean, Committee Manager  
Peter Bain, Development Manager  
Tim Williams, Area Team Leader – Oban, Lorn and the Isles  
Marina Curran-Colthart, Local Biodiversity Officer

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Lorna Douglas, Audrey Forrest, Jean Moffat and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. MINUTES**

- a) The Minutes of the Planning, Protective Services Licensing Committee held on 18 November 2020 at 11.00 am were approved as a correct record.
- b) The Minutes of the Planning, Protective Services Licensing Committee held on 18 November 2020 at 2.00 pm were approved as a correct record.
- c) The Minutes of the Planning, Protective Services Licensing Committee held on 18 November 2020 at 2.30 pm were approved as a correct record.
- d) The Minutes of the Planning, Protective Services Licensing Committee held on 18 November 2020 at 3.00 pm were approved as a correct record.
- e) The Minutes of the Planning, Protective Services Licensing Committee held on 23 November 2020 were approved as a correct record.
- f) The Minutes of the Planning, Protective Services Licensing Committee held on 30 November 2020 were approved as a correct record.

**4. MR C KENNEDY: ERECTION OF DWELLINGHOUSE AND FORMATION OF VEHICULAR ACCESS: LAND EAST OF TIGH NA MARA, ARINAGOUR, ISLE OF COLL, ARGYLL AND BUTE (REF: 20/01688/PP)**

The Area Team Leader spoke to the terms of the report. Before presenting the application he referred to 2 late submissions: an email the Applicant sent direct to all Members of the Committee on 14 December 2020; and a letter dated 9 December 2020 from the Applicant's Planning Consultant which had also been distributed to Members of the Committee.

In terms of the adopted Argyll and Bute Local Development Plan (LDP) the application site is located within the southern fringe of the Key Rural Settlement of Arinagour where Policy LDP DM 1 gives encouragement to sustainable forms of development on appropriate sites subject to compliance with other relevant policies and supplementary guidance. The proposed site is located on the seaward side of the road opposite, and to the east of, the neighbouring guesthouse Tigh Na Mara which occupies a site on the opposite side of the public road. The stretch of land between the ferry terminal to the south and the small pier to the north on the seaward side of the road is rocky in nature and it is completely devoid of development.

The determining factors in the assessment of this application are whether or not this location is acceptable for the erection of a dwellinghouse having regard to its visual impact upon the landscape and its visual relationship with neighbouring properties and its integration with the existing settlement pattern.

In this case it is considered that development of this site would harmfully erode its open and rural character, contrary to the established pattern of development. The undeveloped nature of the site makes a positive contribution to the village and its development with a dwellinghouse would result in the loss of that characteristic and harm the visual amenity of the locality.

Having due regard to the Development Plan and all other material considerations, it was recommended that planning permission be refused for the reasons detailed in the report of handling.

**Motion**

To agree to refuse planning permission for the reasons detailed in the report of handling.

Moved by Councillor George Freeman, seconded by Councillor Richard Trail.

**Amendment**

Chair I move an Amendment to grant the application and in doing so I am taking a different view to that expressed by the Council's Planning Officers.

While I fully respect the professional judgements advanced by them I believe, on this occasion, that I should follow my own opinion in regard to the weight of consideration to be given in balancing the various material planning considerations.

There are no objections from statutory consultees and no representations have been received from any party against the application.

In terms of the adopted Argyll and Bute Local Development Plan (LDP) the application site is located within the southern fringe of the Key Rural Settlement of Arinagour where Policy LDP DM 1 gives encouragement to sustainable forms of development on appropriate sites subject to compliance with other relevant policies and supplementary guidance.

I do not consider that the erection of this dwellinghouse will have a detrimental effect on the visual impact upon the landscape or its visual relationship to neighbouring properties.

Taking account of the appropriate scale and design of the proposal, I consider that the Proposed Development:

Complies with and is supported by Policy LDP DM 1, Policy LDP 8 and Supplementary Guidance SG LDP HOU 1; and complies with Policy LDP 9 and Supplementary Guidance SG LDP Sustainable - Sustainable Siting and Design Principles as well as other policies and guidance, including the Argyll and Bute Sustainable Design Guidance 1 - small scale housing development (2006), the Isle of Coll Sustainable Design Guidance and Planning Advice Note 72: Housing in the Countryside (PAN 72).

I move that the Committee approve the application and agree to remit determination of conditions and reasons to the Head of Development and Economic Growth in consultation with the Chair and Vice Chair of the Planning, Protective Services and Licensing Committee.

Moved by Councillor Roderick McCuish, seconded by Councillor Graeme Archibald Hardie.

A vote was taken by calling the roll.

**Motion**

**Amendment**

Councillor Colville  
Councillor Devon  
Councillor Freeman  
Councillor Green  
Councillor Kinniburgh  
Councillor MacMillan  
Councillor Trail

Councillor Hardie  
Councillor McCuish  
Councillor Redman

The Motion was carried by 7 votes to 3 and the Committee resolved accordingly.

**Decision**

The Committee agreed to refuse planning permission for the following reason:

1. In terms of the adopted Argyll and Bute Local Development (LDP) the application site is located within the Key Rural Settlement of Arinagour which is subject to the effect of Policy LDP DM 1 and Supplementary Guidance SG LDP

HOU 1 which establish a general presumption in favour of housing development within settlements, provided such development is of a scale and form compatible with the surrounding area and does not result in inappropriate densities or the loss of valuable open areas, and is acceptable in terms of siting and compatibility with the established settlement pattern and landscape character.

Development of this site would erode the open and rural character of the rocky coastline, a key environmental feature, contrary to the established pattern of development which is characterised by an absence of built development on the seaward side of the public road south of the existing pier. The undeveloped nature of the site makes a positive contribution to the village and its development with a dwellinghouse would result in the loss of undeveloped land such that the characteristics and visual amenity of the locality would be materially harmed by the extent of built development. The natural interplay between the rocks and rough grazing would be disrupted by an alien feature adversely affecting this area of common landscape character. The large property at Tigh Na Mara is a visual focal point when one approaches the village from the south whilst the largely undeveloped seaward side of the road provides clear open views across the coastal edge and across the bay to the north-east and east and this would be unacceptably compromised by the proposed development which would result in an inappropriately prominent and isolated development within a fragile and vulnerable area of undeveloped and visually uninterrupted coastal hinterland which occupies the seaward side of the public road – a key arrival point on the island from the sea.

This assessment is underpinned by the key findings of the Isle of Coll Landscape Capacity for New Housing Report 2006 which is a detailed assessment of the landscape character of the island and it identifies the appropriate opportunities and necessary constraints for new housing development. The study highlights that there is a visual pinch point to the south of the proposed development site along the public approach to Arinagour from the ferry terminal and that any new development beyond this point would intrude negatively upon the 'surprise' reveal of Arinagour (whilst acknowledging that this effect is somewhat diminished by the existing property Tigh Na Mara). Although not statutory guidance in and of itself it is considered that the 2006 report is a material consideration in the determination of the application because it was an important and professionally competent technical working document commissioned by the Council in order to inform the subsequently adopted Isle of Coll Sustainable Design Guidance and is concerned solely with the landscape impact of development proposals for new housing.

In this case it is considered that the erection of a dwellinghouse in this location would result in an unacceptable environmental impact resulting in a development which does not have regard to the surrounding settlement pattern and would be materially harmful to the wider landscape character of the area. The proposal is therefore considered to be contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9, Supplementary Guidance SG LDP HOU 1, and the Sustainable Siting and Design Principles of the LDP as well as the Isle of Coll Sustainable Design Guidance, the Isle of Coll Landscape Capacity for New Housing Report 2006, Scottish Planning Policy and Planning Advice Note 72.



(Reference: Report by Head of Development and Economic Growth dated 26 November 2020, submitted)

**5. SCOTTISH GOVERNMENT - BIODIVERSITY DUTY COMPLIANCE REPORT 2021 (ARGYLL & BUTE COUNCIL)**

The Nature Conservation (Scotland) Act 2004 places a duty on all public bodies to further the conservation of biodiversity. The Wildlife and Natural Environment (Scotland) Act 2011 requires the publication of a report, every three years, on how public bodies are meeting this duty.

Consideration was given to a report seeking Committee approval of the Scottish Government Biodiversity Duty Compliance Report (Argyll and Bute Council), for the period January 2018 – January 2021. The report details the activities across the Council that support and conserve biodiversity and demonstrates the great variety and range of work being carried out.

**Decision**

The Committee agreed to:

1. note achievements made across the Council to meet Argyll and Bute Council's Biodiversity Duty under the Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011; and
2. approve the Scottish Government Biodiversity Duty Compliance Report 20018-21 (Argyll and Bute Council) for submission to Scottish Government and publication on the council's website.

(Reference: Report by Executive Director with responsibility for Development and Economic Growth dated 6 November 2020 and Scottish Government: Biodiversity Duty Compliance Report (Argyll and Bute Council) 2018-2021, submitted)

**6. DRAFT SERVICE PLAN 2021-22: DEVELOPMENT AND ECONOMIC GROWTH SERVICE**

A report presenting to the Planning, Protective Services and Licensing Committee the Draft Service Plan 2021-22 for Development and Economic Growth was considered.

**Decision**

The Committee reviewed the Draft Service Plan 2021-22 (no finance) as presented prior to onward travel to the Policy and Resources Committee on 18 February 2021 and Full Council on 25 February 2021 for budget allocation.

(Reference: Report by Executive Director with responsibility for Development and Economic Growth dated 10 November 2020, submitted)

**7. FQ2 2020/21 PERFORMANCE REPORT**

A paper presenting the Planning, Protective Services and Licensing Committee with the Development and Economic Growth Service (PPSL only) FQ2 2020/21 (July – September) Performance Report and accompanying Scorecard was considered.

**Decision**

The Committee:

1. reviewed the FQ2 2020/21 Performance Report as presented; and
2. recorded their thanks and appreciation to all staff within the Development and Economic Growth Service for their hard work, particularly during these challenging times.

(Reference: Report by Executive Director with responsibility for Development and Economic Growth dated November 2020, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY SKYPE  
on WEDNESDAY, 16 DECEMBER 2020**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Donald MacMillan BEM
Councillor Audrey Forrest	Councillor Roderick McCuish
Councillor George Freeman	Councillor Alastair Redman
Councillor Kieron Green	Councillor Richard Trail

**Attending:** Stuart McLean, Committee Manager  
Graeme McMillan, Solicitor  
Norman Ferris, Applicant

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Lorna Douglas, Jean Moffat and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF TAXI OPERATOR LICENCE (N FERRIS, RENFREW)**

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this hearing the Applicant opted to proceed by way of Audio Call and he joined the meeting by telephone.

The Chair outlined the procedure that would be followed and invited the Applicant to speak in support of his application.

**APPLICANT**

Mr Ferris advised that he was currently living in Rothesay since moving his family there in July. He said that they'd had a holiday home there for over 20 years and they now wanted to move there from Renfrew for a fresh start. He commented that his daughter had enrolled at Rothesay Academy and was doing well. He said that they had still to sell their house in Renfrew and that they currently had an application on hold for a shared ownership house with Fyne Homes.

He advised that when he applied for this Taxi Operator Licence he was advised by the Licensing Team that due to Covid it may be some time before the application could be brought to a hearing. He was told that it would be acceptable for him to apply for the licence for his personal car, which was a Kia Rio, and then apply for a change of vehicle if the application was successful. He explained that it was his

intention to drive a wheelchair accessible vehicle and that he had sourced a Citroen Berlingo which was rear loading and had a fixed ramp. He advised that he has been a taxi driver for 20 years and that he regularly picked up passengers from Glasgow Airport. He said he was used to picking up passengers who required a wheelchair accessible taxi.

Mr Ferris indicated that before he was a taxi driver, he was a private hire driver and that over all those years there has never been any complaints about him. He said that he had a credit card machine so was able to take payments by card. He advised that to his knowledge, there were no wheelchair accessible taxis on Bute.

He said that he had approached other taxi owners but as they had no shifts he was looking to start up on his own. He referred to demand at the taxi rank and commented that from observing the rank he could see there was demand late in the afternoon and in the evening when people returned to the island. He commented that demand was also higher at the weekends. He advised that he felt there would be enough work to go round on the island.

### **MEMBERS' QUESTIONS**

Councillor Kinniburgh referred to Mr Ferris applying for a taxi operator licence for his Kia Rio and indicating that if his application was successful he would change his vehicle to a wheelchair accessible Citroen Berlingo. He sought clarification from the Council's Solicitor on the process that would be undertaken to deal with this proposal. Mr McMillan explained that if Mr Ferris' application was successful he could then make an application for a substitution. He said this was quite a common thing to do if a taxi operator wished to change from an old car to a new car. He advised that a substitution application would normally be dealt with administratively.

Councillor Kinniburgh asked if the Committee were minded to grant the licence today, would it be possible for a condition to be attached stating that the licence had to be used for a wheelchair accessible vehicle. Mr McMillan confirmed that the Committee had two options. Such a condition could be attached or the Committee could receive an undertaking from the Applicant to do as he planned.

Councillor Trail commented that taxis across the country were finding it very difficult to make a living at the present time. He asked Mr Ferris why he thought he had a business case in Rothesay that could support him and his family. Mr Ferris referred to there being no wheelchair accessible vehicles on the island at the moment. He advised that he had been keeping an eye on the rank and that he was aware of the times when there was demand. He advised that at the airport he always made a point of working at the busiest times when demand was at its highest. He also pointed out that he had noticed that the property market on Bute has gone 'crazy' with properties that had previously been unable to be sold now gone. He commented that more people have wanted to move over to the island during the second half of this year.

Councillor Trail asked Mr Ferris if he would be working as an individual or if he would make use of the systems used by taxi companies. Mr Ferris advised that initially he would work on his own. He said that he would pick up passengers from the rank and then hand them a business card with his contact details on it so that he could grow his business. He commented that he was not sure what the policy in Argyll and Bute

was for taxis using Uber. He advised that only private hire operators could use Uber in the Renfrewshire Council area.

Councillor Kinniburgh sought and received confirmation from Mr Ferris that he had renewed his taxi driver licence with Renfrewshire Council in November for a further 2 years.

Councillor Kinniburgh referred to the taxi survey carried out by LVSA and the outcome of the report which concluded that there was no unmet demand for taxis in the Bute and Cowal area. He asked Mr Ferris to comment on these findings and explain why he thought that the demand was there. Mr Ferris confirmed that he had read the report and that one thing that had stood out for him was the waiting time at the rank for Rothesay was between 8 and 10 minutes. He said he was surprised that the waiting time was as low as that. He referred to the fact that Bute was an island and said he was surprised to learn that there were no wheelchair accessible taxis on the island. He said that this was the type of vehicle that he was used to driving as all public hire taxis in general in Renfrewshire had to be wheelchair accessible.

Councillor McCuish sought and received confirmation from Mr Ferris that he believed he would be providing a service that was not currently available on Bute. Mr Ferris also confirmed that he would be happy for a condition to be attached to the licence stating that the taxi had to be wheelchair accessible.

### **SUMMING UP**

Mr Ferris thanked everyone for giving him a chance to explain his situation and the reason why he had submitted his application in the way he had.

Mr Ferris confirmed that he had received a fair hearing.

### **DEBATE**

Councillor Freeman said that this appeared to be a genuine application. He commented that he had heard that some drivers had left the business in recent times and suggested that clearly there was a restricted market when talking about Rothesay and Bute. He advised that he saw no problem with this application and said he did not think the licence required a condition to be attached to it. He referred to the waiting times at the rank of 8 – 10 minutes and commented that he would not want to wait that long for a taxi. He confirmed that he would be happy to move approval of the application at the appropriate time.

Councillor McCuish agreed with Councillor Freeman and said he would welcome Mr Ferris and his family to Argyll and Bute. He commented that he would be providing a service that was not there at the moment and that he would have no hesitation in granting the licence.

Councillor Redman confirmed that he was in line with what others were saying. He said that he believed there was unmet demand on the island and that he would not want to wait 8 – 10 minutes for a taxi. He advised that he thought this would be an improvement and help the population of Bute.

Councillor Forrest said she was shocked to hear there were no wheelchair accessible taxis on Bute and that she would very much support this application in order to provide a service that was not currently available.

Councillor Green echoed the same points made and said that wheelchair accessible taxis were something in this day and age you would want.

Councillor Devon said she would like to reiterate what everyone else had said and advised that this was good news for Rothesay.

Councillor MacMillan confirmed that he would have no problem with granting this licence.

Councillor Hardie advised that he would welcome this application.

**Motion**

To agree to grant a Taxi Operator Licence to Mr Ferris.

Moved by Councillor George Freeman, seconded by Councillor Alastair Redman.

**Amendment**

To agree to grant a Taxi Operator Licence to Mr Ferris on condition that it was for a wheelchair accessible vehicle.

Moved by Councillor David Kinniburgh, seconded by Councillor Audrey Forrest.

A vote was taken by calling the role.

**Motion**

Councillor Freeman  
Councillor Redman

**Amendment**

Councillor Colville  
Councillor Devon  
Councillor Forrest  
Councillor Green  
Councillor Hardie  
Councillor Kinniburgh  
Councillor MacMillan  
Councillor McCuish  
Councillor Trail

The Amendment was carried by 9 votes to 2 and the Committee resolved accordingly.

**DECISION**

The Committee agreed to grant a Taxi Operator Licence to Mr Ferris on condition that it was for a wheelchair accessible vehicle.

(Reference: Report by Head of Legal and Regulatory Support, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY SKYPE  
on WEDNESDAY, 16 DECEMBER 2020**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Donald MacMillan BEM
Councillor Audrey Forrest	Councillor Roderick McCuish
Councillor George Freeman	Councillor Alastair Redman
Councillor Kieron Green	Councillor Richard Trail

**Attending:** Stuart McLean, Committee Manager  
Graeme McMillan, Solicitor

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Lorna Douglas, Jean Moffat and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF TAXI OPERATOR LICENCE (D HADDOW, ALEXANDRIA)**

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this hearing the Applicant opted to proceed by way of a written submission. A copy of this was circulated to the Committee in advance of the hearing in a supplementary Agenda pack.

The Chair outlined the procedure that would be followed and invited questions and comments from Members.

**MEMBERS' QUESTIONS AND DEBATE**

Councillor Colville referred to the Applicant advising in his submission that he had a wheelchair accessible private hire vehicle which allow him to sit at the taxi ranks if the licence was granted. He commented that he would have thought that the majority of requests for a wheelchair accessible vehicle would come through phone calls. He said he questioned the reasoning behind the request for a taxi operator licence and advised that he was not convinced by the Applicant's argument.

Mr McMillan said that he guessed the point the Applicant was trying to make was that access to the rank would make his venture more viable in terms of him getting wider access to customers. Councillor Colville acknowledged that the Applicant had a private hire car and had put forward arguments why a taxi operator licence would be more appropriate to meet his needs.

Councillor Freeman said it could not be assumed that people with disabilities could only get taxis from their own homes. He advised that he saw lots of people with disabilities out and about.

Councillor Kinniburgh referred to the Applicant advising that since publication of the LVSA survey report some elderly drivers were retiring due to the ongoing pandemic which had led to a reduction in taxi services. He pointed out that this did not address the number of private hire vehicle licences that have been granted since the survey was carried out. He commented that at the last hearing held by the Committee it was noted that there had been close to a 50% rise in private hire vehicles for the Helensburgh and Lomond area since the survey was carried out. He advised that he would like to hear the Applicant's views on that as there was now significantly more vehicles on the road. He said that when he passed the rank in Helensburgh there were always taxis at it and that he could not recall the last time it was empty, especially in these times.

Mr McMillan advised that it was important to note that whilst private hire car numbers were a factor to take into account, when considering whether or not there was a significant unmet demand for taxis and whether or not to restrict taxi licences on that basis, regard should be given to the number of taxis. He pointed out that the statutory regimes for taxis and private hire cars were different. In terms of the survey report, he confirmed that this concluded that there was no significant unmet demand in terms of taxis for the Helensburgh and Lomond area. He advised that when the survey was carried out there were 48 taxi licences and since that time 3 additional taxi car licences have been granted and one has been surrendered, leaving a total of 50, therefore there were 2 additional taxi car licences since the survey was carried out.

Councillor Kinniburgh commented that due to the way the businesses were operated in Helensburgh, private hires and taxis went hand in hand. He pointed out that it had been noted in the survey report that a number of taxis operated in the Helensburgh and Lomond area as private hire vehicles.

Councillor Forrest asked Mr McMillan if he knew how many of the 50 taxis were wheelchair accessible. Mr McMillan advised he did not have a definite number but in terms of the make and model of the vehicles licenced, this indicated that there were 5 wheelchair accessible vehicles in Helensburgh and Lomond at the moment.

Councillor Kinniburgh asked if this number included private hire vehicles. Mr McMillan advised that there were an additional 7 private hire vehicles to add to the 5 which were wheelchair accessible. It was noted that Mr Haddow's private hire vehicle would be one of those.

Councillor Freeman commented that although there were 5 taxis they would not be available 24 hours per day. He suggested that there would be approximately 2.5 available at any given time. He also said that it was important not to confuse taxis with private hire vehicles and pointed out that private hire vehicles could not sit on the rank and if any of them did the taxi drivers would be up in arms over that.

Councillor Kinniburgh agreed that there was a difference between taxis and private hire vehicles but pointed out that there was evidence, even in the survey report, that taxis were operating as private hire vehicles. He said that a lot of private hire



operators were working off of apps now and that taxi operators were also working off these apps. He acknowledged that it was important not to confuse the 2 types of hire, but said they were more in line in operational terms than they were before.

Councillor McCuish commented that the difference between this application and the one considered at an earlier hearing, was there were no wheelchair accessible vehicles on Bute. He questioned whether 5 was enough for Helensburgh and Lomond or if more were required or not, given what had been said about the number of private hire vehicles.

Councillor Freeman said it may be helpful to note that in Helensburgh and Lomond the population figure was 30,000 but in Bute this was only 5,000, so only about a 6<sup>th</sup> of the population of the Helensburgh and Lomond area.

Councillor Colville advised that in the summer on Bute the population figure greatly increased.

Councillor Trail said that it would be good to have more wheelchair accessible vehicles but that these should replace the current ordinary vehicles that were being used because there were plenty of cars for hire available in Helensburgh.

Councillor Freeman referred to the comment Councillor Colville made about the population of Bute in the summer time and pointed out that Helensburgh, on a summer's day, was hoatching with people from the central belt.

Councillor Kinniburgh advised that from what he could see in the paper presented to him, and with regard to the information provided by Mr McMillan, that taxis have increased in the Helensburgh area by 2 since the survey was carried out and concluded that there was no significant unmet demand for taxis in the Helensburgh and Lomond area, he would move the following Motion:

**Motion**

To agree to refuse Mr Haddow's application for a Taxi Operator Licence as there was no significant unmet demand for taxis in the Helensburgh and Lomond area.

Moved by Councillor David Kinniburgh, seconded by Councillor Richard Trail.

**Amendment**

To agree to grant a Taxi Operator Licence to Mr Haddow.

Moved by Councillor George Freeman, seconded by Councillor Alastair Redman.

A vote was taken by calling the roll.

**Motion**

Councillor Colville  
Councillor Devon  
Councillor Forrest  
Councillor Green  
Councillor Hardie

**Amendment**

Councillor Freeman  
Councillor Redman

Councillor Kinniburgh  
Councillor MacMillan  
Councillor McCuish  
Councillor Trail

The Motion was carried by 9 votes to 2 and the Committee resolved accordingly.

**DECISION**

The Committee agreed to refuse Mr Haddow's application for a Taxi Operator Licence as there was no significant unmet demand for taxis in the Helensburgh and Lomond area.

(Reference: Report by Head of Legal and Regulatory Support and written submission from Applicant, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY SKYPE  
on WEDNESDAY, 16 DECEMBER 2020**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Donald MacMillan BEM
Councillor Audrey Forrest	Councillor Roderick McCuish
Councillor George Freeman	Councillor Alastair Redman
Councillor Kieron Green	Councillor Richard Trail

**Attending:** Stuart McLean, Committee Manager  
Graeme McMillan, Solicitor  
William Morran, Applicant  
PC Raymond Borland, Police Scotland

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Lorna Douglas, Jean Moffat and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF TAXI DRIVER LICENCE NUMBER 4130 (W MORRAN, CAMPBELTOWN)**

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this hearing the Applicant and Police Scotland opted to proceed by way of Audio Call and they both joined the meeting by telephone.

The Chair outlined the procedure that would be followed and invited the Applicant to speak in support of his application.

**APPLICANT**

Mr Morran advised that he was applying to renew his taxi driver's licence and that he had been driving taxis since 1971. He referred to the incident which happened on 4 March 2019 and apologised for that. He explained that he had come round a corner and a cat came out in front of him which he served to avoid, causing him to go over the white line. He advised that the Procurator Fiscal had sent him a letter requesting that he attend a driver improvement course. Mr Morran confirmed that he had attended the course where he learnt a lot and had enjoyed it.

## **POLICE SCOTLAND**

PC Borland referred to a letter of representation from the Chief Constable dated 20 August 2020 which advised of an incident on 4 March 2019 which resulted in Mr Morran being reported to the Procurator Fiscal for a contravention of Section 3 of the Road Traffic Act 1988. He outlined the circumstances surrounding the incident and advised that the Procurator Fiscal decided to take action by way of requesting that Mr Morran attend a driver improvement course.

## **QUESTIONS FROM APPLICANT**

Mr Morran referred to the letter stating that he was driving at excessive speed and asked where he was found to be speeding. He advised that he was not speeding as he was going round a sharp corner which required you to change down gears. PC Borland referred to the initial report submitted by the Police and said it appeared that due to the position of the vehicle there was a perception by the driver of the vehicle coming in the opposite direction that Mr Morran was speeding.

Mr Morran asked why the Police did not approach him until the next day. PC Borland advised that it would not have been unusual for further enquiries to be carried out first.

## **MEMBERS' QUESTIONS**

Councillor Trail sought and received confirmation from Mr Morran that the incident took place in the countryside, half way down the Southend road.

Councillor Trail also sought and received confirmation from Mr Morran that the speed limit for the road was 60 mph. Mr Morran advised that he would have been doing about 30 mph going round the corner as, he said, you needed to change down the gears. He commented that as he had to swerve to avoid the cat the other driver must have thought he was speeding.

Councillor McCuish asked PC Borland if, during their further enquiries, the other driver had said they had seen the cat. PC Borland advised that there was no mention of a cat in the report.

Councillor Green asked PC Borland if there was any evidence of Mr Morran exceeding the speed limit. He said he appreciated that this was a speed limit and not a target. PC Borland confirmed that the speed limit on the road was 60 mph. He advised that from reading the report, the bend at which the incident took place was extremely sharp, running at 120 degrees. From the position of Mr Morran's car on negotiating the bend, he said it would be reasonable to infer that the speed was excessive for the bend if the vehicle crossed the carriageway. He advised that there was no suggestion that Mr Morran was over the speed limit but likely he was driving at excessive speed.

Councillor Colville sought and received confirmation from PC Borland that as the action taken by the Procurator Fiscal was a request that Mr Morran attend a driver improvement course, there was no conviction.

Councillor Forrest sought and received confirmation from Mr Morran that there was a fee paying passenger in his car at the time of the incident.

Councillor McCuish asked Mr Morran if the passenger was asked to give evidence to the Police or if they volunteered to do so. Mr Morran said no because the Police did not ask him if he had any passengers.

Councillor McCuish asked Mr Morran if he had asked the passenger to speak on his behalf after the incident had been reported. Mr Morran advised that he had not as the passenger was a stranger that he had given a lift to go hill walking.

Councillor Kinniburgh sought and received confirmation from PC Borland that the other driver had not mentioned a cat but Mr Morran had mentioned the cat when he was cautioned and charged by the Police.

Councillor Kinniburgh referred to it being established that there was no conviction. He asked if this was because it was a third party that had reported the incident so the Procurator could not convict Mr Morran. PC Borland said he did not think so. He said that as there were two witnesses there was sufficient evidence to charge Mr Morran and that the disposal was a matter for the court.

Councillor Kinniburgh sought and received confirmation from PC Borland that if deemed appropriate by the Procurator Fiscal, Mr Borland could have been convicted.

## **SUMMING UP**

### **Police Scotland**

PC Borland advised that the reporting Officer at the time had remarked that in their opinion, from what had been described by both civilian witnesses, it was down to luck that there had been no injuries sustained or damage to vehicles.

### **Applicant**

Mr Morran acknowledged that no one was hurt and said he was sorry for what had happened.

When asked, both parties confirmed that they had received a fair hearing.

## **DEBATE**

Councillor Colville said he was almost certain he knew the corner that was referred to. He said it was a very tight corner and that there was no way you could drive at excessive speed there. He pointed out that Mr Morran had been driving taxis for 50 years with no penalties and that this was a part time position. He advised that due to the fact that the Procurator Fiscal had not deemed the offence so serious to warrant a fine or other action other than the driver improvement course, and that Mr Morran had stated he had learnt a lot and enjoyed the course, he would have no hesitation in approving this application.

Councillor Trail advised that if the Committee were to take at face value about the cat coming out, causing Mr Morran to swerve, it was lucky the cars did not collide. He commented that everyone will have had close shaves when driving at some point and that he was of a similar view to Councillor Colville.

Councillor Redman said he was a great believer in second chances. He commented that this had been a foolish and dangerous mistake to make but thought that Mr Morran had paid his dues and that he was leaning towards supporting this application.

Councillor Kinniburgh advised that he found himself agreeing with his fellow Councillors. Recognising what Councillor Colville said, he advised that it was good to hear that Mr Morran had attended the course and that he had learnt a lot from it. He commented that he had noted that Mr Morran had been driving for a long time with no convictions and he agreed with what Councillor Trail had said that everyone would have experienced near misses while driving. He confirmed that he would have no hesitation in this instance in granting this licence.

### **DECISION**

The Committee unanimously agreed to renew Mr Morran's Taxi Driver Licence Number 4130.

(Reference: Report by Head of Legal and Regulatory Support, submitted)

**Argyll and Bute Council**  
**Development and Economic Growth**

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 19/00447/PP

**Planning Hierarchy:** Local Application

**Applicant:** Mr Keith and Denice Punler

**Proposal:** Removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP - Erection of 1800mm high deer fence (retrospective).

**Site Address:** Land south-east of Castle Toward, Toward, Argyll

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#### **DECISION ROUTE**

- Local Government (Scotland) Act 1973
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#### **(A) THE APPLICATION**

##### **(i) Development Requiring Express Planning Permission**

- Removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP - Erection of 1800mm high deer fence (retrospective).

##### **(ii) Other specified operations**

- None.
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#### **(B) RECOMMENDATION:**

Having due regard to the Development Plan and all other material considerations, it is recommended that the application be **refused** for the reason appended to this report.

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#### **(C) HISTORY:**

Listed Building Consent (ref. 97/00883/LIB) for internal alterations and installation of wheelchair ramp was granted on 25<sup>th</sup> July 1997 and implemented.

A masterplan proposal (ref. 16/02356/MPLAN) in respect of Strategic Masterplan Area 1/2 and Potential Development Area 2/42 relating to mixed use development (including

tourism/leisure/housing/business) was endorsed by the PPSL Committee at a discretionary hearing on 13<sup>th</sup> December 2016.

Listed Building Consent (ref. 16/01405/LIB) for the demolition of enclosed fire escape, metal fire escape and metal clad sheds. Installation of new doorway, ventilation louvre, balcony railings, 3 new windows, 2 sets of external doors, new glazed roof over existing courtyard. Internal alterations to accommodate leisure facilities at basement level, removal of wall between ballroom and function room, installation of lift and toilets at ground floor level, removal of partitions and installation of partition walls to provide en-suites to first and second floor bedrooms was granted on 24<sup>th</sup> November 2016.

Planning permission (ref. 16/00996/PP) for a change of use from Class 8 (residential institution) to Class 9 (dwellinghouse), including ancillary housekeeper's accommodation and Sui Generis use as a commercial/leisure events venue was granted 14<sup>th</sup> December 2016.

An application for the reinstatement of the east driveway, erection of 2 gate lodges, vehicular and pedestrian entrance gates with stone piers and a secondary set of vehicular gates at the head of the eastern driveway with stone piers (ref.17/00400/PP) was granted 24<sup>th</sup> November 2017.

An application for the erection of wedding venue comprising, storage building with gateway entrance to timber decking enclosed with decorative metal panels with posts and a decorative pergola for the wedding ceremony (ref.17/00401/PP) was refused on 27<sup>th</sup> June 2018.

Planning permission (ref. 17/00402/PP) for the erection of metal gates for vehicular and pedestrian access on the existing west driveway at the road junction and additional set of gates further along the west driveway was granted 16<sup>th</sup> October 2017.

An application for the erection of 2 lodges (ref.17/00420/PP) was refused by the Local Review Body on 28<sup>th</sup> June 2018.

Planning permission (ref. 17/02052/PP) for the erection of an 1800mm high deer fence was originally granted on 26<sup>th</sup> January 2018. The applicants subsequently lodged an appeal (ref. 18/0005/LRB) against conditions, 2, 3 and 4, which was refused by the Local Review Body on 28<sup>th</sup> June 2018.

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**(D) CONSULTATIONS:**

**Core Paths Officer** (responses dated 6<sup>th</sup> September 2020 and 26<sup>th</sup> October 2020): Request for simplified Access Plan showing route of proposed path systems and standard cross section details in addition to a supporting statement. Refer to report.

**Scottish Rights of Way Society (Scotways):** (response dated 2<sup>nd</sup> May 2019): Object on the basis that the conditions the application seeks to remove are reasonable mitigation for the deer fence's impact on public access rights. If the applicant is not willing to accept the reasonable mitigation proposed via the planning conditions, then it is the Society's view that the logical and responsible alternative is for the landowner to accept and enable those public access rights which apply within the deer fence.

**South Cowal Community Council** (response dated 26<sup>th</sup> April 2019): We understand that the access in question was put in place after a retrospective application to erect a six foot high deer fence was submitted. The granting of the permission for the fence



was conditional on this access and access to the Chinese Lakes remaining open, indeed we understand that the deer fence application would have been refused had this access not been included, and we feel should therefore remain open.

We believe the access in question has been designated a Core Path by the council so consider that it should remain open. We also believe that the owners have appealed the condition of this access and that the appeal was refused. We feel that this planning application is simply another appeal, and as such should be refused. The Community Council can see no reason for the previous decisions of the Planning Department to be overturned, or for any need to close off this access, and therefore request that this application be refused.

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**(E) PUBLICITY:** Listed Building/Conservation Advert, publication date 22<sup>nd</sup> March 2019; expiry date 12<sup>th</sup> April 2019. Neighbour notification expired on 29<sup>th</sup> March 2019.

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**(F) REPRESENTATIONS:**

Letters and emails of objection have been received from the following 17 individuals.

1. Mr R Trybis, Stoneywood, Toward, Dunoon (emails dated 20<sup>th</sup> March 2019, 28<sup>th</sup> March 2019, 27<sup>th</sup> May 2019, 30<sup>th</sup> May 2019);
2. Ian Marshall, no address given, former Chair of Dunoon Hill Runners (email dated 29<sup>th</sup> March 2019);
3. Gary R Brown, no address given, Manager Student Tours Scotland, Glasgow (email dated 1<sup>st</sup> April 2019);
4. Mrs A Mackenzie, 79 Mountcastle Drive South, Edinburgh (email dated 3<sup>rd</sup> April 2019);
5. Mr Dave Souza, Secretary of Inverclyde Ramblers, 16 Park Terrace, Gourrock (email dated 5<sup>th</sup> April 2019);
6. Mr Dennis Archer, 2 The Meadows, Toward, Dunoon (email dated 5<sup>th</sup> April 2019);
7. Sheila Falconer, no address given, local resident (email dated 11<sup>th</sup> April 2019);
8. Mrs J Trybis, Stoneywood, Toward, Dunoon (email dated 11<sup>th</sup> April 2019);
9. Tom Goodfellow, no address given, part of Dunoon Walkers (email dated 11<sup>th</sup> April 2019);
10. Agnes Harvey 33 Loch Eck, Hunters Quay, Dunoon (email dated 11<sup>th</sup> April 2019);
11. Mr David Eaglesham, Ardachuidh, Colintrave (email dated 11<sup>th</sup> April 2019);
12. Jacqueline Couch, no address given, part of Cowal Walking Group (email dated 11<sup>th</sup> April 2019);
13. Miss Margaret Bicket, 2 Hafton Court, Dunoon (email dated 12<sup>th</sup> April 2019);
14. Vickie Poole, no address given (email dated 12<sup>th</sup> April 2019);
15. Ross Morley-Trapnell, 22 Albert Place, Sandbank, Dunoon (email dated 25<sup>th</sup> April 2019);
16. Alison McCrossan, 11 Glenacre, Innellan, Dunoon (email dated 25<sup>th</sup> April 2019);
17. Mr Norman New, 11 Wyndham Park, Rothesay, Isle of Bute (email dated 26<sup>th</sup> April 2019);

The various concerns raised are detailed below.

- *This is not a planning application, it is an appeal against conditions attached to planning consent '17/02052/PP - Erection of 1800mm high deer fence (retrospective)' which was granted on 26th January, 2018. Those conditions have already been subject to an appeal which, on 28th June 2018, unanimously concluded that the conditions were reasonable, that consent would have been refused without them, and that they should remain. The applicants subsequently breached the conditions and enforcement notice '18/00197/ENBOC3 Breach of*

Conditions 2, 3, and 4 Relative to planning Permission 17/02052/PP' was served on 1<sup>st</sup> November, 2018. The enforcement notice had a time limit for compliance, which has expired. There is no appeal against an enforcement notice, but this application is in effect an appeal. The notice stressed, as did the original consent, the need for all gates within the deer fencing to remain 'open' until alternative access routes along the southern and eastern boundary of the estate were provided and available for public use. That also has not been complied with. To further consider appeal 19/00447/PP would be a breach of the normal planning process, also nothing substantive has changed since the original appeal, it would use the scarce time of Council Officers, waste Taxpayers money, and amount to maladministration.

- *If the Council does further consider appeal 19/00447/PP then I would request that all conditions pertaining to the original planning consent should be retained. The applicants' problem with the conditions is one of their own making. As property developers they should surely have realised that planning consent would be required for enclosing such a large area in the centre of an estate, on which "Right to Roam" applied, in deer fencing. There is some old, patchy, deer fencing on the boundary of the estate which was, no doubt, used by the Forestry Commission to protect young trees. That is very different from extensive fencing within the heart of the estate for which there is no precedent. Had consent been applied for before the fencing was erected then the planning process may well have delivered a fencing route that was much less disruptive to the network of paths within the estate and so required less conditions.*

*The fencing completely blocked the connection between the east and the west to the north of the mansion. It also completely blocked the Right of Way.*

*The appeal tries to suggest that the deer fencing is necessary to restore the estate to its original condition e.g. "... existing traditional estate fence, which had comprised 1000mm wrought iron estate railings, erected probably around 1930 when the estate was extensively upgraded , to delineate the ornamental gardens of the estate". In fact historically the estate was parkland, it did have not ornamental gardens. If you refer to document 21461065 Consultee Response - Historic Scotland Thursday, September 29, 2016 you will see that Historic Scotland state that the parterre on the lawns and parkland to the south of the house "represent a significant change to the appearance and character of this part of the designed landscape, of which there is no historical precedence".*

*They go on to state "...we have concern that the proposed parterre, a very large and formal garden feature which will fill the entire area of the open ground to the south of the house, may have a significant impact on the character of this part of the GDL, which formed the informal, picturesque parkland setting of Hamilton's marine villa and the later enlarged mansion house. It will also change the function and understanding of the ha-ha, which under the proposals will no longer divide lawn from parkland but become a terrace within a large formal garden".*

*Yes, in the past there were some areas with low wrought iron fencing, but the fencing provided no real barrier to people never mind deer. One can imagine that in a parkland setting having deer within the trees and indeed on the lawns was actually a feature. Historically the kitchen garden and ornamental area were of course contained safely away from deer within the estate's walled gardens.*

*In their submission Historic Scotland actually stated "You may wish to consider whether reducing the scale of the parterre- perhaps confining it to the former south lawn or relocating this formal garden feature to the East Walled Garden, which was historically a more formal area of the designed landscape". The reality therefore is that deliberately introducing a large parterre garden, which is a significant deviation*

*from the original design intent, results in the need for extensive deer fencing to protect it. This in turn acts as a significant barrier to public access.*

- Although the appeal describes the paths to the south of the estate as "informal" these paths are of sufficient standing to appear in maps dating right back to the 1800s, and they include stone bridges. The actual line of the low wrought iron fence is not known accurately but no doubt it contained gates when crossing paths that appeared in maps.*
- In their Master Plan the owners described the East Gate as being the main public access into Castle Toward Estate. They obtained consent for the gate there on the basis that it would include a pedestrian section which would be kept open in perpetuity. This would have allowed the public to enter the estate on a good solid driveway. Contrary to their own plans the owners erected a gate with no pedestrian section. They now appear to be intending that the public enter via path to the right. This raises a couple of issues;  
There needs to be a formal planning record that the path is the public access and that it has to be kept open in perpetuity so that in 5-10years time it is not simply closed or allowed to become overgrown.  
The path as it presently stands is not complete as it contains a muddy central section and the route is also likely to become overgrown, which was not the case with the gate solution that was originally proposed and consented. The alternative path needs to be of a better standard than it is at this point in time, and the owners need to be obliged to keep it usable.  
It is good to see that there is a sign reading; Castle Toward / Chinese Lakes / Walkers Welcome. However once you are in the estate it is not at all obvious how you get to the Chinese Lakes as you have to go across grass that does not obviously lead to a path. Prior to the fencing the route to the Lakes was entirely on paths. There needs to be a simple sign showing where to depart from the driveway to find the path to the Lakes. Regarding crossing from the West Driveway to the East Driveway; originally you could simply walk along one drive onto the other and that route would of course always be open and it was used by wheelchair users and others with lesser disabilities. Now a path through the woods has been strimmed, but that will quickly become overgrown with rhododendrons and bracken even if it is being used quite often, it is also quite muddy in places. While the course taken by the strimmed path is fine the path does need to be to a somewhat higher standard. I don't expect that it will be up to disabled access standard but it should at least be reasonably dry underfoot and clearly a permanent woodland path. Again I hope there will be some sort of planning record for the path and the need for it to be kept open.*
- The applicants seem to be riding roughshod over the planning process at Castle Toward. This application clearly included a pedestrian gate and the consent that was granted contained a condition that the pedestrian gate should be left open "in perpetuity", to permit public access. No pedestrian gate has actually been installed, only a vehicle gate and that is kept padlocked. The applicant should be made to install the original design that was approved. If alternative arrangements are going to be made for public access to the East Drive then they should be to an adequate standard and signposted so that people know the entrance is there and that they can use it. Formidable padlocked gates are clearly designed to create the impression that access is not allowed. Until the situation is resolved the vehicle gates should be left open. Conditions attached to another planning application 17/02052/PP have not been complied with despite long standing enforcement notices and application 19/00447/PP seeks to remove some of those conditions. The problem with the gates*

*demonstrates why those conditions should be retained and why signage is required so that the public are aware of the existence of entrances.*

- I really do think the current application to have conditions removed should not be allowed. I can understand that if somebody is granted planning consent and, after commencing works, then discovers issues which mean conditions are unduly onerous it is fair to let them attempt to have the conditions changed. That is not what is happening here though. In this case the works were done first then the consent was sought. The applicants appealed the conditions and the appeal was rejected. Nothing has changed since the appeal. They have not discovered problems in the course of works and so allowing what is in effect a further appeal seems to be a breach of process. I do hope that the conditions will be retained.*
- As it happens "Student tours Scotland" have been in touch with me. As well as the issues at Castle Toward they have also had some problems at Puck's Glen. As a result they wrote "If this keeps up the tour will not be reappearing". Cowal needs visitors and access to places such as Castle Toward is important.*
- As I understand the situation with this application, the company who bought Toward castle put up deer fences restricting access then applied for retrospective planning permission. This was granted with conditions to maintain reasonable access. These conditions were breached and the company now wants them set aside. If this is correct why was planning permission not revoked and the fences removed? The walking routes around the castle have been used for leisure walking for many years by many people and, in my opinion access should not be restricted without good reason. There is an obesity epidemic in this country and walking is an important factor in mitigating its effects. Walking is a social activity with health benefits and no doubt helps to reduce the cost of health and social care to the council. Walking helps to attract visitors to the county. The council should aim to expand areas for walking not reduce them. Allowing a private company to flout regulations will encourage others to do the same. My interest is that the Isle of Bute ramblers group regularly walk from Inellan to the Chinese pools and it is a popular fixture on our schedules. I accept that the company may have legitimate concerns over use of the land but they must not be allowed to use illegitimate means to achieve those ends.*
- Castle Toward grounds have historically permitted relatively free access to members of the public. Despite transfer of this building to private ownership, the public's "right to roam" within these grounds should not unreasonably be restricted.*
- I wish to object to the removal of these planning conditions and believe that the original conditions should be complied with.*
- I would like to strongly object to planning application 19/00447/PP as a member of the Cowal walking group.*
- As secretary of Inverclyde Ramblers I write to object to application 19/00447/PP. We regularly provide well-attended led walks in Cowal and Bute, and the paths currently closed are crucial to some popular routes. Our members, both in Inverclyde and in Cowal, are very disappointed that there has been delay in restoring public use of these historically interesting rights of way. Access to the scenic outdoors makes the area attractive to tourists and residents, so it's surprising that the developers seem to be going out of their way to cage them off. Far from obstructing these paths, the developers should promptly meet their legal obligations to comply fully with the*

*planning consent conditions, to provide well-maintained amenity access for the public along the network of paths.*

*As well as leading walks, our remit includes encouraging countryside access, and we note that the Applicants proposed an information area for the Estate with a guide to the walks available, as well being required to provide signage to ensure continued public access around the Estate. We will be glad to make use of this information when planning future walks, and in promoting Cowal as a destination.*

*We've begun publicising two walks near Benmore Garden with a leaflet (in partnership with The Bothy walking and cycling facility at Gourock railway station), and online at [www.inverclyderamblers.org.uk/pucks-glen/](http://www.inverclyderamblers.org.uk/pucks-glen/). It's available at venues, including the Benmore Cafe, The Queen's Hall and the Burgh Hall in Dunoon, who welcomed it. In particular, The Argyll Hotel was delighted as they'd been discussing local visitor attractions for their guests. This underscores the importance of maintaining the rights of the public to use these paths for access.*

- During a weekend break in Cowal I decided to revisit Castle Toward. When I got there I found my access blocked by locked gates and fencing, not a great welcome for tourists. Unsure of where the fencing ran or if any of the paths were open I left, but not before seeing a notice pinned up regarding this planning consent. When I read about the planning application I was really annoyed to discover that the gates which had kept me out should have been open (condition 3), and that there also should have been signs to show available paths (condition 2f). The planning application says that considerable research was undertaken to identify the route of a wrought iron fence erected around 1930. The logic of this defeats me. Why would the path of a fence erected in 1930, for an unknown reason, determine a person's access rights 89 years later? I tried to find maps or photographs of the old estate and came across this one which shows a fence running up the side of a drive. Surely it would be just a logical to say that that is where the fencing should have been erected? As I discovered the fencing seems to have been put up not just for privacy but in a way that makes it difficult for people to enjoy the land on which there should be public access. All the conditions in the original planning application are sensible and fair and should be completed sooner rather than later.*
- I am writing to submit a formal objection with regards to the planning application - 19/00447/PP. The objection is for the following reason-  
The existing conditions should be retained i.e.  
d. Improvements to the paths to the south of the enclosed area to mitigate the loss of public access within the area enclosed by the proposed deer fence Including standard cross section construction details, showing width;  
  
4. Prior to the commencement of works details shall be provided of a footpath that will link the east and west driveways within the southern area of the estate below to the 'ha-ha'. Such details shall include but are not limited to:  
Location Including start and finishing points,  
Construction details that shall include suitable drainage, 1.8m width and a type one finish, Timetable of works with the footpath to be completed within three months of the details approved. The full details shall be submitted to the planning authority for approval and the works complete within three months from the date of approval unless otherwise agreed in writing with the planning authority.*
- I wish to object to the removal of these planning conditions and believe that the original conditions should be complied with. I have two reasons for this:  
I have a firm belief that Councillors are elected by the public to ensure that laws and other regulations are upheld in the public interest. I feel that there is a danger that*

*planners are not applying regulations with sufficient rigour and determination. In particular, I cite the manner in which recent objectors to the application for the Ardtaraig windfarm were allowed to desecrate the countryside for far too long without correct permissions. Laws were not enforced properly. Here is another instance. Planners have a duty to enforce regulations otherwise planning consent becomes a nonsense. I am a resident of Toward who walks regularly in the parish. I do so for pleasure and for my health. It is always unacceptable to me for the selection of footpaths and access points to be reduced. Access to Toward Castle is especially significant. As a newish resident, I had never even been aware that I should have this access and feel strongly that all existing access rights should be restored and indeed properly indicated.*

- I would like to put in a new objection to Planning application 19/00447/PP Removal of Planning conditions 2d (path improvements) and 4 (footpath link). I have no issue with the development of Castle Towards as long as the following conditions are met. I was under the impression these were now being met and yet after several years I have seen no improvement or any work to this effect. I would like to see paths around Toward Castle Ruin looked after. These should include access from the coach and car parking on the main road. There are two access points along the main road with waterlogged and sodden paths that are not maintained at all. With some gravel paths or wooden slats with mesh these could be excellent access points for the castle ruin. Otherwise the large fenced off gravel area would be perfect for some coach parking or car parking to allow easy access along the approach path to Toward Castle ruin. This is currently fenced off and waterlogged. My tour company currently brings regular business to Dunoon and Benmore Gardens with a stop at Toward. However as conditions fail to improve it would mean no longer stopping here. I was also told from the planners that access around Toward Castle ruin would be improved with signage, info boards and access paths. None of this has appeared and so I would like to renew my objection until these conditions are met.*
- I wish to submit an appeal against any condition to remove the original conditions set out by Argyll and Bute council in relation to the erection of the deer fence around Toward Estate. It is essential to preserve the rights of the public including walkers, runners, horse riders and such others to ensure they can continue to maintain access and use of these paths. I am the previous Chair of Dunoon Hill Runners, recently retiring from this position 5 years from setting up the club. We have seen our membership grow to over 100 members and many of them use these access paths to either walk or run on. To lose them would incredibly upsetting and diminish the rights that the public so wonderfully have within Scotland.*
- Please record my objection to planning application 19/00447/PP. One of the owners of Castle Toward was once quoted in the local newspaper as saying that she fell in love with the place when she walked there as a child. When my children were young they too enjoyed walking and cycling there. Unfortunately today's youngsters cannot experience that because of fencing. Of course the owners should have privacy but they could have put up the fencing in a way that gave them privacy without blocking so much access. For three years I have been patiently waiting for reasonable access to be restored to the grounds. When I heard that enforcement notices had been served I thought that the end was at last in sight. Now I have read this planning application which is trying to remove sensible and necessary conditions rather than simply complying with them. How is it that despite the Right to Roam people have been excluded from so much of the estate for so long? As I understand it the conditions have already been appealed and the decision was that planning consent would not have been awarded without them. So why is this coming up again? If consent would not have been granted without the conditions and the owners don't want to abide by the*

*conditions is the solution not a simple one - remove all the fencing. That would return access to the way it operated, without any problem, since the current owners were children. Recently I read that French planning authorities have ordered the demolition of a £49m villa because it did not comply with planning conditions, and it only took them 2 years to decide that. The Council's appeal decision was correct and it should stick by it.*

- I would like to express concern about any loss of public access to walking routes around Castle Toward and its environs. As a member of Cowal Walking Group and a supporter of Cowalfest the area is valued by local people and visitors who enjoy walking in this specific part of Cowal's countryside. I would hope that consideration of the application makes due provision to safeguard public access for walkers.*
- As a member of the public, I wish to object to Planning Application 19/00447/PP 'Removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP- Erection of 1800mm high deer fence ( retrospective). The Applicants are in receipt of conditions attached to the original consent I 7/02052/PP, granted retrospectively. Following an Appeal, the Local Review body, in June 2018, unanimously agreed that the conditions were reasonable, that consent would have been refused without them, and that they should remain. These conditions have not been complied with. It is entirely unacceptable that the Council' s conditions are not being met and that the public's traditional use of the estate severely curtailed, to the detriment of their health and wellbeing. The deer fencing and heras fencing have cut off easy access from the eastern drive to the western drive and fragmented the network of paths in the southern part of the estate; the gates through the deer fencing have not remained 'open' to allow public access; and the Right of Way SA181 has been blocked in several places. In addition, a footpath linking the east and west driveways within the southern area of the estate requires to be planned and maintained to improve public access around the estate, and the Core Path's location determined. I expect the Council, with vigour and determination, to pursue the non-compliance with Enforcement Notice 18/00197 /ENBOC3 ' Breach of Conditions 2, 3, and 4 relative to Planning Permission 17 /02052/PP and ensure that their conditions are met timeously.*
- I would like to object to the restrictions that the owners of Castle Toward have been placing on their land. It is being done to prevent responsible users having access to the land. They cannot be permitted to go against the Scottish Rights to Roam. I would like the Council to continue to retain and enforce all conditions as they are fair and sensible way to restore access blocked by deer fencing and locked gates.*

**Comment:** For comment on all of the concerns raised above, refer to report Appendix A section B

NOTE: Committee Members, the applicant, agent and any other interested party should note that the consultation responses and letters of representation referred to in this report, have been summarised and that the full consultation response or letter of representations are available on request. It should also be noted that the associated drawings, application forms, consultations, other correspondence and all letters of representations are available for viewing on the Council web site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

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**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) Environmental Statement:** No
- (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
- (iii) A design or design/access statement:** Yes. A supporting statement by the applicants has been submitted

*“Supporting Statement: Section 42 Application for Removal of Conditions 2 (d) and Condition 4.*

*The applicants have submitted a number of planning applications to the council in the recent past, associated with their acquisition from the council of the former residential school at Castle Toward, a 144 acre estate. These include approval for change of use from class 8 residential use to class 9 dwelling house (ref 16/00996/PP and approval for a Masterplan for the subjects (ref 16/02356/MPLAN).*

*Several meetings had been held between the applicants and the council planning officers. The application 17/02052/PP was submitted in response to a request from Argyll and Bute planning to submit a retrospective application for an 1800mm high deer fence which had been erected within the grounds of the estate.*

*The erection of the fence had commenced several weeks earlier after confirmation was received from Argyll and Bute that an application was not needed for the works and the request to retrospectively submit the application was therefore a surprise. However it was not believed to be a contentious application and further discussions with the planning officer confirmed this, so we subsequently lodged the application. Works to continue the fence were prudently suspended in the meantime, although approximately 80% of it had been erected.*

*The fence is contained wholly within the estate, generally several hundred metres from any boundary, with the exception of a short section that runs parallel to (and set back approximately 2.5 metres back from) the boundary with the forestry commission. Historically deer fences exist elsewhere on the estate, for which no record of planning applications can be found. It is therefore difficult to tell whether these existing fences were erected during the tenure of Argyll and Bute Council or its predecessors Strathclyde Region, but in any event it sets a precedent for the erection of the fence in question. These deer fences remain in place particularly on the north east boundary of the estate adjoining the Forestry Commission land.*

*The new fence was erected by the applicants along the route of an existing traditional estate fence, which had comprised 1000mm wrought iron estate railings, erected probably around 1930 when the estate was extensively upgraded, to delineate the ornamental gardens of the estate. Considerable research had been undertaken to identify the route, much of which had become substantially overgrown due to invasive rhododendron species etc*

*The fence is required to protect the ornamental gardens from the large population of deer prevalent on the estate and on the adjoining forestry land, as considerable new investment is being expended upon the ornamental gardens and planting, in line with the detailed Landscape Maintenance Plan (attached in support of this application) submitted to the council. Previous deer fences on the estate particularly abutting the*



boundary with the forestry commission land are now incomplete, additionally since these had been erected Argyll and Bute Council had designated a route on the estate to become a Core Path, and this route passes through the estate and is unfenced and ungated, therefore providing further routes for deer to access the ornamental gardens. Approximately 25% of the route of the new deer fence follows the route to the inside of the existing core path.

The granting of approval of the application was not a surprise based on previous discussions with the planning officers, neither were the conditions pertaining to the requirement for a new pedestrian bridge and access arrangements towards the Chinese Lakes on the East side of the estate (which are included as requirements under a separate planning application ref 17/0400/PP), but the requirement to construct a further new path (condition 4) through heavily wooded landscape outwith the boundary of the fence to the south but within the estate, was. Condition 2 (d) is very similar to condition 4 but it could be considered that condition 2 (d) is already met by the informal network of routes throughout the estate.

The estate was previously a residential school and therefore accepted as being outwith the remit of the right to roam Land reform Act. Planning permission was secured by the applicants to change the use from residential School to dwelling house (under consent 16/00996/PP). It was accepted by the applicants that in securing such a change in use, the majority of the subjects would then become subject to public access rights under the Land Reform Act. Extensive discussions took place with the vendors of the estate (Argyll and Bute Council) as to what extent of the subjects would be deemed "private" and what land would therefore be subject to the right to roam. The applicants secured a statement from Legal Services, confirming that no rights of access existed on the subjects, other than the Core path to the west which is not disputed. Approximately 80% of the estate would become applicable to the Land Reform Act giving responsible public access. The applicants agreed to facilitate improved access to the Chinese Lakes with the replacement of a pedestrian footbridge (the previous footbridge now in the ownership of the Forestry Commission and having become considerably dilapidated) so that informal public access could be secured around the northern part of the estate from east to west. These works are being completed by the applicants at a cost to them of in excess of £50,000.

#### Summary

The path does not merit inclusion in the conditions for the following reasons:

- a) The fence follows the route of an existing 1000mm high original fence
- b) The deer fence encloses formal gardens as well as an area identified on the approved masterplan 16/02356/MPLAN as a helicopter landing area. The dangers of deer in the vicinity of such aircraft activities are well recognised, the Joint Agency Statement and Guidance on deer fencing 2004 states "Road traffic accidents (RTAs) involving deer directly or indirectly are a Public Safety issue as is the presence of deer on airfields."
- c) The applicants have already secured consent for a diverse Masterplan for the estate under application 16/02356/MPLAN. An element of that approved plan is for the creation of a deer farm/park within the outer estate area. A deer fence as submitted under the application in question is a necessary prerequisite to the establishment of the deer park.

- d) *There is already an accepted principle pertaining across the estate, outwith the deer fence area, of the Right to Roam throughout the areas identified in the condition for the route of the path and members of the public already take informal access in these areas*
- e) *A pedestrian right of way does not exist across the estate and therefore does not need to be formalised by any condition, indeed when the matter of potential rights of way were reviewed at the time of acquisition of the estate by the applicants, three firms of solicitors all concurred that there were no formal rights of way from the east of the estate through to the west. This was further ratified by Argyll and Bute Council legal services department who confirmed that no such right existed nor would one be recognised by the council.*
- f) *The reason given for the inclusion of the condition is **“To improve access around the estate and address any loss of access resulting for the development hereby approved.”** There is no loss of access which arises from the inclusion of the deer fence, as it can be legally demonstrated (by three firms of solicitors as well as the council’s own legal services team) that there are no public access rights within the deer fence enclosure. The formation of the pedestrian bridge and links to the north and east of the deer enclosure as required by condition 2 of the consent is considered to be sufficient to improve access around the estate*
- g) *The council is called upon to provide examples of precedence for the inclusion of such a condition for a deer fence within a private estate, when the route follows the line of an existing fence and follows the boundary of a legally accepted private dwelling boundary. A review of the council’s planning website indicates that there have been seven applications for deer fencing (including the current application) recorded since 2002, six of those since 2011. None of the conditions attaching to the approvals makes any kind of reference to conditions other than those that one might expect e.g. approval of materials to be used or keeping back a short distance from a public road etc, with the exception of application 17/02052/PP*
- h) *The former use of the premises was as a school and as such the entire grounds were inaccessible under the right to roam act, a previous change of use application that was successfully submitted by the applicants (ref 16/00996/PP) resulted in around 80% of the estate grounds now being included under the Land Reform Act. The applicants therefore believe that improved public access has been secured to an immeasurable extent and that condition 4 of the current application therefore serves no purpose as it seeks to start a path at an unspecified point within the estate and end at an unspecified point in the estate. The applicants have expended a considerable six figure sum on improvements to the estate outwith the deer fence enclosure, works including tree and scrub clearance, reinstatement of woodland walks, drainage, improved safe means of access to the estate through a new pedestrian entrance, all items that contribute to improved public access and which the applicants believe the planners have failed to take into account when including condition 2d) and condition 4.*
- i) *The applicants have been advised by their insurers to resist the conditions on the basis that the creation of such a path will result in an increased liability, currently the premise that exists for members of the public taking access under the Land Reform Act is one of doing so at their own risk. This would no longer be the case if a formal path was created as a duty of care would then be imposed on the applicants*

- j) *The condition calls for a path that would be more acceptable in a suburban environment and not a remote country estate. It would be quite alien to the landscape which is heavily wooded. The estate business plan creates an environment for movie makers, foragers and wildlife experts, all of which could be impacted by the creation of the proposed path*
- k) *The path would be required from some unspecified point on the east of the estate to an unspecified point to the west of the estate i.e. it would not link to any existing paths that are of a similar type and finish*
- l) *The construction of this new path would place significant maintenance obligations on the applicants. It is noteworthy that the council have themselves closed the well used woodland path at Morag's Fairy Glen, in Dunoon only five miles from the subjects, citing the cost of maintenance of woodland paths as sufficient justification for the paths closure.*
- m) *There already exists a large network of informal woodland paths and walks throughout the estate and if members of the public wanted to access through the estate from east to west they could already do so, either passing to the north of the mansion house, or to the south.*
- n) *Previous owners of the estate, most recently Argyll and Bute Council, have not kept up the grounds and therefore there is windblown timber etc at various locations throughout the grounds. The applicants have embarked upon an ambitious plan of restoration of the grounds. The imposition of the condition is seen as a "backdoor" attempt to formalise a "right of way" that does not currently exist*
- o) *Other conditions contained within the consent e.g. condition 2 a) to c) are being adhered to by the applicants, with the proposed new footbridge due to be completed within the next month. The construction of this footbridge effectively provides a link from the east of the estate to the west of the estate, at considerable cost to the applicants, and makes use of part of the existing core path, the formally recognised route within the area. The imposition of a further path as required by condition 4 therefore serves no purpose*
- p) *The proposed route of any path required by condition 4 is through natural woodland which currently has informal routes. The topography does not lend itself to the construction of any formal path and the cost is estimated at in excess of £125,000. It is considered that the imposition of such a condition is penal*
- q) *The proposed route of the path to the south of the main estate would follow closely the existing Loch Striven public road which already offers public access. This road follows the foreshore in front of the estate, the foreshore itself offering further public access.*
- r) *Had the requirement to provide a path from east to west passing through the south of the estate been an important element of public access, the council as landowners of the estate until 2016, could have chosen at any time to create or formalise this, including at the time when creating core paths. Instead they chose to identify the path on the west of the estate as the core path, this is the obvious and chosen route for public access in the area and offers public the opportunity to access from east to west across the estate taking the northern route*

Conclusion

*“National Planning Circular 4/1998 (Use of Conditions in Planning Permissions) states that planning conditions should only be used where they meet ALL 6 of the following tests.*

- *necessary*
- *relevant to planning*
- *relevant to the development to be permitted*
- *enforceable*
- *precise*
- *reasonable in all other respects.*

*In the present case Conditions 4 and 2 d. of planning permission 17/02052/PP are not needed (for all of the above reasons) to make the development acceptable in planning terms and fail the necessity test. Further, Conditions 4 and 2 d. are unreasonable and the Circular cautions against imposing onerous conditions. “*

- (iv) A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: No**
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**(H) PLANNING OBLIGATIONS**

**Is a Section 75 obligation required: No.**

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- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**
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**(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

Argyll and Bute Local Development Plan (26<sup>th</sup> March 2015)

LDP STRAT 1 Sustainable Development;  
LDP DM1 Development within the Development Management Zones (the application site is located within the Countryside Zone);  
LDP PROP 3 The Proposed Potential Development Areas;  
LDP 3 Supporting the Protection, Conservation and Enhancement of our Environment;  
LDP 5 Supporting the Sustainable Growth of our Economy;  
LDP 9 Development Setting, Layout and Design;

Argyll and Bute Supplementary Guidance (March 2016)

SG LDP ENV 1 Development Impact on Habitats, Species and our Biodiversity;  
SG LDP ENV13 Development Impact on Areas of Panoramic Quality (APQs);  
SG LDP ENV14 Landscape;  
SG LDP ENV 15 Development Impact on Historic Gardens and Designed Landscapes;  
SG LDP ENV 16(a) Development Impact on Listed Buildings;  
SG LDP ENV 20 Development Impact on Sites of Archaeological Importance;

SG LDP SERV7 Flooding and Land Erosion - The Risk Framework for Development;  
SG LDP TRAN1 Access to the Outdoors;  
SG2 Sustainable Siting and Design Principles.

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

Scottish Planning Policy (SPP) (June 2014);  
Scottish Historic Environment Policy 2014;  
Applicants Supporting Information;  
Planning history;  
Views of statutory and other consultees;  
Legitimate public concern expressed on 'material' planning issues.  
Argyll and Bute Proposed Local Development Plan 2 November 2019.

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- (K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No
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- (L) **Has the application been the subject of statutory pre-application consultation.**  
No
- 

- (M) **Has a sustainability check list been submitted:** No
- 

- (N) **Does the Council have an interest in the site:** No.

The Castle Toward Estate was purchased from the Council by Mr. and Mrs. Punler on 21<sup>st</sup> October 2016.

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- (O) **Requirement for a hearing:** No

In deciding whether to hold a discretionary hearing, the Council will consider:

- How up to date the Local Development Plan is, the relevance of the policies to the proposed development, and whether the representations are on development plan policy grounds which have recently been considered through the development plan process.
- The degree of local interest and controversy on material considerations, together with the relative size of community affected set against the relative number of representations and their provenance.

Whilst letters of objections have been received from seventeen individuals, the concerns have been listed in the report in Section (F) above. The determining factor of this application is procedural in that the applicants are attempting to remove planning conditions previously appealed to a Local Review Body but dismissed on the grounds that the original planning conditions were reasonable and that without these conditions the proposal would not have been consistent with policy SG LDP TRAN 1. As the application is being recommended for refusal, it is not considered that a hearing would

add value to the determination process and therefore it is recommended that Members do not undertake a hearing prior to the application being determined.

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**(P) Assessment and summary of determining issues and material considerations**

The Castle Toward estate is identified as a Potential Development Area (PDA) 2/42 within the adopted Argyll and Bute Local Development Plan (LDP) as being suitable for mixed uses, comprising tourism, education, leisure, housing and business. Castle Toward is also identified as a Strategic Masterplan Area (SMA) MAST 1/ 2 which is identified for the same uses as the PDA. The PDA and SMA areas are bounded by the C10 Glenstriven Road to the west and south and by Ardyne Farm and Strathclyde Cottage to the north. The site is bounded to the east by farmland belonging to Toward Farm.

The Castle Toward estate is identified as being within a Garden and Designed Landscape that stretches north and east beyond the PDA / SMA boundaries. With the exception of land around Toward Castle, the majority of the PDA / SMA site also lies within a wider Area of Panoramic Quality.

Letters of objection have been received from 17 individuals concerning public access issues and previous conditions and decisions relating to the path systems within the estate and impact of the deer fence and closed gates on public access.

The department have been advised by the Council's Access Officer on public access rights but have endeavoured to work with the applicants to try to find a mutually agreeable solution for alternative path systems within the estate. Whilst the applicants have installed directional signage at various points, the alternative path systems along the "southern access link" connecting the west entrance with Toward Castle and eastern links from the eastern entrance up to the Chinese Lakes are considered to be sub-standard and not immediately obvious, albeit following the route of existing informal path systems.

The erection of the deer fence was required to protect the estate from deer and to mark the extent of the dwellinghouse within a large estate which has historically had open access to the public and continues to offer public access routes through the estate but not directly to the mansion house and walled gardens. The closure of the east entrance gates and gates within the new deer fencing meant that public access has been temporarily restricted during construction works and ongoing woodland management works. The east entrance gates remain closed however a recently constructed new pedestrian access via a break in the rebuilt stone boundary wall serves as a short diversion back onto the main eastern drive northwards to the Chinese Lakes.

Whilst the line of the southern and eastern alternative routes through the Castle Toward Estate have been agreed between the department and the applicants, there are sections which still require additional improvement. The applicants had been advised to maintain these routes to allow public access with removal of obstructions, additional drainage and surfacing improvements however these have not been implemented and the routes do not currently offer a suitable alternative as directed under LDP policy SG LDP TRAN1 Access to the Outdoors.

The applicant's choice to submit a Section 42 application to remove conditions previously appealed and dismissed would appear to be at odds with the earlier decision by the Local Review Body on 28<sup>th</sup> June 2018 where Members deliberated on similar themes but unanimously agreed that the original planning conditions attached to

planning permission ref. 17/02052/PP were reasonable and necessary to ensure that suitable alternative access provisions were provided in lieu of land now contained within the estate's deer fencing. Whilst a Section 42 application could hypothetically allow the Planning Authority the opportunity to attach different conditions to permission ref. 17/02052/PP, it is apparent that the applicant's may not be content with such conditions and therefore would not resolve the current situation.

Despite several meetings with the applicants, it is unfortunate that an agreement could not be reached to improve two main access routes along the southern portion of the estate and up the eastern flank. Whilst these informal path routes are open to the public with directional signage in place, they would benefit from additional signage, improved drainage measures, better surfacing, regular strimming and removal of obstructions in the form of fallen trees or tree roots. In the absence of any notable improvements in the last year, the applicants have left the department with no other option than to recommend refusal of this application as it does not address previous breaches of planning conditions and the decision taken by the Local Review Body in 2018.

The proposal is inconsistent with the relevant development plan policies. There are no other material considerations, including responses from consultees and representations from third parties, nor matters raised in the assessment of the proposals, which would warrant the setting aside of adopted Local Development Plan policies in favour of the development. Refer to Appendix A below for full details and assessment.

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**(Q) Is the proposal consistent with the Development Plan: No.**

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**(R) Reasons why Planning Permission should be refused.**

1. The Council previously granted planning permission (ref. 17/02052/PP) to the applicants to allow them to erect the deer fencing on condition that access elsewhere on the estate was improved to mitigate the loss of public access to land within the area enclosed by the deer fence. The current application to remove these conditions without carrying out necessary improvements for alternative path systems would be contrary to Policy LDP 11 – Improving our Connectivity and Infrastructure and Policy SG LDP TRAN 1 – Access to the Outdoors of the Argyll and Bute Local Development Plan that requires development proposals to safeguard and enhance public rights of access to the outdoors in a manner that is appropriate and proportionate to the specific site characteristics and the scale and impact of the proposed development on access issues. The proposal to remove these conditions would also be contrary the decision taken by The Local Review Body on 28<sup>th</sup> June 2018, when the applicants lodged an appeal (ref. 18/0005/LRB) against conditions, 2, 3 and 4 of Planning Permission (ref. 17/02052/PP) for the erection of an 1800mm high deer fence.

Whilst the route of the '*southern access path*' and '*eastern flank*' path systems have been agreed and are currently in use, these informal paths are considered to be unsatisfactory in providing suitable alternative paths for those closed off by the erection of the deer fence. The '*southern access path*' and '*eastern flank*' path systems would benefit from better surfacing, additional signage, improved drainage measures, regular strimming and removal of obstructions in the form of fallen trees or tree roots. Without these necessary improvements to provide suitable alternative public access routes, the proposal would be inconsistent with policies to Policy LDP 11 and SG LDP TRAN 1 of the adopted Argyll and Bute Local Development Plan which seek to safeguard and

enhance public rights of access to the outdoors in a manner that is appropriate and proportionate to the specific site characteristics and the scale and impact of the proposed development on access issues.

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**(S) Reasoned justification for a departure from the provisions of the Development Plan** N/a

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**(T) Need for notification to Scottish Ministers:** No

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**Author of Report: Brian Close**

**Date: 14<sup>th</sup> December 2020**

**Reviewing Officer: Howard Young**

**Date: 5<sup>th</sup> January 2021**

**Fergus Murray**

**Head of Development and Economic Growth**



**REASON FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/00447/PP**

1. The Council previously granted planning permission (ref. 17/02052/PP) to the applicants to allow them to erect the deer fencing on condition that access elsewhere on the estate was improved to mitigate the loss of public access to land within the area enclosed by the deer fence. The current application to remove these conditions without carrying out necessary improvements for alternative path systems would be contrary to Policy LDP 11 – Improving our Connectivity and Infrastructure and Policy SG LDP TRAN 1 – Access to the Outdoors of the Argyll and Bute Local Development Plan that requires development proposals to safeguard and enhance public rights of access to the outdoors in a manner that is appropriate and proportionate to the specific site characteristics and the scale and impact of the proposed development on access issues. The proposal to remove these conditions would also be contrary the decision taken by The Local Review Body on 28<sup>th</sup> June 2018, when the applicants lodged an appeal (ref. 18/0005/LRB) against conditions, 2, 3 and 4 of Planning Permission (ref. 17/02052/PP) for the erection of an 1800mm high deer fence.

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**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 19/00447/PP**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A. Settlement Strategy**

The Castle Toward estate is identified as Potential Development Area (PDA) 2/42 within the adopted Argyll and Bute Local Development Plan (LDP) as being suitable for mixed uses, comprising tourism, education, leisure, housing and business. Castle Toward is also identified as a Strategic Masterplan Area (SMA) MAST 1/ 2 which is identified for the same uses as the PDA. The PDA and SMA areas are bounded by the C10 Glenstriven Road to the west and south and by Ardyne Farm and Strathclyde Cottage to the north. The site is bounded to the east by farmland belonging to Toward Farm.

The Castle Toward estate is identified as being within a Garden and Designed Landscape that stretches north and east beyond the PDA / SMA boundaries. With the exception of land around Toward Castle, the majority of the PDA / SMA site also lies within a wider Area of Panoramic Quality.

**Location, Nature and Design of Proposed Development**

The Toward – Castle Toward PDA site is located on the south eastern coast of the Cowal Peninsula and bounded by the Firth of Clyde to the east and south and by farmland and woodland to the west, north and east. In a wider context, the PDA is bounded by Ardyne PDA 2/43 and Knockdow Estate PDA 2/44 to the west. The nearest settlement is Toward which lies some 2km to the south-east.

The Castle Toward designed landscape occupies a site at the southern end of the Toward Peninsula, 10km south-west of Dunoon and is accessed via the A815. The mansion house and grounds occupy the lower south-facing slopes of Toward Hill, at the southernmost point of the Toward Peninsula with views south to the Island of Bute and beyond to the Firth of Clyde.

The designed landscape designation at Castle Toward extends northwards up Toward Hill to include the Chinese Lakes (reservoirs on Toward Hill to supply the estate which were made into an attractive landscape feature) and Ardyne Farm to the north-west. The C10 Glenstriven Road forms the southern and western boundaries, and to the east, the boundary takes in old estate parkland and is bounded by a commercial coniferous plantation on what was probably former policy woodland. A belt of old policy woodland is included in the designed landscape, which stretches east of the old ruins of Toward Castle. The principal features of the designed landscape, except for the Chinese lakes, are contained within the current estate boundary comprising approximately 150ha (370 acres).

The existing Core Path network begins at Toward Memorial Hall and enters Castle Toward estate from the existing western vehicular entrance. The Core Path C208(c) then follows the entrance to Castle Toward just beyond the Nissen Huts at the rear, where the path strikes left and northwards towards the junction to Ardyne Farm to the north. The Core Path follows the track up to and past Strathclyde Cottage where it then splits north-west to the Ardyne Car Park and west around the Chinese Lakes where it splits again with a western and eastern route around Corlarach Forest.

**Accordingly, the proposal would be consistent with the settlement plan for the estate and in accord with policies LDP STRAT1, LDP DM1 and LDP 3 of the Argyll and Bute Local Development Plan.**

## **B. Location, Nature and Design of Proposed Development**

### The Proposal

The proposal relates to the removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP - Erection of 1800mm high deer fence (retrospective).

The original conditions approved for planning permission ref. 17/02052/PP were

2. *Within three months of the date of this permission, a detailed Access Plan including mitigation measures shall be submitted for the written approval of the Planning Authority. Such an Access Plan shall include but not limited to :*
  - a. *The route of the proposed path linking the Chinese Lakes with the eastern driveway;*
  - b. *Standard cross section detail for the construction of the path, showing width to be 1.8m and the finishing materials;*
  - c. *Detail drawing for the timber bridge across the burn along the eastern footpath, including dimensions;*
  - d. *Improvements to the path/s to the south of the enclosed area to mitigate the loss of public access within the area enclosed by the proposed deer fence including standard cross section construction details, showing width;*
  - e. *Location of the Core Path a short section of which will need to be diverted since it will be obstructed by the proposed fence and gates. The plan will need to show the line of the diversion.*
  - f. *Location and details of any directional signage to be provided to manage public access on the estate, referred to in the Report of Handling for the Masterplan;*

*Reason: To ensure continued public access around Castle Toward Estate and to ensure consistency with policy SG LDP TRAN 1.*

4. *Prior to the commencement of works details shall be provided of a footpath that will link the east and west driveways within the southern area of the estate below to the 'haha'. Such details shall include but are not limited to:*
  - *Location including start and finishing points,*
  - *Construction details that shall include suitable drainage, 1.8m width and a type one finish,*
  - *Timetable of works with the footpath to be completed within three months of the details approved.*

*The full details shall be submitted to the planning authority for approval and the works complete within three months from the date of approval unless otherwise agreed in writing with the planning authority.*

*Reason: To improve access around the estate and address any loss of access resulting from the development hereby approved.*

These conditions (in addition to condition 3 below) were appealed against by the applicants and an appeal (ref. 18/0005/LRB) submitted to the Argyll and Bute Local Review Body on 28<sup>th</sup> June 2018. Condition 3 states the following:

3. *Notwithstanding the submitted information, all gates within the deer fencing shall remain 'open' until alternative access routes along the southern and eastern boundary of the estate have been provided and available for public use.*

*Reason: In order to maintain access for pedestrians and horse riders.*

The LRB discussed matters relating to difficulties posed by the established access on the estate; the right to roam and the reasonableness of the conditions imposed on the retrospective planning consent, with all Members agreeing that they did not find the planning conditions unreasonable. The Chair indicated that he believed that the original application would have warranted refusal if the conditions had not been applied at this time as without these conditions, the proposal would not have been consistent with policy SG LDP TRAN 1. The Local Review Body unanimously recommended that the conditions remain as per the officer's recommendations and that the appeal be dismissed.

The 2018 decision by the Local Review Body is therefore considered to be a significant material consideration in an assessment of this application.

As a result of the decision by the Local Review Body to dismiss the appeal, two enforcement files were opened to address outstanding matters. These were ref. 18/00197/ENBOC3 : Breach of Conditions 2, 3 and 4 relative to Planning Permission 17/02052/PP, opened on 29<sup>th</sup> October 2018 and 18/00198/ENBOC3 : Breach of Condition 4 relative to Planning Permission 17/00400/PP, opened on 29<sup>th</sup> October 2018.

Breach of Conditions Notices for 18/00197/ENBOC3 and 18/00198/ENBOC3 were served on 5<sup>th</sup> November 2018. Both enforcement cases remain outstanding having been effectively 'put on hold' during deliberation of the current application ref. 19/00447/PP

### **C. Public Access**

The Land Reform (Scotland) Act 2003 (which came into force in 2005) gives everyone rights of access over land and inland water throughout Scotland, subject to specific exclusions set out in the Act and as long as they behave responsibly. These rights are sometimes referred to as 'freedom to roam'.

Local Development Plan Policy

Policy SG LDP TRAN1 Access to the Outdoors provides additional detail to policy LDP 11 – Improving our Connectivity and Infrastructure of the adopted Argyll and Bute Local Development Plan.

(A) Argyll and Bute Council requires development proposals to safeguard and enhance public rights of access to the outdoors\* in a manner that is appropriate and proportionate to the specific site characteristics and the scale and impact of the proposed development on access issues. Accordingly, the Core Paths Plan, claimed Public Rights of Way and public rights of access to land and water under the Land

Reform (Scotland) Act 2003 (LRSA) will be material considerations in assessing planning applications.

(B) Where development would have a significant adverse effect upon the public access interests identified in (A) alternative access provision will be sought at the developer's expense either by diverting the route or incorporating it into the proposed development in a way that it is no less attractive, safe or convenient for public use. Unless such appropriate provision is demonstrated, the proposal will be resisted.

(C) Where development would have a significant effect upon the public access interests identified in (A) the developer is required to submit an Access Plan\*\* which addresses access issues to the satisfaction of the Council.

(D) The Core Paths Plan, claimed Public Rights of Way and public rights of access to land and water under the LRSA will be material considerations in considering planning applications.

*\*including; Core Paths, Launching Points, claimed Public Rights of Way, identified safe routes to school, Long Distance Routes, walking paths, cycle ways, equestrian routes, trod earth paths, waterways and significant areas where there are wider rights of public access under the LRSA i.e. woodlands, agricultural land, the foreshore and fresh water loch shores;*

*\*\*This should show all the existing paths and tracks on the site, together with proposed public access provision after completion of the development and should include links to the existing path networks and the surrounding area as well as launching points and access to the foreshore or water where appropriate. For larger developments close to settlements a phased approach may be required to the management of access during construction.*

The Council's Access Officer comments that, *"the applicants started to erect the Deer Fence around Castle Toward in June 2017 and because it affected the setting of a Listed Building, a retrospective planning application was required.*

*The Land Reform Scotland Act 2003 places a legal duty on Argyll & Bute Council to protect and assert Public Rights of Access. Whilst an area of land immediately around Castle Toward is land to which the public do not have a right of access to protect the reasonable privacy of the occupants the area enclosed by the deer fence is substantially greater. The deer fence encloses a proposed Parterre Garden that the applicants need to exclude deer from to protect the ornamental plants. The applicants have also stated that the area enclosed by the deer fencing offers privacy to the occupants of the building and ensures an area required for the commercial viability of the approved use. The Council granted planning permission to the applicants to allow them to erect the deer fencing on condition that access elsewhere on the estate was improved to mitigate the loss of public access to land within the area enclosed by the deer fence. This is in accordance with the Local Development Plan Policy SG LDP TRAN1 Access to the Outdoors.*

*The application was approved in January 2018. The Planning decision notice included conditions requiring the applicant to provide improved public access to a number of paths on the estate to mitigate the loss of public access to areas not enclosed by the deer fence. These are the same conditions that this application is asking to remove".*

The applicants have stated (a) to (p) below, that they believe that the conditions should be removed because;

a) *The fence follows the route of an existing 1000mm high original fence*

**Access Officer Comment** – This is not material to the planning application or the conditions imposed upon the applicant. The fence erected in 1930 predates the Land Reform Scotland Act by many decades.

*b) The deer fence encloses formal gardens as well as an area identified on the approved masterplan 16/02356/MPLAN as a helicopter landing area. The dangers of deer in the vicinity of such aircraft activities are well recognised, the Joint Agency Statement and Guidance on deer fencing 2004 states Road traffic accidents (RTAs) involving deer directly or indirectly are a Public Safety issue as is the presence of deer on airfields.”*

**Access Officer Comment** – The deer fence encloses an area of land part of which is land to which the public would otherwise have a right of access. The Council’s Policy SG LDP TRAN1 makes Access Rights a material consideration when considering planning permission and (B) requires the developer to provide alternative access where the proposed development has a significant adverse impact on public access interests. The reason that the public’s rights of access are being impacted is not a consideration.

*c) The applicants have already secured consent for a diverse Masterplan for the estate under application 16/02356/MPLAN. An element of that approved plan is for the creation of a deer farm/park within the outer estate area. A deer fence as submitted under the application in question is a necessary prerequisite to the establishment of the deer park.*

**Access Officer Comment** – The Masterplan did not grant the applicant permission to undertake any development and it is expected that as work on the estate progresses separate applications will be submitted for each element. The Masterplan also identified sites for a number of new houses along the southern boundary of the estate and the proposed path could be required to mitigate the loss of access in this part of the estate and provide access to the Memorial Hall where the few public facilities in the area are located. Planning Permission for deer fencing would not be required to establish a deer farm unless parts of the fencing were adjacent to the public road or affected the setting of a listed building.

The applicant would however need to ensure that they considered public rights of access when erecting fencing, ensuring that existing routes are not obstructed and that the public will continue to be able to exercise their rights of access by providing gates where necessary.

*d) There is already an accepted principle pertaining across the estate, outwith the deer fence area, of the Right to Roam throughout the areas identified in the condition for the route of the path and members of the public already take informal access in these areas*

**Access Officer Comment** – Whilst it is accepted that the public’s rights of access can be exercised across much of the estate as the landowner is required to permit by the Land Reform Scotland Act 2003 the conditions purpose is to mitigate the loss of public access to an area of land to allow the Council to grant permission for the proposed development.

*e) A pedestrian right of way does not exist across the estate and therefore does not need to be formalised by any condition, indeed when the matter of potential rights of way were reviewed at the time of acquisition of the estate by the applicants, three firms of solicitors all concurred that there were no formal rights of way from the east of the estate through to the west. This was further ratified by Argyll and Bute Council legal services department who confirmed that no such right existed nor would one be recognised by the council.*

**Access Officer Comment** – The public have a legal right of access across much of the estate under the Land Reform Scotland Act 2003 and the purpose of the conditions is not to recognise, protect or establish a Public Right of Way. The creation of the path will permit the public to exercise their rights of access more easily across an area of woodland that has become very overgrown, poorly drained in places and is difficult to navigate across. The proposed path will allow the public to park at the Memorial Hall and walk directly to the ruined Toward Castle, which is associated with the Clan Lamont and attracts visitors from around the world. The alternative routes are along the public road or via the Chinese lakes; although not busy the road is more hazardous, the second route to the north is considerably less direct.

*f) The reason given for the inclusion of the condition is “To improve access around the estate and address any loss of access resulting for the development hereby approved.” There is no loss of access which arises from the inclusion of the deer fence, as it can be legally demonstrated (by three firms of solicitors as well as the council’s own legal services team) that there are no public access rights within the deer fence enclosure. The formation of the pedestrian bridge and links to the north and east of the deer enclosure as required by condition 2 of the consent is considered to be sufficient to improve access around the estate.*

**Access Officer Comment** - The applicants’ state that because the estate was previously a residential school the public did not have a right of access to the grounds which in law is correct. However, the school closed in November 2009 and for around seven years until it was purchased in October 2016 the public had a legal right of access to all of the land around what was an unoccupied building. Representations made in response to a call for evidence in support of the claimed right of way during 2015 suggest that the public had had unrestricted access to much of the estate for a period in excess of twenty years. This was whilst the building was in use as an Outdoor Education Centre and suggests that the school staff made no concerted attempt to deter public access. The Land Reform Scotland Act was not enacted until 2005 therefore for much of this period it would appear that access was not discouraged even though the public did not have a legal right.

*g) The council is called upon to provide examples of precedence for the inclusion of such a condition for a deer fence within a private estate, when the route follows the line of an existing fence and follows the boundary of a legally accepted private dwelling boundary. A review of the council’s planning website indicates that there have been seven applications for deer fencing (including the current application) recorded since 2002, six of those since 2011. None of the conditions attaching to the approvals makes any kind of reference to conditions other than those that one might expect e.g. approval of materials to be used or keeping back a short distance from a public road etc., with the exception of application 17/02052/PP.*

**Access Officer Comment** – Generally, developers are not required to submit planning applications for deer fencing which they can erect under Permitted Development Rights unless they are close to a public road. Castle Toward is unusual because permission is required because the fence affects the setting of a listed building. Landowners still have to meet their legal obligations under Section 3 of the Land Reform Scotland Act 2003 to respect the public’s rights of access. This would typically be achieved by installing gates on existing tracks and paths and ensuring that they are not locked. Where there is no provision for public rights of access the Council has powers under Section 14 of the Land Reform Act to issue a notice requiring the landowner to unlock existing gates or provide suitable gates.

*h) The former use of the premises was as a school and as such the entire grounds were inaccessible under the right to roam act, a previous change of use application that was successfully submitted by the applicants (ref 16/00996/PP) resulted in around 80% of the estate grounds now being included under the Land Reform Act. The applicants therefore believe that improved public access has been secured to an immeasurable extent and that condition 4 of the current application therefore serves no purpose as it seeks to start a path at an unspecified point within the estate and end at an unspecified point in the estate. The applicants have expended a considerable six figure sum on improvements to the estate outwith the deer fence enclosure, works including tree and scrub clearance, reinstatement of woodland walks, drainage, improved safe means of access to the estate through a new pedestrian entrance, all items that contribute to improved public access and which the applicants believe the planners have failed to take into account when including condition 2d) and condition 4.*

**Access Officer Comment** – See the comment on item “f”. The Land Reform Scotland Act considers the use of the land not the Planning Use Class. Therefore, as soon as the Residential School closed and the building was unoccupied the public would have had a legal right of access right up to the building until Planning Permission to allow the redevelopment of the building as a dwellinghouse was granted and work commenced. The history of access is not relevant to whether or not the public currently have a right of access to an area of land enclosed by the deer fence around Castle Toward. Several of the works listed above would have been required as part of the redevelopment of the estate whether or not public access was permitted, i.e. woodland management work and resurfacing of the east and west driveways. Where other access improvements have been provided these are required by other conditions, i.e. the path links and bridge to the Chinese Lakes and the pedestrian entrances. The later only comprise a part of the total cost of reinstating the main entrance gates.

*i) The applicants have been advised by their insurers to resist the conditions on the basis that the creation of such a path will result in an increased liability, currently the premise that exists for members of the public taking access under the Land Reform Act is one of doing so at their own risk. This would no longer be the case if a formal path was created as a duty of care would then be imposed on the applicants.*

**Access Officer Comment** – The additional risks and liability arising as a result of creating the path required are minimal provided that the work is carried out competently and adequate maintenance work is carried out. The public in exercising their legal rights of access take responsibility for their own safety and indeed the case law has supported this approach in the Scottish Courts.

*j) The condition calls for a path that would be more acceptable in a suburban environment and not a remote country estate. It would be quite alien to the landscape which is heavily wooded. The estate business plan creates an environment for movie makers, foragers and wildlife experts, all of which could be impacted by the creation of the proposed path.*

**Access Officer Comment** – The condition suggests that the path is constructed using Type 1 which is crushed stone and is the same standard used by the Forestry Commission Scotland for the majority of its paths which are not known for their suburban appearance. This type of path construction has been suggested because the costs are lower than any of the alternatives. If the applicants wish to propose a higher specification which is more in keeping with the surroundings the council will consider this.



*k) The path would be required from some unspecified point on the east of the estate to an unspecified point to the west of the estate i.e. it would not link to any existing paths that are of a similar type and finish.*

**Access Officer Comment** - The Planning Conditions require the developer to submit an Access Plan for the Council's written approval. To date, no Access Plan has been submitted in association with this application. The Access Plan is expected to identify a suitable route for the path. There is no requirement for the path to be constructed to the same standard as the East and West Drives, which are primarily intended for vehicular use.

*l) The construction of this new path would place significant maintenance obligations on the applicants. It is noteworthy that the council have themselves closed the well-used woodland path at Morag's Fairy Glen, in Dunoon only five miles from the subjects, citing the cost of maintenance of woodland paths as sufficient justification for the paths closure.*

**Access Officer Comment** - The path at Morag's Fairy Glen has been constructed on steep slopes adjacent to a burn which is a much more challenging location to maintain a path, therefore it is not surprising that from time to time the path has to be closed to allow repairs to be made. The proposed path crosses ground that is level or has gentle gradients and is likely to require minimal maintenance.

*m) There already exists a large network of informal woodland paths and walks throughout the estate and if members of the public wanted to access through the estate from east to west they could already do so, either passing to the north of the mansion house, or to the south.*

**Access Officer Comment** – The purpose of the Conditions is to mitigate the loss of public access within the fenced area by enhancing public access elsewhere on the estate. Although there are alternative routes that allow people to cross the estate, for the reasons given in (e) these are not considered sufficient.

*n) Previous owners of the estate, most recently Argyll and Bute Council, have not kept up the grounds and therefore there is windblown timber etc at various locations throughout the grounds. The applicants have embarked upon an ambitious plan of restoration of the grounds. The imposition of the condition is seen as a "backdoor" attempt to formalise a "right of way" that does not currently exist*

**Access Officer Comment** – Although the Council previously owned the estate, the tenant from c1997 was a charity called Actual Reality. It is not known which body had responsibility for the maintenance of the estate however, it is apparent that insufficient resources were available leading eventually to the sale of the estate to the applicants. See comments on (b) above regarding the rationale for the conditions.

*o) Other conditions contained within the consent e.g. condition 2 a) to c) are being adhered to by the applicants, with the proposed new footbridge due to be completed within the next month. The construction of this footbridge effectively provides a link from the east of the estate to the west of the estate, at considerable cost to the applicants, and makes use of part of the existing core path, the formally recognised route within the area. The imposition of a further path as required by condition 4 therefore serves no purpose.*

**Access Officer Comment** – Conditions 2(a-f) detail the content of the required Access Plan which the applicants were supposed to submit to the Council within three months

of the planning approval being given in January 2018. This should have been received by the Council by the end of April 2018 but has yet to be submitted to the Council. The applicants have been served with a Planning Enforcement Notice requiring them to address these deficiencies. Condition 3 requires the applicants to keep all gates in the deer fence open until such time as the alternative access routes to the south and east are available for public use. Again the applicant has not complied with this condition which is also the subject of enforcement action. The footbridge referred to above is finally being delivered over one year later than required. The purpose of the path required by Condition 4 is to meet SG LDP TRAN1 explained in the paragraph (b) at the start of this document.

*p) The proposed route of any path required by condition 4 is through natural woodland which currently has informal routes. The topography does not lend itself to the construction of any formal path and the cost is estimated at in excess of £125,000. It is considered that the imposition of such a condition is penal.*

**Access Officer Comment** - The applicants have been given the freedom through the Access Plan to determine the best route for the proposed path, allowing them to decide whether it is better to improve an existing informal route or choose a new route that minimises construction costs. They also have the opportunity to propose the use of crushed concrete waste from demolition at Castle Toward or stone quarried on site to further reduce costs. The ground over which the path is to be constructed is generally level although there are areas where drainage will be an issue. There is dense vegetation that will need to be cleared along much of the route although this is being undertaken across the estate as part of a programme of woodland management. Using costs provided by the Paths for All Partnership, the costs of constructing the path estimated to be c750 metres in length are as follows. Without a detailed site survey it is not possible to estimate the costs more precisely. The proposed path is 750m in length and 1.8m wide. The estimate includes allowances for clearing vegetation, drainage and path construction. The suggested specification is designed to be appropriate to a woodland location. The incorporation of geotextile and geogrid with 150mm of stone subbase will provide a sufficiently robust path over soft ground to withstand equestrian use whilst minimising future maintenance costs. As suggested earlier the stone for the subbase could be obtained by opening a small quarry on the estate or using crushed demolition waste generated from the refurbishment of Castle Toward”.

### **Department Comments**

The department have strived to work with the applicants, mindful of the Access Officer’s comments, to find a mutually agreeable solution for alternative path systems within the estate. Whilst the applicants have installed directional signage at various points, the alternative path systems along the “southern access link” connecting the west entrance with Toward Castle and eastern links from the eastern entrance up to the Chinese Lakes are considered to be sub-standard and not immediately obvious, albeit following the route of existing informal path systems.

Whilst the line of the southern and eastern alternative routes through the Castle Toward Estate have been agreed between the department and the applicants, there are sections which still require additional improvement. The applicants had been advised to maintain these routes to allow public access with removal of obstructions, additional drainage and surfacing improvements however these have not been implemented and the routes do not currently offer a suitable alternative as directed under LDP policy SG LDP TRAN1 Access to the Outdoors and Access Officer’s comments above. The applicants choice to submit a Section 42 application to remove conditions previously appealed and dismissed would appear to be at odds with the earlier decision by the Local Review Body on 28<sup>th</sup> June 2018 where Members deliberated on similar themes

but unanimously agreed that the original planning conditions attached to planning permission ref. 17/02052/PP were reasonable and necessary to ensure that suitable alternative access provisions were provided in lieu of land now contained within the estate's deer fencing. Whilst a Section 42 application could hypothetically allow the Planning Authority the opportunity to attach different conditions to permission ref. 17/02052/PP, it is apparent that the applicant's may not be content with such conditions and therefore would not resolve the current situation.

It is worth noting that there have been significant improvements to the Castle Toward Estate since acquisition by the applicants. The mansion house has undergone significant investment with additional improvement works to historic walled gardens, outbuildings, main east and west entrances and positive woodland management taking place. The erection of the deer fence was required to protect the estate from deer and to mark the extent of the dwellinghouse within a large estate which has historically had open access to the public and continues to offer public access routes through the estate but not directly to the mansion house and walled gardens. The closure of the east entrance gates and gates within the new deer fencing meant that public access has been temporarily restricted during construction works and ongoing woodland management works. The east entrance gates remain closed however a recently constructed new pedestrian access via a break in the rebuilt stone boundary wall serves as a short diversion back onto the main eastern drive northwards to the Chinese Lakes.

#### Conclusion

Despite several meetings with the applicants, it is unfortunate that an agreement could not be reached to improve two main access routes along the southern portion of the estate and up the eastern flank. Whilst these informal path routes are open to the public with directional signage in place, they would benefit from additional signage, improved drainage measures, better surfacing, regular strimming and removal of obstructions in the form of fallen trees or tree roots. In the absence of any notable improvements in the last year, the applicants have left the department with no other option than to recommend refusal of this application as it does not address previous breaches of planning conditions and the decision taken by the Local Review Body in 2018.

**Given the above, the proposal is considered to be inconsistent with the provisions of policies Policy LDP 11 and SG LDP TRAN 1 of the adopted Argyll and Bute Local Development Plan.**

#### **D. Natural Environment and Impact on Trees**

The proposal relates to existing footpath systems therefore no new path systems are proposed and no trees require to be felled as a result of the agreed path systems. There are no habitat or species issues that are not already covered by ongoing woodland management around the estate.

**Accordingly, the proposed development would be consistent with policies LDP STRAT1, LDP3, SG LDP ENV1 and SG LDP ENV6 of the Argyll and Bute Local Development Plan in terms of nature conservation interests.**

#### **E. Built Environment – Listed Buildings and Designed Landscape**

The proposal relates to existing path systems within the southern and eastern part of the Castle Toward estate with no impact on the setting of Castle Toward Mansion House, a category B listed building, and the Toward Castle which is a Scheduled Ancient Monument.

The proposal would have no adverse impact on the Castle Toward Garden and Designed Landscape designation as it relates to existing path systems within the southern and eastern parts of the estate.

**It is considered that the proposed development would not have a detrimental impact on the setting of Castle Toward, the Castle Toward Garden and Designed Landscape and Toward Castle. Accordingly, it is considered that the proposed development would be consistent with policies LDP STRAT1, LDP 3, SG LDP ENV15 and SG LDP ENV19 of the Argyll and Bute Local Development Plan.**

#### **F. Road Network, Parking and Associated Transport Matters**

Castle Toward Estate is currently served by the A815 from Dunoon and then the C10 Glenstriven Road which begins at the Toward Lighthouse junction. Recent proposals for Castle Toward Estate by the applicants have reinstate the eastern driveway. Works are currently underway to install new ornamental gates on the main western driveway.

The proposal relates only to informal existing path systems within the Castle Toward estate with no impact on existing vehicular access arrangements.

**On the basis of the above, the proposal is considered consistent with policies LDP STRAT1, LDP 11, SG LDP TRAN 4 and SG LDP TRAN6 of the Argyll and Bute Local Development Plan.**

#### **G. Landscape**

The application site lies within an Area of Panoramic Quality (APQ) which derives from the scenic qualities of the wider landscape and the interrelationship between narrow sea channels, sea lochs and surrounding steep sided hills. The Kyles of Bute National Scenic Area is approximately 5km to the north-west.

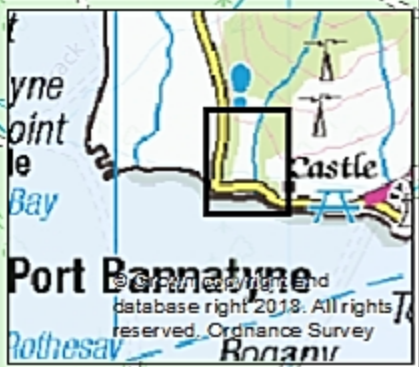
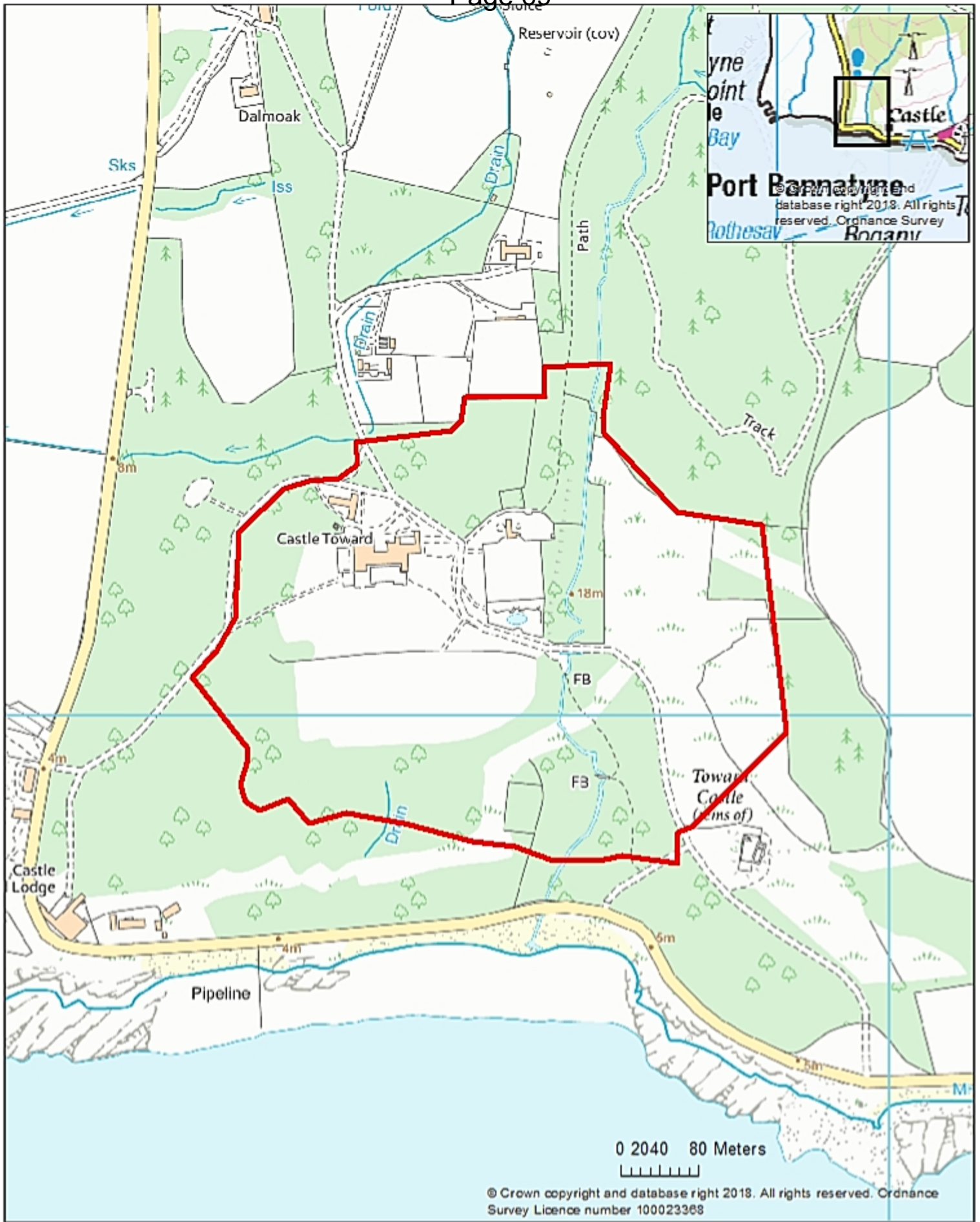
As the proposal relates specifically to path systems within the Castle Toward Estate there would be no impact on the wider landscape and APQ given the dense deciduous woodland within the estate.

**On the basis of the above, the proposal is considered consistent with policies LDP STRAT1, LDP 3, LDP9, SG LDP ENV 13, SG LDP ENV14 and SG LDP ENV 15 of the Argyll and Bute Local Development Plan.**

#### **H. Other Scottish Government Advice**

Scottish Planning Policy (SPP) (June 2014) advises that local development plans should safeguard access rights and core paths, and encourage new and enhanced opportunities for access linked to wider networks (para 228).

**It is considered that the proposal is inconsistent with the elements of SPP in that it does not enhance existing access for walkers around the Castle Toward Estate and currently does not provide suitable alternative routes for land now contained within the deer fencing.**



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**Argyll and Bute Council  
Development and Economic Growth**

This Supplementary report is a recommended response to the Scottish Government's Energy Consents and Deployment Unit (ECDU) Section 36 consultation on Additional Information received regarding the proposed Sheirdrim Renewable Energy Development on Land at Gartnagrenach Forest, Whitehouse, Argyll and Bute

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**Reference No:** 19/02424/S36

**Planning Hierarchy:** Electricity Act Section 36 consultation

**Applicant:** The Scottish Government on Behalf of SLR Consulting Limited

**Proposal:** Electricity Act Section 36 consultation relevant to Sheirdrim Renewable Energy Development

**Site Address:** Land at Gartnagrenach Forest, Whitehouse, Argyll and Bute

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**SUPPLEMENTARY REPORT NO. 1****1. INTRODUCTION**

The above S36 consultation was originally considered at the Planning, Protective Services and Licensing Committee on Wednesday 20<sup>th</sup> May 2020. Officers concluded that the Sheirdrim proposal does not accord overall with the relevant provisions of the Scottish Planning Policy and the Argyll and Bute Local Development Plan and that there are no material considerations which would justify anything other than the Council objecting to this proposal for the reasons detailed in the report dated 6<sup>th</sup> May 2020. At the time of writing the report, public representation stood at 50 of which 46 are objections and 4 in support. Objections had also been made by Historic Scotland Environment, Scottish Forestry, National Air Traffic Services and East and West Kintyre Community Councils and South Knapdale Community Council.

Should any of the objections raised by Historic Environment Scotland, Scottish Forestry and National Air Traffic Services be withdrawn, it was also recommended that the Council no longer objects on these grounds, and that the Energy Consents Unit should treat these aspects of the Council's overall objection as withdrawn. In addition it was also recommended that out of the two access options, the existing Cour access was identified as the Council's preference and that the Scottish Government be notified accordingly.

The Committee agreed to object to the S36 consultation proposal as per the reasons outlined in the report of handling dated 6<sup>th</sup> May 2020 subject to including reference to the proposal having an adverse landscape and visual impact on the villages of Clachan and Whitehouse and that the Scottish Government be notified accordingly. The reasons for objection and committee minutes are detailed at Appendix A of this report.

## **2. UPDATED POSITION**

Since the committee's consideration of the original S36 consultation the applicant has submitted Additional Information to the Energy Consents Unit of Scottish Government. In accordance with EIA Regulations the Council has been consulted on this Additional Information and a response is required by 25<sup>th</sup> January 2021.

The Additional Information (November 2020) includes information relating to submission of information regarding queries received from Historic Environment Scotland (HES) in early 2020 regarding significant potential impacts on Dun Skeig, duns and fort, scheduled monument. The document also includes appendices, which do not constitute Additional Information, but do however, provide the updated position and detail of correspondence between the applicant and relevant consultees for the purposes of clarifying matters within the EIA Report as follows:

- Appendix A: Landscape - A.1 Correspondence with Argyll and Bute Council & A.2 Correspondence with North Ayrshire Council
- Appendix B: Peat - B.1 Correspondence with Ironside Farrar, ECU Peat Advisor
- Appendix C: Aviation - C.1 Correspondence with NATS
- Appendix D: Forestry - D.1 Correspondence with Scottish Forestry
- Appendix E: Ornithology - E.1 Correspondence with Scottish Natural Heritage (SNH), (now NatureScot)

As the Council did not object to the proposal on the grounds of peat or ornithology these matters are not covered in this report. The relevant matters are considered in the following order: Additional Information, Dun Skeig, Scheduled Monument; Appendix A: Landscape; Appendix C: Aviation; and Appendix D: Forestry

## **3. ADDITIONAL INFORMATION - DUN SKEIG, SCHEDULED MONUMENT**

The 4<sup>th</sup> reason for objection as detailed in the Report of Handling 6<sup>th</sup> May 2020 relates to Dun Skeig, Scheduled Ancient Monument. The reason for this objection was that Historic Environment Scotland advised the Energy Consents Unit that they object to this proposal given the potential for significant adverse impacts on the setting of the Scheduled Monument, Dun Skeig duns & fort. Historic Environment Scotland consider that this impact will have an adverse effect on the integrity of the setting of Dun Skeig, duns & fort to the effect that it would affect our ability to understand, appreciate and experience this monument. Consequently, they advise that the proposals are not in line with Scottish Planning Policy, 2014 and raise issues of National Interest that warrant Historic Environment Scotland's objection. While Historic Environment Scotland would welcome further dialogue on mitigation, it does not appear that impacts would be reduced to an acceptable degree without significant reductions in turbine heights or the widespread deletion of turbines. Local Development Plan Policy is clear that developments that have an adverse impact on Scheduled Monuments and their settings should not be permitted unless there are exceptional circumstances. In the reason for objection it was specified that the Energy Consents Unit should note that in the event that Historic Environment Scotland withdraw their objection, then Argyll & Bute Council would no longer object on these grounds.

The Additional Information provided by the applicant includes: Correspondence (including visualisations) from the applicant to Historic Environment Scotland dated 23<sup>rd</sup> April and 24<sup>th</sup> July 2020.



Historic Environment Scotland (HES) have considered the Additional Information and reasserted their position on the 17<sup>th</sup> December 2020 to the Energy Consents Unit.

HES note that the Additional Information (November 2020) includes further analysis and visualisation of the significant impact they identified on the setting of Dun Skeig, duns and fort (Scheduled Monument,) in their detailed objection letter (30<sup>th</sup> March 2020) to the Sheirdrim Renewable Energy Development. In particular, the Additional Information (November 2020) comprises two letters (23<sup>rd</sup> April 2020, 24 July 2020) already submitted to HES during post-submission engagement with the applicant. It should be noted that HES have already provided a written response to each letter in correspondence dated 21<sup>st</sup> May 2020 and 21 August 2020.

In each case, HES have continued to disagree with the conclusions presented by the applicant that the magnitude of impact on the setting of Dun Skeig, duns and fort (Scheduled Monument) would be very low adverse. HES remain of the view that this impact will have an adverse effect on the integrity of the setting of this scheduled monument to the extent that it would affect our ability to understand, appreciate and experience this monument. The proposals are therefore not in line with paragraph 145 of Scottish Planning Policy (SPP 2014) and continue to raise issues of national interest such that warrant our objection.

**Having considered the Additional Information and Historic Environment Scotland's most recent consultation response to the Energy Consents Unit it is concluded that no change is required to the Council's recommended reason for objection in this regard.**

#### **4. APPENDIX A – LANDSCAPE, VISUAL & CUMULATIVE IMPACT**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> reasons for objection as detailed in the Report of Handling 6<sup>th</sup> May 2020 relates to landscape, visual and cumulative impact.

Appendix A includes correspondence dated 1<sup>st</sup> September 2020 and is entitled "Landscape". It is a response to these three reasons for objection and concludes that: *"Whilst there would be some significant landscape, visual and cumulative impacts, these should not be considered to be of such magnitude as to be unacceptable. Again, it should be noted that the EIAR, as well as the Council's Landscape Architect has taken a very precautionary approach and assumed that all of these cumulative visual changes would be adverse, but not everyone would perceive these changes to be so"*.

The views of Carol Anderson, the Council's Landscape Consultant were sought on this document. On the 2<sup>nd</sup> September 2020, Carol Anderson confirmed that: *"none of the information detailed in the report would cause me to revise my landscape advice to the Council. It should be stressed, given the comments made in the note, that my landscape advice to you on this proposal relies on the more detailed information contained in the EIA-R rather than on the strategic guidance contained in the Argyll and Bute Landscape Wind Energy Capacity Study (2017) as is the correct approach when considering a specific development"*.

**Having considered the Landscape Appendix and our expert Landscape Consultant's advice it is concluded that no change is required to the Council's recommended reasons for objection in this regard.**

**5. APPENDIX C - AVIATION**

The 5<sup>th</sup> reason for objection as detailed in the Report of Handling 6<sup>th</sup> May 2020 relates to Aviation. The reason for this objection was that National Air Traffic Services Safeguarding (NATS) advised the Energy Consents Unit that the proposal has been examined by technical and operational safeguarding teams and that an unacceptable technical impact is anticipated, consequently, they object as an unacceptable impact from the proposal has been identified. Local Development Plan Policy is clear that developments that have an adverse impact on the Safeguarding of Airports should be refused. In the reason for objection it was specified that the Energy Consents Unit should note that in the event that National Air Traffic Services (NATS) withdraw their objection, then Argyll & Bute Council would no longer object on these grounds.

Appendix C includes: an SPR Aviation Response Report (7<sup>th</sup> April 2020); and an email (8<sup>th</sup> April 2020). The most recent response from National Air Traffic Services (1<sup>st</sup> December 2020) available on the Energy Consents Unit website states that: *“NATS is pleased to note that the applicant agrees with their finding that “four Sheirdrim turbines are likely to be detected by the Lowther Hill PSR” which will inevitably be a net negative on the performance of the RADR and the operation it supports. NATS has offered to deploy a mitigation similar to that already in place for the neighbouring Freasdail turbines but SPR have not yet taken them up on the offer and therefore NATS position remains one of objection”.*

**Having considered the Aviation Appendix and NATS most recent consultation response to the Energy Consents Unit it is concluded that no change is required to the Council’s recommended reason for objection in this regard.**

**6. APPENDIX D - FORESTRY**

The 6<sup>th</sup> reason for objection as detailed in the Report of Handling 6<sup>th</sup> May 2020 relates to Forestry. The reason for this objection was that insufficient information has been provided regarding ‘Calculation of UK Forestry Standard percentages for the wind farm proposal area’ had still to be addressed to the satisfaction of Scottish Forestry. Scottish Forestry objected to the proposal on these grounds, and would also object unless conditions are applied to secure Compensatory Planting and a Long Term Forest Plan. Local Development Plan Policy is clear that adequate provision must be made in regard to woodland when considering development proposals. In this instance, insufficient information has been provided to demonstrate to Scottish Forestry that this is the case. In the reason for objection it was specified that the Energy Consents Unit should note that in the event that Scottish Forestry withdraw their objection, subject to the provision of Scottish Forestry’s conditions to secure Compensatory Planting and a Long Term Forest Plan then Argyll & Bute Council would no longer object on these grounds.

Appendix D includes correspondence with Scottish Forestry dated 31<sup>st</sup> March 2020, 15<sup>th</sup> May 2020 and EIAR Figure 3.2.8 Infrastructure Felling Plan. Scottish Forestry provided a response to the Energy Consents Unit on the 18<sup>th</sup> June 2020 which confirms that *Scottish Forestry* are content with the restocking proposals. Scottish Forestry confirm that they have no outstanding issues regarding this proposal, assuming that suitably worded conditions are applied to secure: compensatory planting and a long term forest plan.

**Having considered the Forestry Appendix and Scottish Forestry’s most recent consultation response it is noted that this matter has now been satisfactorily**

resolved. However, no change is required to the Council's recommended reason for objection in this regard as the objection is worded in such a way which allows it to be withdrawn without further action if the points of objection are resolved in advance of the inquiry..

**7. CONCLUSION & RECOMMENDATION**

It is considered that the Additional Information and accompanying appendices do not facilitate any necessity to alter the details of the recommendation to object contained in the original Report of Handling. It is recommended that the Energy Consents Unit be notified accordingly.

**Author of Report: Arlene Knox**

**Date: 22<sup>nd</sup> December 2020**

**Reviewing Officer: Sandra Davies**

**Date: 22<sup>nd</sup> December 2020**

**Fergus Murray**  
**Head of Development and Economic Growth**

**APPENDIX A TO SUPPLEMENTARY REPORT 1 – 19/02424/S36 – REASONS FOR OBJECTION & THE MEMBERS' DECISION IS OUTLINED IN A COPY OF THE PUBLISHED MINUTE**

**1. Landscape Impact**

Argyll and Bute Council will assess development proposals with the aim of protecting conserving and where possible enhancing the built, human and natural environment. A development proposal will not be supported when it does not protect, conserve or where possible enhance the established character and local distinctiveness of the landscape in terms of its location, scale, form and design. Argyll and Bute Council will resist renewable energy developments where these are not consistent with the principles of sustainable development and it has not been adequately demonstrated that there would be no unacceptable significant adverse landscape and visual impacts, whether individual or cumulative.

This proposal lies within the *Upland Forest Moor Mosaic* Landscape Character Type. The proposed turbines, which would be up to 149.9m high to blade tip, would fall within the 'Very Large' typology considered in the Landscape Wind Energy Capacity Study (LWECS). The LWECS concludes that the combined landscape and visual sensitivity of the *Upland Forest Moor Mosaic* Landscape Character Type is high-medium for wind turbines of this size. The guidance set out in the study for this Landscape Character Type advises that there is very limited scope for additional turbines to be accommodated within this landscape principally due to potential cumulative effects that could occur on the coastal fringes of Kintyre and on views from Arran and Gigha. The area of the peninsula to the north of Beinn Bhreac is noted as being particularly sensitive due to likely increased effects on Arran, Gigha and surrounding seascapes. Significant intrusion on adjacent settled and small-scale landscape character types and on Arran and Gigha should be avoided by siting larger turbines well back into the interior of these uplands. The LWECS considers the strategic pattern of wind farm developments on the Kintyre peninsula and concludes that: "A 'Landscape with wind farms' is a more appropriate strategy for Kintyre rather than allowing a 'Wind Farm Landscape' to evolve. This is because of the presence of key landscape and visual constraints including effects on Gigha, Arran and sensitive coastal fringes.....clustered developments with clear and generous spaces between them would be a better approach aimed at reducing impacts from surrounding islands and seascapes". The proposal also lies close to the boundary of part of the *Rocky Mosaic* Landscape Character Type covering the east coast of Kintyre and south and west Knapdale. Key constraints identified in the LWECS include the strong contrast which occurs between these intricate settled sea and loch fringes with adjacent simple and more expansive uplands, which makes an important contribution to the rich scenic composition characteristic of Argyll.

The *Upland Forest Moor Mosaic* Landscape Character Type has characteristics that reduce sensitivity to large scale wind turbines, including a gently undulating simple landform and land cover of forest and moorland and a generally expansive scale. A number of operational and consented wind farm developments are located in this landscape. Eascairt and Clachaig Glen wind farms have also been consented in this Landscape Character Type since the LWECS was issued in 2017. The Landscape & Visual Impact Assessment concludes that significant effects would occur on the open moorland of the *Upland Moor Forest Mosaic* within approximately 5-6 km of the proposed wind farm. The Council's Consultant Landscape Architect is in agreement with the Landscape & Visual Impact Assessment that effects on part of the *Upland Forest Moor Mosaic* Landscape Character Type would be significant and adverse. The *Rocky Mosaic* Landscape Character Type comprises a narrow coastal strip on both the east and west coasts of Kintyre and around Knapdale. This is a small-scale, settled and highly sensitive landscape to large wind turbines. The proposal would not be located in this Landscape Character Type but would lie in close proximity to it due to its position on the

outer edge of the *Upland Forest Moor Mosaic*. There would be intermittent visibility of the proposal from the part of the *Rocky Mosaic* Landscape Character Type covering the shores of West Loch Tarbert and south Knapdale. The Landscape & Visual Impact Assessment concludes that effects would be significant in the South Knapdale area and the Council's Consultant Landscape Architect is in agreement with this. The Landscape & Visual Impact Assessment also correctly concludes that significant effects would arise on West Loch Tarbert which is classified as National Coastal Character Type 9 Sounds, Narrows and Islands. There would be visibility of the proposal from parts of the Area of Panoramic Quality designated area covering the Knapdale area and the Area of Panoramic Quality covering the West Kintyre coast.

There is no citation for the Knapdale Area of Panoramic Quality although special qualities are likely to focus on the small-scale character of the rocky shores of West Loch Tarbert, scenic views across West Loch Tarbert, to Kintyre and Gigha and across the sea to the dramatic mountainous profiles of Jura and Islay. This sparsely settled Area of Panoramic Quality also has a strong perception of naturalness, heightened by the single-track road access. The proposal would not be located in this Area of Panoramic Quality but would lie approximately 3.9km from the closest point of the designated area. The wind farm would be a prominent feature seen across the relatively narrow and scenic West Loch Tarbert. This proposal would be likely to have a significant effect on part of the Knapdale Area of Panoramic Quality.

The West Kintyre Coast Area of Panoramic Quality area does not have a formal citation. Special qualities of the Area of Panoramic Quality are likely to comprise multi-layered and dramatic views to the sea, Gigha, Jura and Islay, the diversity of the coastal edge including its landform, landcover and cultural heritage features which contrasts with the simple forest and moorland-covered backdrop of the Kintyre hills and the setting it provides to recreational activities. While visibility of the wind farm would be significantly restricted by woodland, there would be views from a very small part of the West Kintyre Coast Area of Panoramic Quality in the more open Dun Skeig area. Although the Council's Consultant Landscape Architect considers that there would be an adverse effect on some of the special qualities of this Area of Panoramic Quality, it is not considered that these would be significant.

Significant adverse effects would arise on part of the *Upland Forest Moor Mosaic* Landscape Character Type and on parts of the *Rocky Mosaic* Landscape Character Type where it covers the shores of West Loch Tarbert and south-west Knapdale. There would also be a significant effect on the southern part of the Knapdale Area of Panoramic Quality affecting the setting and perception of naturalness associated with the small-scale and diverse coastal fringes of the designated area and views across Loch Tarbert. This proposal would be contrary to the guidance set out in the Argyll and Bute LWECs and would be located in a landscape where capacity has largely been reached in landscape and visual terms.

The foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments.

**Having due regard to the above it is concluded that the proposal will have significant adverse landscape impacts and is therefore inconsistent with the provisions of: SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality; SG LDP ENV 14 Landscape; SG 2 Renewable Energy; LDP STRAT 1 – Sustainable Development; LDP DM1 – Development within the Development Management Zone; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; Policy LDP 6 – Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; of the Argyll & Bute Local Development Plan; SPP (2014); the**

## **Onshore wind policy statement, (2017); and guidance contained in the Argyll & Bute Landscape Wind Energy Capacity Study 2017.**

### **2. Visual Impact**

Argyll and Bute Council will assess development proposals with the aim of protecting conserving and where possible enhancing the built, human and natural environment. A development proposal will not be supported when it does not protect, conserve or where possible enhance the established character and local distinctiveness of the landscape in terms of its location, scale, form and design. Argyll and Bute Council will resist renewable energy developments where these are not consistent with the principles of sustainable development and it has not been adequately demonstrated that there would be no unacceptable significant adverse landscape and visual impacts, whether individual or cumulative.

Visibility of the proposal would principally affect West Loch Tarbert and the southern and south-western parts of Knapdale. There would be limited visibility from the east coast of Kintyre although widespread views from the Kilbrannan Sound and north-east Arran. The location of the proposal close to the transition with the more settled coastal fringes of West Loch Tarbert and to key roads, increases the impacts of this proposal when compared with other operational and consented wind farms located on the Kintyre peninsula. This proposal would be particularly prominent in views from north Kintyre and from the West Loch Tarbert area. Significant adverse effects on views would occur on the following receptors:

- Sections of the A83 (in the Clachan/Whitehouse area) and the B8001 which are well-used by tourists. EIA Viewpoints 2, 4 and 8 demonstrate the major adverse effects that will occur on views from this route.
- Intermittent views from the B8024 minor road (and National Cycle Route 78) which is aligned close to the northern shores of West Loch Tarbert and around the coast of Knapdale. There would be views from settlement and coastal footpaths on the north coast of West Loch Tarbert and from more informal walking areas around Ardpatrik Point. EIA Viewpoint 5 illustrates how this proposal will significantly extend the horizontal spread of turbines seen on the skyline in addition to the Freasdail wind farm but will also be much more prominent due to the size turbines and their proximity (3.9km distance). While the proposed wind farm would be more distant (>10km) from Viewpoint 10 on the B8024, it would be seen at the end of a framed view channelled down the narrow inner loch, thus increasing the magnitude of effect. Viewpoint 9 located further west on the B8024 and some 8km distance illustrates how the size of the proposed turbines and their location towards the outer margins of the uplands, give an appearance of them spilling down on the coastal hills and thus increasing prominence when compared with other wind farms located on Kintyre.
- The Islay ferry route – The Ferry Route Analysis visualisations and maps set out in Appendix 7.6 are informative and help confirm that significant effects would occur on views from much of the route between Kennacraig and close to the northern point of Gigha.
- The Lochranza to Cloanaig ferry route – cumulative effects will occur with the operational Freasdail wind farm in that this proposal would considerably increase the spread of turbines seen on the Kintyre skyline. The proposal would also appear considerably more prominent than the Freasdail wind farm in views from Lochranza and the Kilbrannan Sound due to their larger size (predominantly 149.9m as opposed to 100m) and because a greater vertical extent will be visible on a higher part of the upland backdrop to views. Cumulative effects would also occur with the consented Eascairt wind farm as a confused array of overlapping and different sized turbines is evident (EIA Figure 7.32a) and where this proposal would make a major contribution to the development of a more concentrated band of development seen on this part of the Kintyre skyline.
- Footpaths in the local area, including those to Dun Skeig and from sections of the Kintyre Way where significant cumulative effects with operational and consented developments will

also occur. (EIAR Viewpoints 1 and 6 illustrate these effects). The proposed solar array would also be likely to contribute to adverse effects experienced from Dun Skeig (Viewpoint 6) and while the proposal would not be located in the most dramatic part of the panorama seen from the summit, it would bring large turbines and other infrastructure substantially closer, forming a focus in views on the walk to and from the hill and adversely affecting the setting and experience of this special landscape feature.

The foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments.

**Having due regard to the above it is concluded that the proposal will have significant adverse visual impacts and is therefore inconsistent with the provisions of: SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality; SG LDP ENV 14 – Landscape; SG 2 Renewable Energy; LDP STRAT 1 – Sustainable Development; LDP DM1 – Development within the Development Management Zone; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; Policy LDP 6 – Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; of the Argyll & Bute Local Development Plan; SPP (2014); the Onshore wind policy statement, (2017); and guidance contained in the Argyll & Bute Landscape Wind Energy Capacity Study 2017.**

### **3. Cumulative landscape and visual effects**

Argyll and Bute Council will assess development proposals with the aim of protecting conserving and where possible enhancing the built, human and natural environment. A development proposal will not be supported when it does not protect, conserve or where possible enhance the established character and local distinctiveness of the landscape in terms of its location, scale, form and design. Argyll and Bute Council will resist renewable energy developments where these are not consistent with the principles of sustainable development and it has not been adequately demonstrated that there would be no unacceptable significant adverse landscape and visual impacts, whether individual or cumulative. Significant cumulative landscape and visual effects would be likely to occur on the following receptors:

This proposal would infill the gap between the Freasdail and Eascairt wind farms and would erode the existing pattern of cluster and space wind farms on the Kintyre peninsula resulting in a significantly extended spread of turbines on the skyline of Kintyre seen from the east. The wider spacing and larger size of the Sheirdrim turbines would create a cluttered appearance with the Freasdail and Eascairt wind farms. This proposal would be much more prominent in views from Lochranza (and the Kilbrannan Sound) than these other operational and consented wind farms as evident in EIAR Viewpoint 12, Figure 7.32a.

Sequential effects of the Airigh and Clachaig Glen wind farms seen with this proposal from the A83 and from the Islay ferry route - the Sheirdrim proposal would be a major contributor to these effects.

Cumulative impacts from Dun Skeig (EIAR Viewpoint 6), the northern shores of West Loch Tarbert and from the Ardpatrik Point area where the Sheirdrim proposal would be variously visible with the operational Freasdail wind farm, the consented Eascairt wind farm and the Airigh proposal. The Sheirdrim proposal would be a major contributor to these effects.

Cumulative impacts on the character of the *Upland Forest Moor Mosaic* Landscape Character Type (including the recently consented Clachaig Glen wind farm) and on the Kintyre Way.

The foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments.

**Having due regard to the above it is concluded that the proposal will have significant adverse Cumulative Landscape and Visual impacts and is therefore inconsistent with the provisions of: SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality; SG LDP ENV 14 –Landscape; SG 2 Renewable Energy; LDP STRAT 1 – Sustainable Development; LDP DM1 – Development within the Development Management Zone; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; Policy LDP 6 – Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; of the Argyll & Bute Local Development Plan; SPP (2014); the Onshore wind policy statement, (2017); and guidance contained in the Argyll & Bute Landscape Wind Energy Capacity Study 2017.**

#### **4. Scheduled Monument**

Argyll and Bute Council will assess development proposals with the aim of protecting conserving and where possible enhancing the built, human and natural environment. A development proposal will not be supported when it has not been ascertained that it will avoid adverse effects, including cumulative effects on the integrity or special qualities of nationally designated built environment sites. There is a presumption in favour of retaining, protecting and preserving Scheduled Monuments and the integrity of their settings. Developments that have an adverse impact on Scheduled Monuments and their settings will not be permitted unless there are exceptional circumstances. Historic Environment Scotland have advised the Energy Consents Unit that they object to this proposal given the potential for significant adverse impacts on the setting of the Scheduled Monument, Dun Skeig duns & fort. Historic Environment Scotland consider that this impact will have an adverse effect on the integrity of the setting of Dun Skeig, duns & fort to the effect that it would affect our ability to understand, appreciate and experience this monument. Consequently, they advise that the proposals are not in line with Scottish Planning Policy, 2014 and raise issues of National Interest that warrant Historic Environment Scotland's objection. While Historic Environment Scotland would welcome further dialogue on mitigation, it does not appear that impacts would be reduced to an acceptable degree without significant reductions in turbine heights or the widespread deletion of turbines. Local Development Plan Policy is clear that developments that have an adverse impact on Scheduled Monuments and their settings should not be permitted unless there are exceptional circumstances. It is considered that the foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments. It is therefore considered that the proposal would not represent an exceptional case in this instance.

**Having due regard to the above it is concluded that based on the advice of Historic Environment Scotland this proposal will have an adverse impact on the Scheduled Monument, Dun Skeig, duns & fort and is therefore inconsistent with the provisions of SG LDP ENV 19 – Development Impact on Scheduled Ancient Monuments; SG LDP ENV 20 – Development Impact on Sites of Archaeological Importance; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; Policy LDP 6 – Supporting the Sustainable Growth of Renewables; and SG 2 Renewable Energy of the Argyll & Bute Local Development Plan; SPP (2014); the Onshore Wind Policy Statement and Historic Environment Policy for Scotland (April 2019) in this respect. Argyll & Bute Council therefore object to the proposal due to the adverse impact it would have on the Scheduled Monument, Dun Skeig, duns and fort. The Energy Consents Unit should note**



**that in the event that Historic Environment Scotland withdraw their objection, then Argyll & Bute Council would no longer object on these grounds.**

## **5. Aviation**

Argyll and Bute Council will assess development proposals with the aim of preventing unnecessary dangers aircraft. Policy requires that development is refused where it would constrain the present and future operations of existing airports and airfields. National Air Traffic Services Safeguarding (NATS) have advised the Energy Consents Unit that the proposal has been examined by technical and operational safeguarding teams. An unacceptable technical impact is anticipated, consequently, they object as an unacceptable impact from the proposal has been identified. Local Development Plan Policy is clear that developments that have an adverse impact on the Safeguarding of Airports should be refused. It is considered that, the foregoing technical considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments.

**Having due regard to the above it is concluded that due to the fact that National Air Traffic Services Safeguarding (NATS) have advised the Energy Consents Unit that they object to the proposal, it will have an adverse impact on aviation is therefore inconsistent with the provisions of SG 2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables and SG LDP TRAN 7 –Safeguarding of Airports of the Argyll & Bute Local Development Plan, SPP (2014) and the Onshore Wind Policy Statement in this respect. Argyll & Bute Council therefore object to the proposal due to the adverse impact it would have on Aviation. The Energy Consents Unit should please note that in the event that National Air Traffic Services (NATS) withdraw their objection, then Argyll & Bute Council would no longer object on these grounds.**

## **6 Forestry**

Argyll and Bute Council will assess development proposals with the aim of protecting conserving and where possible enhancing the built, human and natural environment. Argyll and Bute Council will resist development likely to have an adverse impact on trees by ensuring that adequate provision is made for the preservation and where appropriate the planting of new woodland/trees, including compensatory planting and management agreements. Scottish Forestry have advised the ECU that they object to the proposal on the grounds that insufficient information has been provided regarding 'Calculation of UK Forestry Standard percentages for the wind farm proposal area' have still to be addressed. In addition, they would also object unless conditions are applied to secure Compensatory Planting and a Long Term Forest Plan. Local Development Plan Policy is clear that adequate provision must be made in regard to woodland when considering development proposals. In this instance, insufficient information has been provided to demonstrate to Scottish Forestry that this is the case. It is considered that, the foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments.

**Having due regard to the above it is concluded that the proposal will have an adverse impact on the natural heritage and is therefore inconsistent with the provisions of SG LDP ENV 6 – Development Impact on Trees / Woodland; SG 2 Renewable Energy; LDP STRAT 1 – Sustainable Development; LDP DM1 – Development within the Development Management Zone; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan; SPP; Onshore wind policy statement,**

**Scottish Government (January 2017); The Scottish Government's Policy on 'Control of Woodland Removal' (Forestry Commission Scotland 2009); Argyll & Bute Council therefore object to the proposal on the grounds that insufficient information has been submitted to Scottish Forestry to demonstrate that adequate provision has been made in regard to woodland. The Energy Consents Unit should please note that in the event that Scottish Forestry withdraw their objection, subject to the provision of Scottish Forestry's condition to secure Compensatory Planting and a Long Term Forest Plan then Argyll & Bute Council would no longer object on these grounds.**

## **OTHER RECOMMENDATION**

### **Access Options**

Having considered the two access options, it is considered that the preference would be for the existing Cour access to be utilised rather than the creation of a new access. The reason for this is in the interests of visual amenity, based on the fact that there are already a number of wind farm accesses off the A83 and it is considered that these should be minimised wherever possible. This however, should not be at the expense of the residential amenity of the occupants of Glebe Cottage, the house located at the access to Cour wind farm. If the Energy Consents Unit agree with the view of the Council then it is recommended that appropriate conditions are applied in relation to the Construction Environment Management Plan to ensure that noise, vibration and delivery times are limited in accordance with the advice of the Council's Environment Protection Officer.

#### **Motion**

To agree to object to this proposal for the reasons outlined in the report of handling subject to including reference to the proposed development having an adverse landscape and visual impact on the villages of Clachan and Whitehouse, and that the Scottish Government be notified accordingly.

Moved by Councillor David Kinniburgh, seconded by Councillor Sandy Taylor

#### **Amendment**

To agree to continue consideration of this Section 36 consultation.

Moved by Councillor Rory Colville, seconded by Councillor Lorna Douglas

A vote was taken by calling the roll.

#### Motion

Councillor Robin Currie  
Councillor Mary-Jean Devon  
Councillor David Kinniburgh  
Councillor Jean Moffat  
Councillor Alastair Redman  
Councillor Sandy Taylor  
Councillor Richard Trail

#### Amendment

Councillor Gordon Blair  
Councillor Rory Colville  
Councillor Lorna Douglas  
Councillor George Freeman  
Councillor Roderick McCuish

The Motion was carried by 7 votes to 5 and the Committee resolved accordingly.





**Location Plan Relative to Planning Application: 19/02424/S36**



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ARGYLL AND BUTE COUNCIL

PLANNING PROTECTIVE SERVICES AND  
LICENSING COMMITTEE

Development and Economic Growth

20th January 2021

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**British Telecom's Public Payphone Rationalisation Consultation**

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**1. INTRODUCTION**

- 1.1. The purpose of this report is to inform members of the current consultation that is being undertaken in respect to BT's Public payphone rationalisation programme.
- 1.2. The 90 day consultation is currently ongoing regarding the proposed removal of 67 payphones across Argyll and Bute and is due to end on the 21<sup>st</sup> January 2021. The Council requested an extension to the consultation period due to the current pandemic and associated restrictions which has prevented many public meetings taking place (such as Community Council meetings). A list of the phone boxes which are being earmarked for disconnection is provided at **Appendix 1** and includes details on the average number of calls per month for each box.
- 1.3. To facilitate the consultation officers have attempted to contact the Chair of each Community Council affected by the consultation.

**2. RECOMMENDATION**

- 2.1 Members are requested to agree:-
  - That no objection is raised to the removal of the phone boxes that are outlined in **Appendix 1** where the Community Council has agreed that they are content for it to be removed; and
  - That the Council formally object to the removal of those phone boxes which have received public objections or have not had a response from a Community Council as outlined in **Appendix 1**.

**3. DETAIL**

- 3.1 This original consultation which was promoted by BT was due to finish at the end of 2020. However given the current COVID19 pandemic and the ongoing restrictions this has resulted in many Community Councils being unable to meet to discuss community matters.
- 3.2 The original document provided by BT had a number of inaccuracies which required to be addressed prior to it being put forward to communities for consultation. Officers liaised with BT and an updated version was provided and agreement was reached to extend the period of the consultation until January 2021.
- 3.3 Due to the delays and the public gathering restrictions it was decided that the best course

of action would be to for officers to make contact with relevant Community Councils by phone and discuss the proposals. This was well received by the people that could be contacted. Given that a number of Community Councils could not be contacted within the period of the consultation it is suggested that in order to allow comments to be received from these communities that the Council objects to any that have not received a response. This approach will mean that BT will include those phone boxes that have received objections in the next round of consultation processes.

- 3.4 Officers have also requested BT to consider the number of phone boxes in their future consultation documents highlighting the resource and officer time required in dealing with these consultations given the geography of our area.
- 3.5 As outlined in the consultation document the reason for the proposed removal is due to the fact that overall use of payphones has declined by over 90 per cent in the last decade and the need to provide payphones for use in emergency situations is diminishing all the time, with at least 98 per cent of the UK having either 3G or 4G coverage. This is important because as long as there is network coverage, it's now possible to call the emergency services, even when there is no credit or no coverage from your own mobile provider.
- 3.6 In addition to this, BT have also asked the Council to consider the recent Ofcom affordability report which found that most consumers do not view payphones as essential for most consumers in most circumstances.
- 3.7 On the 14<sup>th</sup> March 2006 the Office of Communications (Ofcom) published a statement following their 2005 review of universal service in the Telecommunications market, which includes a requirement for payphone provision to meet reasonable needs. Part of that statement amended the Councils obligations with regard to the removal of payphone service.
- 3.8 As stated in Ofcom's 2005 review, it is the responsibility of the local authority to initiate its own consultation process to canvas the views of the local community. They would normally expect these consultations to involve other public organisations such as the Parish or Community Councils and work within the terms of the Communications Act 2003. This means that you must be able to objectively justify your decisions.
- 3.9 The consultation process is relatively simple, they are asking local communities is the wish to agree/object to the removal of the box or if the wish is to adopt the telephone box for an alternative use. If they wish to adopt the telephone box they need pay £1 and provide contact email address.
- 3.10 There have been a number of communities across the area that have already been through the adoption process and have used these to hold defibrillators, small libraries cake shops or general public information hubs.

## **4. CONCLUSION**

- 4.1 A number of local communities across Argyll and Bute have already responded with some objecting to the proposed removal of the local public telephone, some agreeing and some wishing to adopt.
- 4.2 As the consultation is due to end shortly it is recommended that the PPSL Committee allows the consultation to progress as outlined and any phone box that has received a

response from a Community Council representative be put forward to BT in line with the response received.

## **5. IMPLICATIONS**

5.1 Policy – In line with Argyll and Bute Outcome Improvement Plan – Our infrastructure is safe and fit for the future.

5.2 Financial – N/A

5.3 Legal – As per Ofcom 2005 Review and Communications Act 2003

5.4 HR – N/A

5.5 Fairer Scotland Duty

5.5.1 Equalities – Community consultation carried out and views directly fed back to the council via this report.

5.5.2 Socio-economic Duty – Community consultation carried out and views directly fed back to the council via this report.

5.5.3 Island – The council has taken into account the needs of islands communities when considering its stance on how it responds to this consultation.

5.6 Risk- N/A

5.7 Customer Service- N/A

**Executive Director with responsibility for Development and Economic Growth – Kirsty Flanagan**

**Policy Lead: Councillor David Kinniburgh**

20th January 2021

**For further information contact:**

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w: [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

**Appendix 1**

<b>Address</b>	<b>Postcode</b>	<b>Average calls per month</b>	<b>Posting Date</b>	<b>Consultation Response</b>
S.P.O. PCO1 BRIDGE OF ORCHY	PA36 4AD	0	27/07/2020	Agree
PCO PCO1 GLENVIEW DALMALLY	PA33 1BE	1	27/07/2020	Agree
PCO PCO1 ACHLONAN TAYNUILT	PA35 1JJ	0	27/07/2020	Agree
DALAVICH VILLAGE PCO1 LOCHAVICH TAYNUILT	PA35 1HJ	1	27/07/2020	Object
O/S HOTEL PCO1 FORD LOCHGILPHEAD	PA31 8RH	0	27/07/2020	Object
PCO PCO1 TAYVALLICH LOCHGILPHEAD	PA31 8PL	1	28/07/2020	Object
BELLANOCH S.P.O. PCO1 BELLANOCH LOCHGILPHEAD	PA31 8SN	0	28/07/2020	Object
				Object
PCO PCO1 KILMICHAEL GLASSARY LOCHGILPHEAD	PA31 8QA	0	28/07/2020	Object



Address	Postcode	Average calls per month	Posting Date	Consultation Response
PCO PCO1 EDEN DRIVE ROTHESAY ISLE OF BUTE	PA20 9HU	0	28/07/2020	Agree
PCO PCO1 ROBERTSON DRIVE ROTHESAY ISLE OF BUTE	PA20 0EJ	0	28/07/2020	Agree
PCO ENTERKIN KINGARTH ISLE OF BUTE	PA20 9LU	0	28/07/2020	Adopt
PCO PCO1 PORT ANN LOCHGILPHEAD	PA31 8SE	0	28/07/2020	Agree
PCO PCO1 KILMORY LOCHGILPHEAD	PA31 8RR	1	28/07/2020	Agree
NEAR TOILETS PCO1 LOCHNELL STREET LOCHGILPHEAD	PA31 8JN	8	28/07/2020	Agree
NEAR TOILETS PCO1 LOCHNELL STREET LOCHGILPHEAD	PA31 8JN	3	28/07/2020	Agree
PCO PCO1 CHALMERS STREET ARDRISHAIG LOCHGILPHEAD	PA30 8DX	2	28/07/2020	Adopt
O/S CHURCH PCO1 CHALMERS STREET ARDRISHAIG HEAD	PA30 8EY	0	28/07/2020	Agree
PCO PCO1 ACHAHOISH LOCHGILPHEAD	PA31 8PD	0	28/07/2020	Object
CAMUS PCO1 ORMSARY ROAD LOCHGILPHEAD	PA31 8NZ	0	28/07/2020	Object
PCO PCO1 TORINTURK TARBERT	PA29 6YE	0	28/07/2020	Object
PCO PCO1 BRUCEHILL TARBERT	PA29 6TG	1	28/07/2020	Object

Address	Postcode	Average calls per month	Posting Date	Consultation Response
PCO PCO1 HARBOUR STREET TARBERT	PA29 6UD	1	28/07/2020	Object
PCO PCO1 BARMORE ROAD TARBERT	PA29 6TW	0	28/07/2020	Object
ADJACENT BUS SHELTER PCO1 CAMPBELTOWN ROAD TARBERT	PA29 6TY	1	29/07/2020	Object
CLAONAIG FERRY TERMINAL PCO1 SKIPNESS TARBERT	PA29 6YG	0	29/07/2020	Object
PCO PCO1 SKIPNESS TARBERT	PA29 6XT	0	29/07/2020	Object
OPP. THE MANSE PCO1 CARRADALE CAMPBELTOWN	PA28 6QG	0	29/07/2020	Object
PCO PCO1 TORMHOR CARRADALE EAST CAMPBELTOWN	PA28 6SD	0	29/07/2020	Object
SITUATED IN TORRISDALE PCO1 TORRISDALE CAMPBELTOWN	PA28 6QT	0	29/07/2020	Object
PCO PCO1 MILLERS PARK SADDELL CAMPBELTOWN	PA28 6RA	4	29/07/2020	Object
PCO PCO1 PENINVER CAMPBELTOWN	PA28 6QP	0	29/07/2020	Object
PCO PCO1 SOUTHEND CAMPBELTOWN	PA28 6RP	0	29/07/2020	Object

Address	Postcode	Average calls per month	Posting Date	Consultation Response
PCO PCO1 RALSTON ROAD CAMPBELTOWN	PA28 6LG	1	29/07/2020	Object
PCO PCO1 STEWARTON CAMPBELTOWN	PA28 6PG	0	29/07/2020	Object
ADJ TO SOUTHEND A.T.E. PCO1 SOUTHEND CAMPBELTOWN	PA28 6RW	0	29/07/2020	Object
PCO PCO1 LAOIGAN PLACE KEILLS ISLE OF ISLAY	PA46 7RQ	0	30/07/2020	Object
PCO PCO1 GARTNESS COTTAGES BALLYGRANT ISLE OF ISLAY	PA45 7QN	0	30/07/2020	Object
PCO PCO1 A846 ISLE OF ISLAY	PA44 7PB	0	30/07/2020	Object
BRIDGEND PCO1 THE OA ISLE OF ISLAY	PA42 7AX	0	30/07/2020	Adopt
NEW TERMINAL/FEOLIN FERRY PCO2 CRAIGHOUSE ISLE OF	PA60 7XX	0	30/07/2020	Object
ARDFIN PCO1 CRAIGHOUSE ISLE OF JURA	PA60 7XX	0	30/07/2020	Object
PCO PCO1 MACHRIHANISH CAMPBELTOWN	PA28 6PZ	0	30/07/2020	Object
KNOCKNAHA PCO1 CAMPBELTOWN	PA28 6PH	0	30/07/2020	Object
PCO PCO1 DRUMLEMBLE CAMPBELTOWN	PA28 6PW	0	30/07/2020	Object
MAFEKING PLACE PCO1 BURNBANK STREET CAMPBELTOWN	PA28 6JD	7	30/07/2020	Object

Address	Postcode	Average calls per month	Posting Date	Consultation Response
PCO SUB POST OFFICE MILLKNOWE CAMPBELTOWN	PA28 6NJ	0	30/07/2020	Object
TANGY MILL PCO1 KILKENZIE CAMPBELTOWN	PA28 6QD	0	30/07/2020	Object
PCO PCO MUASDALE TARBERT	PA29 6XD	0	30/07/2020	Object
BELLOCHANTUY PCO1 GLENBARR TARBERT	PA29 6UT	0	30/07/2020	Object
PCO PCO1 GLENBARR TARBERT	PA29 6UT	0	30/07/2020	Object
PCO PCO / TAYINLOAN VILLAGE TAYINLOAN TARBERT	PA29 6XG	0	30/07/2020	Object
PCO PCO1 TAYINLOAN TARBERT	PA29 6XG	0	30/07/2020	Object
O/S LAGAVULLIN HOUSE PCO1 WHITEHOUSE TARBERT	PA29 6XR	1	30/07/2020	Object
PCO PCO1 KILCHRENAN TAYNUILT	PA35 1HD	0	30/07/2020	Object
PCO PCO STRATHLACHLAN CAIRNDOW	PA27 8DB	1	30/07/2020	Object
GLENBRANTER/STRACHUR PCO1 STRACHUR CAIRNDOW	PA27 8DJ	0	30/07/2020	Object
JCN ARDENSLATE CRES PCO1 ELIZABETH AVENUE KIRN	PA23 8JD	1	30/07/2020	Object

Address	Postcode	Average calls per month	Posting Date	Consultation Response
PCO1 ROBERTSON TERRACE SANDBANK DUNOON	PA23 8PT	0	30/07/2020	Object
PCO PCO1 SANDHAVEN SANDBANK DUNOON	PA23 8QW	0	30/07/2020	Object
PCO PCO1 COLLINS ROAD HELENSBURGH	G84 7UA	0	30/07/2020	Object
O/S NAVAL PROVOST HQ PCO1 CHURCHILL SQUARE RGH	G84 9HL	0	10/08/2020	Object
PCO ARDEN ROUNDABOUT ARDEN ALEXANDRIA	G83 8RD	5	10/08/2020	Object
FRONT OF STONE SHED UP FROM MIDDLE PIER ISLE OF COLL	PA78 6TB	0	11/08/2020	Object
PIER HEAD PCO1 CRAIGNURE ISLE OF MULL	PA65 6AY	0	12/08/2020	Object
PCO PCO1 LOCHBUIE ISLE OF MULL	PA62 6AA	4	12/08/2020	Object
PCO1 ULVA FERRY ISLE OF MULL	PA73 6LT	0	12/08/2020	Object
PCO PCO1 BUNESSAN ISLE OF MULL	PA67 6DS	0	12/08/2020	Object

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**ARGYLL AND BUTE COUNCIL****PPSL****Development and Economic Growth****20 January 2021**

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**Planning Performance Framework 2019/20**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 This report contains recent feedback from the Scottish Government in relation to our Planning Performance Framework (PPF). **Appendix A.**
- 1.2 Our PPF is the principal performance measure for Planning Services (*Development Management and Development Policy – within Planning and Regulatory Services*) and is submitted to the Scottish Government annually for scrutiny and scoring. The Council's 2019/20 PPF was submitted in July 2020 and was independently reviewed by the Scottish Government. A copy of the submitted document was submitted to the PPSL for noting at their meeting of 19<sup>th</sup> August 2020.
- 1.3 Overall the feedback report is considered to be a highly positive response registering ten 'green', three 'amber' and no 'red' outcomes across the thirteen performance indicators assessed.
- 1.4 The positive feedback response supports our 'open for business' ethos and is warmly welcomed in the current economic climate. Whilst the Scottish Government have not identified any improvement actions for ABC this year, the service must not be complacent with the focus being year on year continuous improvement. The PPF for 2020/21 is due to be submitted in July 2021.
- 1.5 It is recommended that the Committee:-
  - (a) Agree the content of the report and publicise (*press, Twitter, Facebook and website release*) the positive feedback from the Scottish Government.

**Planning Performance Framework 2019/20**

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**2.0 INTRODUCTION**

2.1 This report contains recent feedback from the Scottish Government in relation to our Planning Performance Framework (PPF). **Appendix A.** The Executive Summary (above) provides further background information.

**3.0 RECOMMENDATIONS**

3.1 It is recommended that the Committee:-

- (a) Agree the content of report and publicise (*press, Twitter, Facebook and website release*) the positive feedback from the Scottish Government.

**4.0 DETAIL**

**What is the Planning Performance Framework?**

4.1 This was Planning Services 9<sup>th</sup> Annual Planning Performance Framework (PPF) and is our 'balance scorecard' of performance which all Local Authorities must submit to the Scottish Government for review and scrutiny.

4.2 The PPF aims to be a holistic and easy read document that encapsulates statistical performance indicators as well as more qualitative information and case studies of good practice for the previous financial year. The basic structure of the document is stipulated by the Scottish Government but the character, tone, style and content is all shaped by the individual Authority. The Scottish Government has suggested that Authorities use the PPF as more than a means of simply reporting performance but utilise the document as an opportunity to promote their service and local area, to incorporate customer feedback and to provide updated narrative on case study items from previous years. The PPF seeks to focus on the Council being 'open for business' and the positive economic contribution that Planning Services have made within Argyll and Bute. The PPF presents case studies and examples of good practice which demonstrates the ability of the Service to facilitate the delivery of high quality development on the ground, to provide certainty to developers and investors, to consult and engage with customers effectively and to ensure that appropriate management and service delivery structures are in place to work efficiently.



## Review and Feedback

- 4.3 The review of the PPF was carried out by the Scottish Government and considered by the Minister for Local Government and Housing – Kevin Stewart MSP.
- 4.4 Within our PPF We managed to showcase a variety of good quality projects and initiatives that demonstrate our ‘open for business’ and service improvement ethos.
- 4.5 The covering letter and feedback from Kevin Stewart MSP is contained in full at **Appendix A**, however some pertinent points are highlighted below:-

- **PM 1 Decision Making (Green):** This marker was previously identified as Green in 2018/19. Performance in the determination of planning applications has not been significantly affected by the Coronavirus pandemic during the reporting period; however the effects of lockdown and service disruption will be evident in performance reported for 2020/21. During the 2019/20 reporting period performance improved from the previous reporting period on two of the three performance markers with Local and Householder developments being processed on average faster than the National average. Performance on the determination of Major applications was decreased from the previous reporting period but was only 0.4 weeks longer than the National average.
- **PM 4 Legal Agreements (Green):** This marker was previously identified as Green in 2018/19. The feedback commentary notes that the time period for handling applications subject to legal agreements was faster than the previous reporting period and faster than the National average.
- **PM 6 Continuous Improvement (Amber):** This marker was previously identified as Amber in the previous two reporting periods. The Planning Service received positive feedback for the wide range of service improvements delivered during 2019/20, these are detailed in Part 3 of the PPF and include Customer Service Excellence status, completion of 2 Conservation Area Appraisals, and update of the Enforcement Charter. The feedback acknowledges that a number of service improvements have been put on hold as a result of Covid-19 and Scottish Government review of Permitted Development Rights. It was also noted that the preparation of LDP2 progressed to plan during the reporting period. The performance marker was however graded as an ‘Amber’ on the basis that the number of legacy cases (as detailed in PM 14 below) was not improved from the last reporting period, that determination of Major Applications slipped behind the National Average, and that the next LDP will not be delivered within the required 5 year timescale.
- **PM 8 Development Plan Scheme (Amber):** This marker was previously identified as Amber in 2018/19. Whilst confirmation that the LDP will not be replaced within the 5 year cycle flags as Red, this is balanced against the fact that the Council had recognised that the project was behind time within an updated Development Plan Scheme and amended the project plan for delivery accordingly.
- **PM 14 Stalled Sites / Legacy Cases (Amber):** This marker was previously identified as Amber in 2018/19. The feedback commentary identifies that whilst 13 legacy cases were cleared during the reporting period 13 new cases reached legacy status during the same time period with a total of 34 undetermined applications as of 31<sup>st</sup> March 2020.

### **Focus on Performance / Resources / Impact of Covid-19**

- 4.6 The cover letter from the Minister for Local Government and Housing, Kevin Stewart MSP has taken the opportunity to thank the Council and its staff “for enabling planning services to continue to operate during the Covid-19 pandemic”, and acknowledges the role of Planning in Scotland’s green recovery.
- 4.7 It is highlighted that the 2019-20 PPF reporting period has seen progress made Nationally by Scotland’s planning authorities with an overall increase in the number of green ratings and reduction in red ratings awarded this year.
- 4.8 The Minister also reaffirms that the Scottish Government remain committed to ensuring that planning authorities are properly resourced and confirms that the stalled workstream looking at Planning Performance and Fees will be recommenced at an appropriate time.
- 4.9 Finally, it is recognised that the impact of Covid-19 upon service delivery and performance will be more evident in the next PPF reporting period and commitment has been provided that authorities will not be unfairly criticised for circumstances outwith their control; and that it is expected that PPF 10 will “provide an opportunity to recognise the vital actions taken by planning authorities to maintain the planning system and its contribution to recovery”.

### **5.0 CONCLUSION**

- 5.1 The 2019/20 PPF demonstrates strong performance against National statistics and agreed PPF Performance Markers and showcases a number of our high quality projects and outcomes.
- 5.2 Feedback from the Scottish Government has been highly positive and has confirmed that the Planning Service has an ‘open for business’ approach to delivering sustainable economic growth throughout Argyll and Bute.

### **6.0 IMPLICATIONS**

- 6.1 **Policy:** None
- 6.2 **Financial:** None
- 6.3 **Legal:** None
- 6.4 **HR :** None
- 6.5 **Fairer Scotland Duty:**

6.5.1 **Equalities Protected Characteristics:** None

6.5.2 **Socio-Economic Duty:** None

6.5.3 **Islands:** None

6.6 **Risk:** Reputational of being identified as a poor performing authority if next year's PPF performance is substandard.

6.7 **Customer Service:** The PPF report provides Customers with an overview of the statistical and qualitative performance of the Council as the planning authority in a format that can be benchmarked with other authorities.

**Executive Director with responsibility for Development and Economic Growth:**

**Kirsty Flanagan**

**Policy Lead: David Kinniburgh**

23<sup>rd</sup> December 2020

**For further information contact:** Peter Bain – 01546 604204

## **APPENDICES**

Appendix A – Planning Performance Framework 2019/20 Feedback

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Minister for Local Government and Housing  
Kevin Stewart MSP



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: 0300 244 4000  
E: scottish.ministers@gov.scot

Pippa Milne  
Chief Executive  
Argyll and Bute Council

17 December 2020

Dear Pippa,

### **PLANNING PERFORMANCE FRAMEWORK FEEDBACK 2019-20**

I am pleased to enclose feedback on your authority's ninth Planning Performance Framework (PPF) Report, for the period April 2019 to March 2020.

Firstly, I would like to take this opportunity to thank you and your staff for enabling planning services to continue to operate during the Covid-19 pandemic. This has been a difficult year for so many, and our planning system has a vital role to play in Scotland's green recovery. The impact which the pandemic has had, has demonstrated how valuable planning is from ensuring that businesses can operate flexibly to the contribution that it can make to the Places that are so important for our communities in terms of having access to the services they need, to greenspace and other areas where families can walk, wheel and cycle safely.

Turning to the 2019-20 PPF reporting year, I believe that good progress continues to be made by Scotland's planning authorities. Overall, there has been an increase in the number of green ratings awarded this year, with a subsequent reduction in red ratings, however, there remains some variation across some authorities and markers. I have been particularly pleased to see improvements in the speed of determination of major planning applications in some authorities.

When I wrote about performance reporting last year, I indicated that a consultation on Planning Performance and Fees was underway, including preparations for the new performance arrangements being introduced through the Planning (Scotland) Act 2019; with our intention at that time being that the proposed changes would be implemented in Summer 2020. However, the Covid-19 pandemic has required a rethink about the timing and a wider reprioritisation of our work programme.

I would like to reassure you that, while we have paused the changes to the fees and performance legislation, I am committed to ensuring that planning authorities are properly resourced and that planning fee levels are proportionate. We will pick this up again when the timing is more appropriate.

Finally, although the Covid-19 pandemic will have impacted on the tail end of the 2019-20 reporting year, I appreciate the impacts on service delivery will show through more in the 2020-21 reporting year. The Planning statistics for the first 6 months of the reporting year are due to be published in January, which will provide the first indications of how the pandemic has affected the ability of authorities to determine applications. I would like to reassure you that I will consider, in liaison with the High Level Group on Planning Performance, how next year's reports will be assessed, so that authorities are not unfairly criticised due to circumstances outwith their control. It could also provide an opportunity to recognise the vital actions taken by planning authorities to maintain the planning system and its contribution to recovery.

If you would like to discuss any of the markings awarded below, please email [chief.planner@gov.scot](mailto:chief.planner@gov.scot) and a member of the team will be happy to discuss these with you.

Yours sincerely



**KEVIN STEWART**

**CC: Fergus Murray**

## PERFORMANCE MARKERS REPORT 2019-20

Name of planning authority: **Argyll & Bute Council**

The High Level Group on Performance agreed a set of performance markers. We have assessed your report against those markers to give an indication of priority areas for improvement action. The high level group will monitor and evaluate how the key markers have been reported and the value which they have added.

The Red, Amber, Green ratings are based on the evidence provided within the PPF reports. Where no information or insufficient evidence has been provided, a 'red' marking has been allocated.

No.	Performance Marker	RAG rating	Comments
1	<b>Decision-making:</b> continuous reduction of average timescales for all development categories [Q1 - Q4]	Green	<p><b>Major Applications</b> Your timescales of 33.9 weeks are slower than the previous year and are slower than the Scottish average of 33.5 weeks. <b>RAG = Red</b></p> <p><b>Local (Non-Householder) Applications</b> Your timescales of 10.2 weeks are faster than the previous year are are faster than the Scottish average of 10.9 weeks. <b>RAG = Green</b></p> <p><b>Householder Applications</b> Your timescales of 7.2 weeks are slower than the previous year but are faster than the Scottish average of 7.3 weeks and the Statutory timescale. <b>RAG = Green</b></p> <p><b>Overall RAG = Green</b></p>
2	<p><b>Processing agreements:</b></p> <ul style="list-style-type: none"> <li>offer to all prospective applicants for major development planning applications; and</li> <li>availability publicised on website</li> </ul>	Green	<p>You encourage processing agreements to applicants for all major and significant local developments through pre-application discussions. <b>RAG = Green</b></p> <p>Processing agreement information is available through your website. <b>RAG = Green</b></p> <p><b>Overall RAG = Green</b></p>
3	<p><b>Early collaboration</b> with applicants and consultees</p> <ul style="list-style-type: none"> <li>availability and promotion of pre-application discussions for all prospective applications; and</li> <li>clear and proportionate requests for supporting information</li> </ul>	Green	<p>You provide a pre-application advice service which is promoted through the website, user forums and by staff engaging with prospective applicants. <b>RAG = Green</b></p> <p>You have a proportionate and clear process for requesting supporting information including engaging with consultees and other council services to identify issues/constraints prior to the application being submitted. <b>RAG = Green</b></p> <p><b>Overall RAG = Green</b></p>
4	<b>Legal agreements:</b> conclude (or reconsider) applications after resolving to grant permission	Green	Applications subject to a legal agreement during the reporting year were determined faster than last year and faster than the Scottish average. You state that applications which are

	reducing number of live applications more than 6 months after resolution to grant (from last reporting period)		subject to a legal agreement are regularly reviewed to ensure progress and completion within 6 months.
5	<b>Enforcement charter</b> updated / re-published within last 2 years	Green	Your enforcement charter was revised in March 2020.
6	<b>Continuous improvement:</b> <ul style="list-style-type: none"> <li>• progress/improvement in relation to PPF National Headline Indicators; and</li> <li>• progress ambitious and relevant service improvement commitments identified through PPF report</li> </ul>	Amber	<p>Your LDP is up-to-date and clear timescales exist for adopting the next LDP however, this will be not be within the required 5 year timescale. Your decision making timescales for major developments is slower than last year and the Scottish Average however Non-householder and Householder are faster than last year or the statutory timescale. Your enforcement charter is up-to-date. However, the number of legacy cases you have has remained the same as last year even though you have managed to clear 13.</p> <p><b>RAG = Amber</b></p> <p>You have completed 3 out of 9 of your improvement commitments with the remaining to be continued over the next reporting year. It is noted that some of your improvement commitments were put on hold due to Covid-19 or awaiting the outcome of SG review of PD. You have identified a good range of improvement commitments for the coming year.</p> <p><b>RAG = Green</b></p> <p><b>Overall RAG = Amber</b></p>
7	<b>Local development plan</b> less than 5 years since adoption	Green	Your development plan was 5 years old at the time of reporting.
8	<b>Development plan scheme</b> – next LDP: <ul style="list-style-type: none"> <li>• on course for adoption within 5 years of current plan(s) adoption; and</li> <li>• project planned and expected to be delivered to planned timescale</li> </ul>	Amber	<p>Your LDP will not be replaced within the 5 year cycle.</p> <p><b>RAG = Red</b></p> <p>LDP2 is project planned with management and reporting processes in place to ensure adoption in 2021.</p> <p><b>RAG = Green</b></p> <p><b>Overall RAG = Amber</b></p>
9	<b>Elected members engaged early</b> (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i>	N/A	Although you have provided information in your PPF this section only refers to the pre-MIR stage.
10	<b>Cross sector stakeholders* engaged early</b> (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year *including industry, agencies and Scottish Government</i>	N/A	
11	<b>Regular and proportionate policy advice</b> produced on information required to support applications.	Green	You have a “make a planning application” section on your website which contains information for applicants to consider before making an application. As noted last year you have adopted the national validation standards published by HOPS in 2017. Guidance is reviewed and updated regularly.
12	<b>Corporate working across services</b> to improve outputs and services for customer benefit (for example: protocols; joined-up	Green	You engage with other council services during pre-application discussions. A number of your case studies demonstrate you approach to corporate working such as the Dunbeg Masterplan and regeneration of Campbeltown.



	services; single contact arrangements; joint pre-application advice)		
13	<b>Sharing good practice, skills and knowledge</b> between authorities	Green	You continue to explore the delivery of shared services for example the council's Conservation and Design Officer providing advice to LLTNP. You also visited D&G and Glasgow to learn from their experience in the development and roll out of IDOX Enterprise workflow systems. You also continue to participate and contribute to HOPS and other forums.
14	<b>Stalled sites / legacy cases:</b> conclusion or withdrawal of old planning applications and reducing number of live applications more than one year old	Amber	You have cleared 13 cases during the reporting year, with 34 cases still awaiting conclusion. This is the same number which remained at the end of last year.
15	<b>Developer contributions:</b> clear and proportionate expectations <ul style="list-style-type: none"> <li>• set out in development plan (and/or emerging plan); and</li> <li>• in pre-application discussions</li> </ul>	Green	Your LDP, supported by supplementary guidance, sets out expectations for developer contributions and sets out how contributions are proportionate to the scale, nature and impact of the proposed development. <b>RAG = Green</b>  Expectations for developer contributions are established in pre-application discussions. <b>RAG = Green</b>  <b>Overall RAG = Green</b>

**ARGYLL AND BUTE COUNCIL**  
**Performance against Key Markers**

Marker		12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
1	Decision making timescales								
2	Processing agreements								
3	Early collaboration								
4	Legal agreements								
5	Enforcement charter								
6	Continuous improvement								
7	Local development plan								
8	Development plan scheme								
9	Elected members engaged early (pre-MIR)	N/A	N/A	N/A	N/A			N/A	N/A
10	Stakeholders engaged early (pre-MIR)	N/A	N/A	N/A	N/A			N/A	N/A
11	Regular and proportionate advice to support applications								
12	Corporate working across services								
13	Sharing good practice, skills and knowledge								
14	Stalled sites/legacy cases								
15	Developer contributions								

**Overall Markings (total numbers for red, amber and green)**

	Red	Amber	Green
<b>2012-13</b>	0	4	9
<b>2013-14</b>	0	5	8
<b>2014-15</b>	0	2	11
<b>2015-16</b>	0	3	10
<b>2016-17</b>	1	3	11
<b>2017-18</b>	1	3	11
<b>2018-19</b>	0	3	10
<b>2019-20</b>	0	3	10

**Decision Making Timescales (weeks)**

	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	2019-20 Scottish Average
Major Development	88.2	59.1	14.1	23.3	22.1	37.9	28.3	33.9	33.5
Local (Non-Householder) Development	14.0	13.1	10.8	10.3	12.4	12.6	10.8	10.2	10.9
Householder Development	8.9	7.2	6.9	7.0	7.5	7.9	7.1	7.2	7.3

**Argyll and Bute Council  
Development and Economic Growth**

**PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE – 20<sup>th</sup> January 2021**

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**UPDATE ON CALL IN DECISION – 17/01205/PP - SITE WEST OF TAIGH SOLAIS, LEDAIG, TOBERMORY**

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**A) INTRODUCTION**

This report summarises a decision by Scottish Ministers following the above noted planning application being called in for determination.

**B) RECOMMENDATION**

It is recommended that Members note the contents of this report.

**C) BACKGROUND**

This report refers to planning application reference 17/01205/PP for the erection of retail unit, visitor centre and self-catering accommodation at site West of Taigh Solais, Ledaig, Tobermory, including realignment of escape stairs to Taigh Solais and MacGochans.

This application was the subject of a discretionary local hearing, held on Wednesday 29<sup>th</sup> January 2020 at Aros Hall, Main Street, Tobermory, Isle of Mull.

At the hearing, Members were appraised that the proposed development had been the subject of sustained objection by SEPA and that the development, therefore, was contrary to both local and national flood risk policy. Members were advised that the recommendation by officers was that planning permission be refused and that any move to grant planning permission contrary to that recommendation would require the application, as 'Category 2 development', to be notified to Ministers for their determination of whether or not they would exercise their veto and 'call-in' the application for their consideration and final decision.

The unanimous resolution by Members attending that hearing was that Members considered that the proposed development represents a clear and overriding locational and operational need for the development sufficient to warrant departure from national and local flood risk policy. That there is an exceptional case for the approval of this development. The reasons for that are –

1. It is an existing gap site that is visually harmful and harmful to the character and appearance of the conservation area.
2. It is the only remaining development opportunity within the Harbour front and without development here, the harbour front remains incomplete and as such is a unique opportunity to complete the harbour front development.
3. The development includes an opportunity to include permanent tourist information provision, currently lacking in Tobermory and development is vital to secure the tourism growth strategy of the Council.

And further that the considerations that have been brought forward by those who support the application are material considerations which, in the view of those Members attending the hearing, carry considerable weight in their nature and are in accordance with the various material policy considerations in the LDP with which the application is compliant so that they should outweigh the weight that has been given to the concerns that have been raised by planning services and by SEPA with regard to flood risk.

The decision taken at the hearing was, therefore, that planning permission be granted and that this intent be notified to Ministers in accordance with relevant legislation.

#### **D) SCOTTISH MINISTERS' DECISION**

The Scottish Government was notified of the Council's intention to grant planning permission for this development contrary to the advice of SEPA under the Town And Country Planning (Notification Of Applications) (Scotland) Direction 2009 on the 28<sup>th</sup> January 2020.

On the 5<sup>th</sup> May 2020, the Scottish Government, under the powers conferred on them by Section 46(1) of the Town and Country Planning (Scotland) Act 1997, issued to the Council a Direction requiring the application to be referred to them for determination. A report advising Members of this direction was submitted to the PPSL committee in May 2020.

This report provides an update on Scottish Ministers' decision dated 4<sup>th</sup> December 2020.

Consideration of this proposal was undertaken by a Scottish Government Reporter who then submitted a report containing the conclusions and recommendations to Scottish Ministers. Scottish Ministers accepted these conclusions and decided that planning permission should be granted subject to conditions. The reason for this decision was summarised in the Scottish Ministers' letter as follows:

"Ministers agree with the Reporter that the proposed development would accord with a number of policies in the development plan and would further the delivery of the policy ambitions relating to tourism development areas and the Tobermory town centre and bay area for action. Due to the site's location at medium to high risk of coastal flooding, the proposed development would be contrary to a number of policies in the development plan. Public safety is very unlikely to be compromised by the development, however. Having regard to the significant benefits of the proposal, the development is considered to represent a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. In these specific circumstances, it is considered that a departure from the development plan's provisions, and national policy, in regard to flood avoidance, is justified. Ministers also agree with the Reporter that the proposed development would enhance the character and appearance of Tobermory Conservation Area."

The decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter.

A copy of the letter from Scottish Ministers along with the DPEA Reporter's report is appended to this report.

**E) IMPLICATIONS**

Policy: None

Financial: None.

Personnel: None

Equal Opportunities: None

**Authors and Contact Officers:** Sandra Davies

**Fergus Murray**

**Head of Development & Economic Growth**

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Directorate for Local Government and  
Communities  
Planning and Architecture Division :  
Planning Decisions



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: [REDACTED]  
E: [REDACTED]

Geddes Consulting  
[REDACTED]

Our ref: NA-ABC-025  
4 December 2020

Dear [REDACTED]

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS)  
(SCOTLAND) DIRECTION 2009  
ERECTION OF RETAIL UNIT, VISITOR CENTRE AND SELF CATERING  
ACCOMMODATION AT SITE WEST OF TAIGH SOLAIS, LEDAIG, TOBERMORY  
INCLUDING REALIGNMENT OF ESCAPE STAIRS TO TAIGH SOLAIS AND  
MACGOCHANS**

1. This letter contains Scottish Ministers' decision on the above application submitted to Argyll and Bute Council by Beaton + McMurchy Architects Ltd. on behalf of Argyll Properties Ltd. The application was called in for Scottish Ministers' determination on 5 May 2020.
2. The application was considered by means of written submissions and an unaccompanied site inspection which took place on 22 July 2020, by [REDACTED] a Reporter appointed for that purpose. A copy of the Reporter's report ("the report") is enclosed.

**Consideration by the Reporter**

3. The Reporter's conclusions and recommendations are set out in Chapter 3 of the reporter's report. The Reporter recommended that planning permission be granted subject to conditions.



## Scottish Ministers' Decision

4. Scottish Ministers have carefully considered the report. They agree with the Reporter's overall conclusions and recommendation that planning permission should be granted subject to conditions, and adopt his reasoning for the purpose of their own decision, which is summarised below.

5. Ministers agree with the Reporter that the proposed development would accord with a number of policies in the development plan and would further the delivery of the policy ambitions relating to tourism development areas and the Tobermory town centre and bay area for action. Due to the site's location at medium to high risk of coastal flooding, the proposed development would be contrary to a number of policies in the development plan. Public safety is very unlikely to be compromised by the development, however. Having regard to the significant benefits of the proposal, the development is considered to represent a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. In these specific circumstances, it is considered that a departure from the development plan's provisions, and national policy, in regard to flood avoidance, is justified. Ministers also agree with the Reporter that the proposed development would enhance the character and appearance of Tobermory Conservation Area.

6. Accordingly, for the reasons set out in the Reporter's report and as summarised above, Scottish Ministers hereby grant planning permission, subject to the conditions appended at the bottom of this letter, for erection of retail unit, visitor centre and self catering accommodation at site West of Taigh Solais, Ledaig, Tobermory including realignment of escape stairs to Taigh Solais and MacGochans.

7. This decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

8. A copy of this letter and the report has been sent to Argyll and Bute Council and SEPA. Those parties who lodged representations will be advised of the decision.

Yours faithfully

[Redacted signature]



## APPENDIX – SCHEDULE OF CONDITIONS

### General

1. The proposed development shall be carried out in accordance with the details specified in the application form dated 2nd May 2017 and the approved drawings numbered 1 of 4 to 4 of 4; these being:

Drawing No. 1667 04 rev. e – ‘Ground Floor Plan (Draft)’

Drawing No. 1667 06 rev. a – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 05 rev. b – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 06 – ‘Elevations – refuge area’

*Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.*

Standard Note: In terms of condition 1 above, the Council can approve minor variations to the approved plans in terms of Section 64 of the Town and Country Planning (Scotland) Act 1997 although no variations should be undertaken without obtaining the prior written approval of the Planning Authority. If you wish to seek any minor variation of the application, an application for a non-material amendment (NMA) should be made in writing which should list all the proposed changes, enclosing a copy of a plan(s) detailing these changes together with a copy of the original approved plans. Any amendments deemed by the Council to be material, would require the submission of a further application for planning permission.

### Design and materials

2. Notwithstanding the effect of Condition 1, no development shall commence until written details of the type and colour of external materials to be used in the construction of the building and the flooding refuge area, including render details, cladding and roofing details, window and door details, guttering details, external stair, balustrading and hand rail details, have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to integrate the development into its surroundings and having appropriate regard to the location of the development within a conservation area.*

3. Notwithstanding the effect of Condition 1, no development shall commence until detailed sections and a written specification showing the existing and the proposed levels of the site have been submitted to and approved in writing by the Planning Authority. These details shall clearly show the extent and method of the proposed site recontouring required to accommodate the development and, specifically, the approved ‘flooding refuge area’ and shall include a detailed specification of any required retaining wall or other means of slope stabilisation/retention. The development shall thereafter be completed in accordance with the approved details and methodology or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to allow for a detailed assessment of these elements of the proposed development and, in particular, their impact upon the character and*

*appearance of the site and its wider surroundings and no such detailed information having been submitted with this planning application.*

### **Flood risk mitigation, strategy and details**

4. Notwithstanding the provisions of Condition 1, the development shall incorporate a surface water drainage system which is consistent with the principles of Sustainable urban Drainage Systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

*Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding in accordance with Policy LDP DM 10 of the adopted Argyll and Bute Local Development Plan 2015.*

Note to Applicant: Further advice on SuDS can be found in SEPA's Standing Advice for Small Scale Development – [www.sepa.org.uk](http://www.sepa.org.uk)

5. Notwithstanding the effect of Condition 1, the finished ground floor level of the approved tourist information, retail and self-catering holiday residential units building shall be 3.92 metres AOD and the approved 'flooding refuge area' shall have a finished floor level of 5.4 metres AOD, in accordance with the developer's specification and proposed flood risk mitigation strategy as contained within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

*Reason: In order to ensure that the development is constructed in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

6. No development shall commence until full details of the following flood risk mitigation strategies and 'protection by design' techniques have been submitted to and approved in writing by the Planning Authority:

- Full written details of the proposed 'flood warning' scheme, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).
- Full written details of the proposed 'briefing and guidance for guests' flood management system for the approved first floor self-catering holiday accommodation, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These required details shall also include the proposed means of recording and maintaining a detailed written log of these 'briefings'; the resulting log to be made available, at all reasonable times, for inspection by the planning authority if so required.
- Full written details of the proposed 'property level flood protection measures' for the approved ground floor tourist information facility and shop(s). These details shall include a full specification of any proposed 'stop logs',

'demountable barriers', 'flood proof doors' and any other proposed 'protection by design' measures to be incorporated into the development, as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

- Full written details of the size, type and precise permanent location of the 'emergency boat/dinghy fixed to the wall of a nearby building' as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These details shall also detail how such a scheme will operate and who will be responsible for its implementation and continued operation together with the responsibility for any required maintenance/replacement of the proposed emergency boat/dinghy.

All of the subsequently approved details shall be implemented in full and shall be operational before the development hereby approved is first brought into use and in perpetuity thereafter.

*Reason: In order to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

### **Implementation, phasing and restriction**

7. The approved 'flooding refuge area' shall be implemented in full and shall be operational before any part of the remainder of the development hereby approved is first brought into use/occupied. The 'flooding refuge area' shall, thence after, remain available for its designated purpose.

*Reason: In order to secure an appropriate phasing of development and to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

8. The 'visitor centre' as annotated upon the approved drawings shall provide a tourist information resource which shall be operational within three months of the first occupation/use of any other part of the development hereby approved and shall thereafter be retained in perpetuity unless otherwise agreed in writing by the Planning Authority.

*Reason: In order to secure and maintain the provision of a permanent tourist information centre for Tobermory and its surrounding area, such provision being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

9. Notwithstanding the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 the residential accommodation hereby approved shall be used for short term holiday occupancy only and not as a main residence and shall not be occupied by any family, group or individual for a cumulative period of more than three calendar months in any one year. A register showing dates of

arrivals and departures shall be maintained at the premises and shall be available at all reasonable times for inspection by the Planning Authority.

*Reason: In order to define and control the permitted occupancy and use of this part of the approved development, having regard to the fact that the premises are unsuitable for occupation as a permanent dwelling due to their location within the 1 in 200 year (0.5%) coastal floodplain and an area of medium to high flood risk. The specific short-term holiday occupation of the approved residential accommodation was assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

## NOTE TO APPLICANT

- The length of the permission: This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.



## Report to the Scottish Ministers

# TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Christopher Warren, a reporter appointed by the Scottish Ministers

- Case reference: NA-ABC-025
- Site Address: site west of Taigh Solais, Ledaig, Tobermory, PA75 6QZ
- Application by Argyll Properties Ltd
- Application for planning permission, ref. 17/01205/PP dated 3 May 2017, called-in by notice dated 5 May 2020
- The development proposed: erection of retail unit, visitor centre and self-catering accommodation
- Date of site visit: 22 July 2020

Date of this report and recommendation: 27 August 2020

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**Abbreviations used in this report:**

AFA	Area for Action
AOD	above ordnance datum
LDP	local development plan
m	metres
SEPA	Scottish Environment Protection Agency
SPP	Scottish Planning Policy



**The erection of a retail unit, visitor centre and self-catering accommodation at a site west of Taigh Solais, Ledaig, Tobermory, PA75 6QZ**

• Case reference	NA-ABC-025
• Case type	Called-in planning application
• Reporter	Christopher Warren
• Applicant	Argyll Properties Ltd
• Planning authority	Argyll and Bute Council
• Other parties	Scottish Environment Protection Agency
• Date of application	3 May 2017
• Date case received by DPEA	5 May 2020
• Methods of consideration and dates	Written submissions and unaccompanied site inspection on 22 July 2020.
• Date of report	27 August 2020
• Reporter's recommendation	Grant planning permission subject to conditions listed in appendix

## Background

This application is for the proposed erection of a retail unit, visitor centre and self-catering accommodation. The site is within the delineated town centre in Tobermory, on the Isle of Mull. It would adjoin the existing harbour building 'Taigh Solais'. The site is within the Tobermory Conservation Area. It is also in an area at medium to high risk of coastal flooding.

The Scottish Environment Protection Agency (SEPA) objects in principle to the development due to the coastal flood risk. As Argyll and Bute Council were minded to grant planning permission, Scottish Ministers were required to be notified. A direction was given to refer the application to Scottish Ministers for determination.

## Policy

The adopted development plan is comprised of the Argyll and Bute Local Development Plan (2015) and associated supplementary guidance document, adopted in 2016. Having regard to its provisions, the main issues in this application relate to the principle of development; design considerations including the impact upon the conservation area; and flood risk.

Scottish Planning Policy is a significant material consideration, and is of particular relevance to the matter of flood risk. It establishes the flood avoidance principle and other considerations for development management decisions in areas at risk of flooding.

## **Principle of development**

If the issue of flood risk is set aside, there is no question that the principle of a mixed use development of the nature proposed would be acceptable in principle. The development plan supports development in key settlements, and in town centres where proposed uses would be compatible with the location. In the supplementary guidance there is a presumption in favour of tourist facilities and accommodation. Tobermory (and the whole of Mull) is identified as a tourism development area. The supplementary guidance promotes high quality tourism development intended to add to the appeal of the area to tourists in these areas.

Tobermory town centre is also identified as an 'Area for Action', the focus of which is to support investment opportunities, and to reinforce the "very important role" of Tobermory in regard to tourism development.

As the only obvious undeveloped site in the town centre, the site can reasonably be regarded as offering unique potential for a development that supports the Area for Action and which is compatible with the town centre location more widely. It would also be compatible with the purpose of tourism development areas.

## **Design considerations**

As the only obvious significant gap between buildings fronting onto Tobermory harbour, there is some merit in this site also being developed, in the interests of further enhancing the waterfront streetscape. Given the strong and distinctive character of Tobermory's waterfront, the site is inevitably sensitive, requiring a carefully considered and appropriate design. The site does however lend itself well to accommodating a more contemporary design approach than may be appropriate elsewhere in the conservation area.

Whilst there would be contemporary elements to the design, the overall scale, massing and proportions of the development would be sympathetic to its surroundings. The development would provide a further enhancement to the conservation area as a whole.

## **Flood risk**

The development plan and Scottish planning Policy both stipulate that residential, institutional and commercial development may be suitable uses in medium to high flood risk areas, but only where flood protection measures already exist, or are under construction or planned. Submissions confirm that there are no such existing or proposed measures in Tobermory.

SEPA objects to the proposal in principle, on the grounds that it may place buildings and persons at flood risk, contrary to Scottish Planning Policy. In SEPA's opinion, the location is not essential for operational reasons and nor would it constitute an exceptional circumstance; SPP promotes the adoption of a precautionary approach to flood risk management, and avoidance rather than mitigation is the most sustainable solution. The council's flood officer has also objected to the development.

In the absence of existing or planned flood management measures, the development's location in an area of medium to high flood risk would be contrary to the applicable



provisions the development plan and SPP, in terms of the overarching presumption against development in areas at risk of flooding.

The application proposes a number of mitigation measures, in order to reduce the potential effects of flooding and associated risks. This policy conflict cannot be avoided or addressed through proposed mitigation measures, although the weight which ought to be given to this policy conflict, relative to the benefits of the development which accord with other policy aims, may be affected by the precise nature of the flood risk and mitigation proposed.

### **Overall conclusions**

The development plan sets out an intention to support further investment into Tobermory town centre and waterfront, to enhance and reinforce its important role for the local visitor economy. The proposed development would align strongly with these aims. The convenience retail unit would potentially also directly benefit the local community depending on the precise nature of its end use.

The site is in a prominent position on the waterfront, which is within the Tobermory Conservation Area. The site's development as proposed would further enhance the character and appearance of the conservation area, which is of intrinsic value as well as contributing to the attractiveness of Tobermory (and the Isle of Mull more widely) as a visitor destination.

The site's position, on land at medium to high risk of coastal flooding, is significantly to the detriment of what would otherwise be an eminently desirable and sustainable development. Weight should be given to SEPA's objection to the proposed development, as well as the resultant policy conflict arising from this flood risk.

The benefits of the development would provide a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. Due to the nature of the flood risk affecting the site, the acceptability of this proposal is finely balanced. Given that public safety is very unlikely to be compromised by the development however, the proposal's benefits are considered to outweigh the principle of flood avoidance. In these specific circumstances, it is considered that a departure from the development plan's provisions, and national policy, in regard to flood avoidance can be justified.

### **Recommendation**

It is recommended that planning permission should be granted, subject to conditions listed in the appendix.

Scottish Government  
Planning and Environmental Appeals Division  
4 The Courtyard  
Callendar Business Park  
Callendar Road  
Falkirk  
FK1 1XR

DPEA case reference: NA-ABC-025

The Scottish Ministers  
Edinburgh

Ministers

I have prepared a report with recommendations in connection with the proposed erection of a retail unit, visitor centre and self-catering accommodation on land west of Taigh Solais, Ledaig, Tobermory.

On 28 January 2020, Argyll and Bute Council notified the application to Scottish Ministers. This was because the council was minded to grant planning permission for this development against the advice of the Scottish Environment Protection Agency (SEPA).

On 5 May 2020, a Direction was given to require the council to refer the application to Scottish Ministers for determination. This direction was given in view of the proposed development's potential conflict with national policy on flooding. It was considered that the issues raised would benefit from further scrutiny by Ministers.

Due to Covid-19 restrictions I was unable to make an unaccompanied site inspection until 22 July 2020, which led to some delays in completing this report.

Chapter 1 of my report describes the proposal and outlines the council's position, and the comments expressed in consultation responses and representations. It also provides an overview of relevant policy and guidance. In chapter 2, I have set out the position of the applicant, SEPA and the council's flood officer in detail. In chapter 3 I have set out my conclusions and recommendation.

## CHAPTER 1: BACKGROUND

### The application site

1.1 The application site is located in Tobermory on the Isle of Mull. The site is currently undeveloped, positioned between the 'Taigh Solais' building immediately to the east (which is the harbour building of Tobermory Harbour Association, accommodating a visitor centre, aquarium, offices and other facilities) and MacGochan's bar and restaurant to the west. There is currently a cabin positioned on the site, which is used to provide visitor information. There is a large public car park (Ledaig) immediately adjacent to the site, to the north, which is bound by the harbour/bay to the north and east. To the south, the land rises steeply above the proposal site, physically containing the site.

1.2 The site lies within the 1 in 200 coastal flood zone (0.5% annual probability) on the Scottish Environment Protection Agency (SEPA) flood map. It is therefore classified as being at medium to high risk of coastal flooding.

1.3 The site is within the Tobermory Conservation Area.

### The proposed development

1.4 The proposed building would adjoin the Taigh Solais building, and would be connected internally at ground floor level to provide a 56 square metre extension to the visitor centre. The applicant has indicated that this would be used as a tourist information office. Additionally at ground floor level, there would be a self-contained retail unit. An existing external fire escape stairway would be realigned at the rear of Taigh Solais.

1.5 On the first floor, the development would provide visitor accommodation, comprised of three two-bedroom apartments, accessed via external stairs.

1.6 The building would have an eaves and ridge height slightly lower than that of the Harbour Association building to which it would adjoin. The roof would be a duo-pitched arrangement, with zinc or similar finish. The building would adopt a more contemporary design than neighbouring buildings, but with similar massing and proportions.

1.7 During the course of the application process, amendments to the proposal have been made to incorporate a covered refuge area to the rear of the building, accessed via approximately 9 steps. This would be to provide a safe area for persons not able to otherwise escape the immediate area during a flood event. In order to provide sufficient space for the refuge area, the banking behind the proposed building would require to be re-graded.

### Consultations received by the council

1.8 The Scottish Environment Protection Agency (SEPA) objects in principle to the development, on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. Several responses have been made by SEPA during the course of the application process and in response to additional submissions being made by the applicant. These were dated [31 May 2017](#); [08 November 2017](#); [06 December 2017](#); [16 January 2018](#); [13 February 2018](#); [08 May 2019](#); and finally [11 September 2019](#). In each response, SEPA has consistently objected to the proposal.

1.9 The matters and concerns raised by SEPA are summarised in greater detail in chapter 2 of this report.

1.10 A response by JBA Consulting, on behalf of [Argyll and Bute Council's flood risk management](#) function, recommended refusal of the application in a response dated 24 September 2019. There is significant overlap in the flood risk issues identified in this response and the position of SEPA. The detailed comments by JBA Consulting are therefore also summarised in chapter 2. The above response superseded two earlier consultation responses. The first of these was on [10 January 2018](#) which raised no objection subject to conditions. This was followed by a response of [17 May 2019](#) which requested that the applicant should take account of the scenarios provided by the United Kingdom Climate Change Projections 2018.

1.11 [Argyll and Bute Council's Roads Service](#) has no objections to the proposal, subject to conditions relating to visibility splays, surface water drainage, provision of car parking spaces and bin store provision.

1.12 [Mull Community Council](#) supports the proposal, but no further reasoning was given in its consultation response of 10 October 2018.

### **Representations received by the council**

1.13 A total of 51 [representations](#) were received from members of the public, all of which expressed support for the proposed development. The majority of these representations were based on a pro-forma. The main points raised in these representations can be summarised as follows:

- The provision of a convenience retail unit would provide additional choice for the local community and visitors;
- the retail unit's position adjacent to the public car park would alleviate congestion on Main Street and would be safer for families;
- the site is within the settlement boundary and designated town centre and is a 'gap site';
- the site within a designated 'area for action' where the council wishes to promote regeneration and enhancement of the waterfront;
- the development would provide a significant enhancement and provide much-needed visitor accommodation in Tobermory;
- it is possible that the proposed visitor centre extension could be used to expand the aquarium; and
- the proposal would provide facilities for adjacent pontoons, strengthening the town's role as a key contributor to Mull's economy and the wider area through the continued development of the 'hub port' of Tobermory Harbour.

### **Consideration by Argyll and Bute Council**

1.14 On 29 January 2020 the application was considered by the council's Planning, Protective Services and Licencing [Committee](#).

1.15 Contrary to officer recommendation, the committee reached a unanimous finding that there is an exceptional case for the approval of the development. The reasoning given was that:

- It is an existing gap site that is visually harmful and harmful to the character and appearance of the conservation area.
- It is the only remaining development opportunity within the harbour-front and without development here, the harbour-front remains incomplete and as such is a unique opportunity to complete the harbour-front development.
- The development includes an opportunity to include permanent tourist information provision, currently lacking in Tobermory and development is vital to secure the tourism growth strategy of the council.

1.16 The council therefore concluded that these considerations represent a clear and overriding locational and operational need for the development sufficient to warrant departure from national and local flood risk policy.

1.17 Given the council's decision that the planning application should be approved contrary to the recommendation of SEPA, the application was required to be referred to Scottish Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

### **Development plan policies and guidance**

1.18 As required by section 25 of the Town and Country Planning (Scotland) Act 1997, this application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

1.19 The adopted development plan is comprised of the [Argyll and Bute Local Development Plan](#) (LDP) 2015 and associated [supplementary guidance](#) document, adopted in March 2016.

1.20 LDP policy STRAT 1 ('Sustainable Development') establishes principles applicable to all development. Of relevance to this application, these principles include maximising the opportunity for local community benefit; making efficient use of vacant land; supporting existing communities; maximising opportunities for sustainable design; conserving and enhancing the built environment and the setting and character of settlements; and avoiding places with significant risk of flooding and tidal inundation.

1.21 LDP policy DM 1 ('Development within the Development Management Zones') states that encouragement shall be given to sustainable forms of development, which includes development within the 'main towns' and 'key settlements' up to and including large scale on appropriate sites. The site falls within the settlement boundary for Tobermory, which is one of six key settlements identified by the plan. Paragraph 2.6.3 of the LDP states that "...where specific proposals such as ... Areas for Action are defined these would override the general stance towards development for a particular development management zone".

1.22 The site is within one such Area for Action identified by the LDP, under reference AFA 6/1. The LDP [action programme](#) states that the focus of this area is (amongst other aims) to support investment opportunities identified for Tobermory town centre and waterfront areas, and to reinforce the very important role which Tobermory plays within the 'tourism development area' as identified in the LDP proposals map. Town centre and waterfront enhancement is a focus of AFA 6/1.

1.23 Policy LDP 5 ('Supporting the Sustainable Growth of Our Economy') gives support to development of new industry and business. It requires factors including economic benefit,

spatial needs and locational requirements, and the focussing of regeneration activity and environmental enhancement, to be taken into account in decision-making.

1.24 Policy LDP 7 ('Supporting our Town Centres and Retailing') gives support to compatible uses in defined town centres, as the preferred locations for retail, commercial and leisure uses. The proposal site is within Tobermory's delineated town centre boundary.

1.25 Policy LDP 9 ('Development Setting, Layout and Design') provides criteria to ensure development is of a high standard of appropriate design.

1.26 Policy LDP 10 ('Maximising our Resources and Reducing our Consumption') includes an expectation that development should avoid areas subject to flood risk.

1.27 There are various other policies in the LDP which are of some relevance to the proposed development. These include:

- LDP 3 ('Supporting the Protection, Conservation and Enhancement of our Environment');
- LDP 4 ('Supporting the Sustainable Growth of Our Coastal Zone');
- LDP 8 ('Supporting the Strength of Our Communities'); and
- LDP 11 ('Improving our Connectivity and Infrastructure').

1.28 The adopted supplementary guidance contains extensive provisions and policies, elaborating upon policies in the LDP. Of particular relevance to this case, policy SG LDP SERV 7 ('Flooding and Land Erosion – The Risk Framework for Development') provides additional detail to support the application of policy LDP 10.

1.29 SG LDP SERV 7 states that development on the functional flood plain will be considered contrary to the objectives of the plan. Where redevelopment of existing sites within built-up areas at risk from flooding is proposed, the impact on flood risk elsewhere and proposed mitigation measures should be taken into account. The policy provides guidance on the type of development that will generally be permissible within specific flood risk areas, but states that development will be refused which does not comply with the criteria, or if so advised by the Scottish Environment Protection Agency.

1.30 Criterion (C) states that only certain specified categories of development may be acceptable in medium to high risk areas (1:200 annual probability of flooding). This includes (i) residential, commercial and industrial development within built-up areas, providing flood prevention measures to the appropriate standard already exist or are under construction; (ii) development of certain specified types on undeveloped and sparsely developed areas within the functional flood plain; or (iii) development which accords with flood prevention or management measures as specified by an LDP allocation or development brief.

1.31 SG LDP TOUR 1 ('Tourist Facilities and Accommodation, including Static and Touring Caravans') provides additional detail to accompany policy LDP 5. It makes clear that there is a presumption in favour of new or improved tourism facilities, subject to considerations relating to form, location, scales, character, appearance and accessibility.

1.32 SG LDP TOUR 3 ('Promoting Tourism Development Areas') also relates to policy LDP 5. This states that the tourism development areas shown on in the LDP (in the diagram on page 38 entitled 'Growing our economy together') contain significant

opportunities for the sustainable growth of the Argyll and Bute tourism industry. It states that these areas will be promoted to encourage the further development of new high quality tourism developments that are intended to add to the appeal of Argyll and Bute as a compelling destination for tourists and also as a better place to live for local residents.

1.33 The entirety of the Isle of Mull is identified as a tourism development area by the LDP diagram.

### **National planning policy**

1.34 [Scottish Planning Policy](#) (2014) provides a range of policy principles in relation to managing flood risk, set in the context that climate change will increase the risk of flooding in some parts of the country, and that planning can play an important part in reducing vulnerability of development to flooding.

1.35 The policy principles outlined in paragraph 255 of SPP include an expectation that the planning system should promote a precautionary approach to flood risk from all sources, taking into account the predicted effects of climate change. Another of the principles is that there should be flood avoidance by locating development away from functional flood plains and medium to high risk areas.

1.36 SPP paragraph 263 provides a flood risk framework to be used in local development plans, to guide development. For locations that are at medium to high risk of coastal flooding, SPP states the following in relation to development potential:

“– May be suitable for:

- residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;

- essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;

- some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and

- job-related accommodation, e.g. for caretakers or operational staff.

– Generally not suitable for:

- civil infrastructure and the most vulnerable uses;

- additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and

- new caravan and camping sites.”

1.37 The same paragraph goes on to state that “Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome”; and “Water-resistant materials and construction should be used where appropriate”.

1.38 Paragraph 263 lists a wide range of factors relating to flood risk, which should be taken into account in development management decisions. This recognises that development cannot be planned for solely based on the probability of flooding.

### **Other relevant guidance**

1.39 The SEPA non-statutory publication ‘[Development Management Guidance: Flood Risk](#)’ (July 2018) outlines SEPA’s requirements and recommendations for development management relating to flood risk. It highlights that if the requirements outlined are not met, SEPA are likely to object in principle to the proposed development.

1.40 The requirements and recommendations for proposed developments in fluvial and coastal flood risk areas have been written and designed as a hierarchy of considerations, to help implement the flood risk policy provisions in Scottish Planning Policy. It is based upon the risk framework in SPP.

1.41 The hierarchy of development management requirements set out in the guidance can be summarised as:

- 1. Flood risk context: is the development appropriate for the location and degree of flood risk?
- 2. Flood impacts: is the functionality of the features/processes maintained?
- 3. Access and egress: is the access and egress provision acceptable?
- 4. Freeboard: has adequate freeboard been provided?

1.42 The guidance expects proposals to satisfy each of the above requirements, having regard to whether a climate change allowance has been included in flood level estimations and the resilience of the development’s design to minimise flood water damage.

1.43 Separate to the above, SEPA has also published ‘[Flood Risk and Land Use Vulnerability Guidance](#)’ (version 4: July 2018). The purpose of this guidance (which is also non-statutory) is to aid understanding of the relative vulnerability to flooding of different land uses, and to assist in the interpretation of the foregoing development management guidance.

1.44 The vulnerability guidance categorises different types of development as one of five possible classifications: most vulnerable uses; highly vulnerable uses; least vulnerable uses; essential infrastructure; and water compatible uses.

1.45 SEPA’s publication ‘[Planning Background Paper – Flood Risk](#)’ (version 3: July 2018) provides detailed contextual information and justification for the guidance contained in the foregoing SEPA publications.



## CHAPTER 2: SUMMARIES OF CASE

### The applicant

2.1 The application site is within the defined settlement boundary of Tobermory in the adopted LDP. The LDP classifies Tobermory as a key settlement. It is a location where the council wishes to focus employment-led investment. The proposal supports this aim.

2.2 The site is also within the defined town centre boundary of Tobermory, and is therefore a preferred location for retail, commercial and leisure uses. The council supports development proposals that seek to maintain and enhance the vitality and viability of established town centres. The proposal accords with this objective.

2.3 The site is within an area identified by the council as a priority for regeneration, focused on town centre and harbour improvement and development. Relevant actions include support for investment opportunities in Tobermory town centre and waterfront, and reinforcing Tobermory's important role in tourism. The proposal directly supports the council's regeneration aspirations as set out in its LDP Area for Action (AFA) 6/1. The proposal represents economic investment in a key location on the village's waterfront, supporting increased economic activity, enhancing the streetscape. It will provide much-needed additional visitor accommodation in the heart of Tobermory, strengthening the village's role as a key contributor to the tourism economy of Mull and the wider area.

2.4 The site is a visually prominent 'gap site' in a key location within the Tobermory conservation area. The proposal for infill development will provide a significant enhancement of visual amenity and streetscape character. In its current form it does not contribute positively to the visual amenity and streetscape in this key waterfront location within the conservation area. The design of the proposal responds appropriately to its context between two existing buildings.

2.5 The proposal will also provide road safety benefits by locating an additional convenience retail unit in an appropriate location off the Main Street and with car parking available, reducing congestion and accident risk associated with the existing Co-op. The location of the Co-op on Main Street is poorly suited to the level of traffic and parking demand it generates. This is due to the on-street parking arrangement and narrowness of the road at this location. The introduction of an additional convenience retail unit in a location off the Main Street, with ample car parking normally available, will reduce congestion on Main Street and reduce the risk of accidents.

2.6 The site is within the 1 in 200 year coastal flood zone (classified as medium to high risk), as identified on SEPA's flood mapping. The proposal incorporates a number of design and mitigation measures to address flood risk. These include finished floor levels (FFL) of 3.92 metres above ordnance datum (AOD), which is above the current 1 in 200 year coastal floodplain.

2.7 This is the highest level practicable in design terms, taking account of the requirement for ramped access to the ground floor retail unit. Increasing floor levels further would also present issues of potential adverse visual impact, as well as commercial viability issues. This would render the proposal undeliverable. The upper floor self-catering accommodation is well above all relevant flood levels at 7.32 metres AOD.

2.8 The proposed ground floor finished floor level (3.92 metres AOD) does not allow for a freeboard allowance to be included. However, this is consistent with SEPA's guidance as set out in Planning Background Paper: Flood Risk (July 2018) which makes clear that freeboard is not an absolute requirement for development to be acceptable. In terms of the potential risk from wave action, based on a water depth of around 0.6 metres in the car park during a 1 in 200 year flood event, it is reasonable to assume a total wave height (from trough to crest) of around 0.36 metres. This represents a combined water level of 4.09 metres AOD (3.91 metres + half the wave height, i.e. 0.18 metres). This is only 0.17 metres above the proposed ground floor level.

2.9 Flood mitigation measures include emergency access, flood resilient design measures, and a flood emergency plan. Safe emergency access/egress and a refuge area will be provided at 5.4 metres AOD. This takes into account the coastal flood level plus climate change allowance, freeboard and wave action. Emergency access and egress will be to higher ground to the rear of the building, where there is an established path to higher ground. Flood resilient design measures are proposed, including water resilient design, and demountable flood gates equivalent to +0.6 metres of additional property-level protection. The provision of an emergency boat/dinghy fixed to the wall of a nearby property is also proposed.

2.10 The flood emergency plan will utilise the SEPA flood warning scheme in Oban. This is appropriate to use for Tobermory. The Oban flood warning scheme includes coastal flooding, and high water at Tobermory occurs around 10-25 minutes after high water at Oban (as confirmed in 2017 admiralty tide tables). Coastal flooding can be predicted and warnings issued 3 hours in advance. This is ample warning for the proposed ground floor retail and visitor centre use, ensuring the premises can be evacuated and property level protection activated.

2.11 The flood emergency plan will address risk to any vehicles parked on the seaward side of property. There is no direct vehicle access to the rear of the property. No formal parking spaces are included in the proposal as existing parking in Tobermory is to be used.

2.12 The proposed mitigation measures will provide protection levels for the development to the 200 year plus climate change extreme sea level until the year 2080, and until 2065 including an additional 0.2 metres allowance for waves. Flooding-related issues in Tobermory are not restricted to this development only but will impact all shorefront development within the town, including existing buildings with lower floor levels than proposed in this development. Topographical survey information demonstrates that the levels at the proposal site are higher than the base of clock tower on Main Street, which has previously been used as a reference point for previous flood events in the town.

2.13 SEPA's objection in principle does not give weight to the site's location within the settlement boundary and town centre of Tobermory. SEPA will not accept any proposal for built development within the 'undeveloped' flood plain, notwithstanding the specific locational characteristics of the site and its context, or the wider benefits of the proposal. If the site was previously developed with built form, SEPA advises it would accept development of an equal or less vulnerable use. There is an existing cabin on the site, but the council previously determined that this was not 'development' and therefore regarded the site as having not been developed. SEPA has therefore not considered the presence of this cabin as sufficient to regard the site as previously developed and remove its

objection. There is, however, case law to support the classification of such structures as 'development'.

2.14 SEPA's objection in principle also does not give weight to the fact that the 'highly vulnerable' use (self-catering accommodation) is proposed to be located on the first floor of the building, with the ground floor to be occupied by a 'least vulnerable' use (retail and visitor centre).

2.15 In summary, the proposal accords with the council's adopted development strategy of locating additional retail, commercial and leisure uses within designated key settlements and defined town centres (LDP policies DM 1 and LDP 7). It supports the council's regeneration and economic investment objectives for Tobermory waterfront (LDP Area for Action 6/1). The design of the proposal represents a significant visual and streetscape enhancement of a prominent 'gap site' in a key location within the conservation area, in accord with policy (policy LDP 3 and policy SG LDP ENV 17). The location of the proposal also provides road safety benefits by providing an additional convenience retail unit in a more appropriate location, off the Main Street and with parking available.

2.16 This proposed development does not materially increase the risk of flooding to other properties. Flood risk will increasingly impact on Tobermory irrespective of whether this development goes ahead. However, the proposed mitigation measures, including proactive assessment of flood warnings, provision of an evacuation area and emergency boat, will be of benefit to coastal flood risk management in the wider area. Approval of this development and associated mitigation therefore has the potential to provide net benefit to Tobermory overall.

2.17 Tobermory Harbour Association has further development aspirations on its landholding in this area. While these other development proposals will be subject to separate planning applications as appropriate, they are important context in considering the extent to which consideration of flood risk impacts is consistent with the council's regeneration objectives for Tobermory. Significantly, there is also a proposal by the Harbour Association to provide improved flood defences to increase protection to the Ledaig car park area. The Harbour Association is actively seeking to secure funding to deliver this flood mitigation proposal. This proposal will further reduce flood risk to the car park area and to the site itself.

2.18 There are significant policy provisions and material considerations in favour of approving this proposal. Accordingly, the application should be supported.

### **The Scottish Environment Protection Agency (SEPA)**

2.19 SEPA objects in principle to the proposed development on the grounds that it may place buildings and persons at flood risk, contrary to Scottish Planning Policy.

2.20 Given the location of the proposed development within the undeveloped/sparsely developed functional floodplain, SEPA does not consider that it meets the requirements of Scottish Planning Policy. SEPA have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance. Alternative locations for the development should be considered.

2.21 Notwithstanding the foregoing position, SEPA has reviewed the information supplied by the applicant. This review does not imply that SEPA considers there to be a technical solution to managing flood risk at this site which would meet with Scottish Planning Policy.

2.22 The applicant's supporting statement confirms that the proposal site is located within the coastal floodplain. The council has previously confirmed that the temporary structure on the site does not constitute built development and that the land is not considered to be developed. On this basis, and the associated flooding issues, this location is considered to be undeveloped/sparsely developed floodplain. Taking this into account SPP promotes the adoption of a precautionary approach to flood risk management, and avoidance rather than mitigation is the most sustainable solution. In SEPA's opinion, the location is not essential for operational reasons and nor would it constitute an exceptional circumstance.

2.23 The applicant's supporting statement provides details on the proposed flood management measures for the proposed development. Given the sparsely developed nature of the site and as there has been no previous development at the site, SEPA will not support the use of mitigation. Flood avoidance is the most sustainable flood management approach.

2.24 Where a proposed development is comprised of a mix of uses, it should be placed in the higher of the relevant classes in terms of flood risk vulnerability. In this case, the development is viewed as a highly vulnerable use due to the residential element.

2.25 In terms of mitigation, the 0.5% annual exceedance probability (AEP) extreme still water level is approximately 3.86 metres above ordnance datum (AOD). However, this does not take into account the potential effects of wave action, funnelling or local bathymetry at this location. Furthermore, no climate change allowance or freeboard allowance has been provided. A review of the recent United Kingdom Climate Projections 2018 (UKCP 18) suggest a fairly significant sea level rise for the Argyll region, which should also be considered.

2.26 The applicant has proposed to implement a flood resilient design, and a flood emergency plan linked to SEPA's flood warning scheme. The flood warning scheme is a non-structural measure that will not physically prevent flooding and in addition flood warning has associated uncertainties; it should not be used to enable new development. It is acknowledged that access/egress should be available, however the potential impact of climate change implications are reiterated.

2.27 SEPA acknowledge that flooding and various other material considerations have to be considered when determining a planning application. The applicant's supporting statement significantly over-simplifies SEPA's approach to development management with the statement that SEPA are effectively opposed to any new development within established settlements where there is a flood risk. SEPA is supportive of appropriate development in line with the principles of sustainable flood management.

### **Argyll and Bute Council flood risk management**

2.28 JBA Consulting (acting as the council flood officer) provided an updated planning response following the submission of a range of additional documents by the applicant.

The recommendation was to refuse planning permission based on its assessment as summarised below.

2.29 The applicant has not provided any information demonstrating that a flood prevention measure to a 1 in 100 year standard is already present. It is therefore concluded that section (C)(i) of policy SG LDP SERV 7 has not been satisfied.

2.30 The council ordinarily requires development in coastal areas to be protected from the 1 in 200 year still water level, plus an allowance for wave action, plus an allowance for climate change plus a 0.6 metres freeboard. The protection level for the proposed development would therefore be calculated as 5.27 metres AOD.

2.31 With respect to incorporating this level into the design, in a previous consultation response it was suggested that an appropriate level for the ground floor should be a minimum of 4.7 metres AOD, with an allowance for 0.6 metres freeboard achieved by flood resilient construction to 5.3 metres AOD. It was also advised that the proposed emergency access level be set at a minimum of 5.3 metres AOD. However, the proposed ground floor finished floor level of 3.92 metres AOD is 0.78 metres lower than the minimum recommended finished floor level of 4.7 metres AOD. This technical recommendation has not therefore been met.

2.32 It is concluded that the application does not meet the requirements of SG LDP SERV 7. In addition, the technical proposals do not appear to be sufficient to promote a departure from that policy. It is therefore recommended that the application be refused.

## CHAPTER 3: REPORTER'S CONCLUSIONS AND RECOMMENDATIONS

3.1 As required by section 25 of the Town and Country Planning (Scotland) Act 1997, this application must be determined in accordance with the development plan, unless material considerations indicate otherwise. As the site falls within Tobermory Conservation Area, special regard must also be had to the preservation or enhancement of the conservation area.

3.2 Having regard to the provisions of the development plan the main issues in the determination of this application are the principle of development; design considerations including the impact upon the conservation area; and flood risk.

### Principle of development

3.3 Tobermory is identified as a key settlement by the local development plan, with the site also falling within the town centre boundary as delineated on the proposals map. Noting the provisions of policies DM 1, LDP 5 and LDP 7 in particular, aside from the flood risk affecting the site (which I return to and consider in detail below), there is no question that the principle of a mixed use development of the nature proposed would be acceptable in principle. This is because the thrust of these policies support development in key settlements, and in town centres where proposed uses would be compatible with the location. In the supplementary guidance, SG LDP TOUR 1 provides a presumption in favour of tourist facilities and accommodation. SG LDP TOUR 3 applies to tourism development areas (which applies to Tobermory), and promotes high quality tourism development intended to add to the appeal of the area to tourists.

3.4 The town centre boundary shown on the proposals map is linear, drawn tightly to only include development which fronts onto the harbour. This comprises buildings located on Main Street, together with the public car park and buildings and land immediately adjacent to it. This includes the application site and Taigh Solais, which represents the southernmost limit of the town centre boundary. During my site inspection I noted that the application site is the only obvious gap in the building line in the town centre.

3.5 Whilst the policies identified in paragraph 3.3 above provide support in principle to the proposed development (noting again the significant caveat regarding flood risk), these policies are generic in that they would apply to all development proposals of this nature in town centre locations across Argyll and Bute. This generic policy conformity is not the same as where a proposal aligns with a site-specific allocation, where the suitability of a site for a specific type of development or use is established by the plan, having already taken account of any potential constraints to development. Although the application site is within the town centre boundary of a key settlement, it is not allocated for a particular use and so its suitability for development has not therefore been confirmed.

3.6 In this regard, although it is not a specific allocation I find the LDP's identification of an 'Area for Action' for Tobermory town centre and bay (under reference AFA 6/1) to be of relevance to this assessment. The proposals map delineates the precise area to which AFA 6/1 applies. It includes the entirety of the town centre designation plus some additional areas of undeveloped shoreline to the northeast and south of Tobermory. The boundary is otherwise then drawn to include the bay itself, but not any other land.

3.7 Given how AFA 6/1 has been drawn, and when viewed alongside the town centre boundary, the purposes of AFA 6/1 that relate to landward development and enhancement

must logically and principally apply to Tobermory town centre. The purposes of AFA 6/1 are outlined in the LDP action programme. This sets out the intention to pursue an area for action to support investment opportunities, and to reinforce the “very important role” of Tobermory in regard to tourism development.

3.8 It would appear from the wording of the action plan that the council’s intention is to formulate a plan or programme for the town centre and bay, rather than it representing a clear action plan in its own right; the identified actions are strategic in nature and lack specific detail. Nevertheless, the strategic intentions of AFA 6/1 are sufficiently clear to enable the compatibility of development to be considered.

3.9 The proposed development would represent a relatively significant additional investment in Tobermory town centre, which would align with the overarching thrust of AFA 6/1. An extension to the existing visitor centre in the Taigh Solais building, and visitor accommodation, would both be uses consistent with the intention to reinforce the role of Tobermory for tourism.

3.10 The proposed convenience retail unit offers the potential to benefit both visitors and the local community, depending on the precise nature of the business. In any event, additional retail provision within the town centre is a favourable aspect of the proposed development, particularly as any other expansion or further development of the town centre would be physically constrained by the harbour and bay, the steeply rising topography and surrounding development.

3.11 Although AFA 6/1 is not an allocation and it does not directly provide site-specific support for the proposed development, it is evident from the tightly drawn nature of this area and town centre boundary that opportunities for further investments and enhancements, in line with the area for action, may be limited. I have noted the wider aspirations for [developments](#) in the vicinity of Taigh Solais, but planning permission has not been sought for these proposals and I have not considered the potential merits or policy alignment of any wider development. Despite this, the proposal is the only obvious undeveloped site in the designated town centre, and I consider that the site can reasonably be regarded as offering unique potential for a development that supports AFA 6/1 and which is compatible with the town centre location more widely. The proposal would align with policies DM 1, LDP 5, LDP 7 and in particular the support for compatible developments in tourism development areas, outlined in the supplementary guidance in SG LDP TOUR 3. It was the unique nature of the opportunity provided by the site which led the council to the view that planning permission should be granted, despite the flood risk and the consequent objection from SEPA.

### **Design considerations**

3.12 On the date of my site inspection, there was a portable cabin / trailer positioned on the site, being used as a visitor information point (although it was not open at the time of my visit). Submissions confirm that this was granted temporary planning permission which has now lapsed, as that permission required the removal of the trailer by 31 October 2014.

3.13 Setting aside the fact that the siting and use of the trailer on the site is now unauthorised, I found the appearance of the site to currently slightly detract from the otherwise distinctive character and appearance of Tobermory’s harbour front and town centre. I found the site to have a somewhat unkempt appearance, although this was apparent only in its immediate vicinity. The site’s current use for the siting of the

cabin/trailer (whether or not lawful) does not, in my opinion, have any meaningful bearing on the weight to be given to the proposed development. Given the proposal's permanence, scale and intended range of uses, it would clearly be of a materially different character.

3.14 As the only obvious significant gap between buildings fronting onto Tobermory harbour, I consider there is some merit in this site also being developed, in the interests of further enhancing the waterfront streetscape. Given the strong and distinctive character of Tobermory's waterfront, the site is inevitably sensitive, requiring a carefully considered and appropriate design. The site does however lend itself well to accommodating a more contemporary design approach than may be appropriate on Main Street for example, as there is already a mix of architectural styles and types of building facing onto the car park and its access road.

3.15 Taigh Solais, to which the new building would be attached, is a relatively modern building. Whilst there are differences in fenestration detail and use of materials, the overall proportions and massing are similar. The new building would adopt a slightly lower eaves and ridge level to that of Taigh Solais, which also enables the new building to relate well to the lower height and smaller scale MacGochan's building. I noted during my site inspection that the MacGochan's building has recently been subject to external alterations, and it has a more contemporary appearance which the proposed development would complement.

3.16 Overall, I consider that the proposed design would be appropriate for its context. Whilst there are a number of contemporary elements to the design, the overall scale, massing and proportions of the development would be sympathetic to its surroundings. In my view, the development would provide a further enhancement to the conservation area as a whole, without attracting particular individual attention, which could occur if a more strongly contrasting contemporary design had been proposed.

3.17 In my experience, the quality of the final materials and finish of a development can also have a significant bearing on whether or not it makes a positive contribution to the area. Given the sensitivity of this location, if Scottish Ministers are minded to grant planning permission I would recommend that conditions requiring precise finishes to be agreed by the planning authority should be imposed, as suggested by the council. These are set out in the appendix to this report. Subject to those safeguards, I consider the development would protect and enhance the character and appearance of Tobermory Conservation Area.

3.18 In regard to accessibility for all, the retail unit on the ground floor would have a ramped access, whilst the visitor centre extension would be accessed internally via the Taigh Solais building. As the development would be located directly adjacent to the main public car park in Tobermory, this would further improve the site's accessibility, particularly for those with limited mobility. Its town centre location also facilitates its accessibility more widely, without placing greater reliance on private car use.

3.19 The accommodation on the first floor would be accessible via an external staircase, so would not provide a suitable option for visitors with limited mobility. The proposed external refuge area (which would provide a safe area during extreme flood events) would also be accessed via a small flight of steps. However, I recognise that there are practical limitations to the extent to which easy access can be provided to every part of a development. I consider that the parts of the development which would be in regular use by the public (the retail unit and visitor centre extension) would be accessible for all.



3.20 All told, I find the development's design would accord with the relevant provisions of policy LDP 9 in the local development plan and the supporting provisions in the supplementary guidance, and would enhance the character and appearance of the conservation area within which it would be situated.

### **Flood risk**

3.21 The site falls within the 1 in 200 coastal flood zone (0.5% annual probability) on the Scottish Environment Protection Agency (SEPA) flood map. The site is therefore classed as being at medium to high risk of coastal flooding.

3.22 The development plan establishes a presumption against development in locations at risk of flooding in LDP policies STRAT 1 and LDP 10. This is elaborated upon further in the supplementary guidance, in SG LDP SERV 7, which amongst its provisions sets out the basis for when some types of development may be acceptable in areas of medium to high flood risk. In this regard the terms of the supplementary guidance closely align to the provisions of Scottish Planning Policy (SPP) paragraph 263.

3.23 The supplementary guidance and SPP both stipulate that residential, institutional and commercial development (which reflects the proposed development's mix of uses) may be suitable uses in medium to high flood risk areas, but only where flood protection measures already exist, or are under construction or planned. Submissions confirm that there are no such existing or proposed measures in Tobermory. The applicant has intimated that the Harbour Association is seeking funding to progress plans to increase flood protection to the car park, which could in turn benefit the proposal site. However, in the absence of a firmer commitment and/or consent for such works, and as no evidence has been provided to demonstrate that this would reduce flood risk at the site, I do not consider this aspiration can be given weight currently.

3.24 I note that the council had previously advised SEPA that the cabin sited on the land did not constitute existing development of the site. The applicant has suggested that the site could be considered as previously developed, although there is no substantive evidence before me to question the council's position. SEPA's policy on flood risk in its publication 'Development Management Guidance: Flood Risk' would make greater allowances for developments in locations at risk of flooding on previously developed sites. In its objection, SEPA's consideration of the site as falling within undeveloped/sparsely developed floodplain appears to be derived from the council's confirmation of the site's 'undeveloped' status, and its comments were framed accordingly.

3.25 The precise wording of SPP paragraph 263 sets the parameters for additional development "in undeveloped and sparsely developed areas" (emphasis added) within medium to high risk areas. The wording of SG LDP SERV 7 (C)(ii) differs slightly by setting parameters for development within the functional flood plain "on undeveloped and sparsely developed areas" (again with emphasis added). I am not aware whether there was a deliberate decision by the council to deviate from the wording used by SPP. I refer to this difference however because the council's use of 'on areas' rather than 'in areas' introduces a slight ambiguity over whether this part of the policy may apply to individual undeveloped sites, rather than having regard to the characteristics of a site's context more widely. As both SPP and SG LDP SERV 7 (C)(ii) refer to the 'area' rather than 'site' or 'land', I do not consider the application site could fairly be described as falling within an undeveloped or sparsely developed area. Indeed I find the opposite is true, given its position in the town centre.

3.26 This is important to clarify because SPP, SG LDP SERV 7 and SEPA guidance effectively set even more stringent limits on the types of development that may be permissible in undeveloped or sparsely developed areas, with the implication being that even greater weight should potentially be afforded to the flood avoidance principle. I do not find these more stringent restrictions should be applied to this site, for the reasons outlined in the previous paragraph. Whilst the site may itself be undeveloped, in my view this is a separate consideration to whether or not the site is within an undeveloped or sparsely developed area.

3.27 Furthermore, I am not convinced that the site should be considered as 'functional flood plain', as referred to by SEPA. The glossary of SPP provides separate definitions for 'flood plain' and 'functional flood plain', highlighting that the former is not simply shorthand for the latter. 'Flood plain' is defined as "The generally flat areas adjacent to a watercourse or the sea where water flows in time of flood or would flow but for the presence of flood prevention measures ...". In contrast, 'functional flood plain' is defined in the glossary as "The areas of land where water flows in times of flood which should be safeguarded from further development because of their function as flood water storage areas. For planning purposes the functional floodplain will generally have a greater than 0.5% (1:200) probability of flooding in any year."

3.28 Given the nature of coastal flood risk, where the volume of water during tidal inundation is effectively infinite, the application site is not required to serve any water storage function, because there is no evidence to indicate that development of the site would displace flood waters and increase the flood risk elsewhere. There has not been any suggestion by SEPA that the site should remain undeveloped for flood water storage purposes. In my view, the site does not therefore fall into the functional flood plain category, although it does clearly fit the definition of 'flood plain'. This distinction is again important because SG LDP SERV 7 approaches development proposals in the functional floodplain differently (i.e. more restrictively) to those in medium to high risk areas, and again there could fairly be assumed to be an even stronger presumption against development on a functional floodplain.

3.29 All told, I find the site falls within the coastal floodplain but not the 'functional floodplain'. The council considers the site itself to be undeveloped, and there is no evidence before me to question that view, but I find the site is not in an undeveloped or sparsely developed area more widely. However, in the absence of existing or planned flood management measures, the development's location in an area of medium to high flood risk would still be contrary to the applicable provisions of LDP policy STRAT 1, LDP 10 and SG SERV 7(C)(i), in terms of the overarching presumption against development in areas at risk of flooding.

3.30 As paragraph 264 of SPP acknowledges however, and as reflected in the SEPA development management guidance, there are a range of site-specific factors which must be taken into account in development management decisions, in order to more fully understand the nature of the flood risk, and its implications for the proposed development. This is necessary before an overall finding on the development's acceptability can be reached.

3.31 As already identified above, the application site is the only notable gap in development within Tobermory town centre. Whilst not in itself a mitigating factor, it is relevant to note that the medium to high coastal flood risk applies to most of the town centre. Submissions confirm (with reference to topographical survey information and

photographic evidence during flood events) that the site and the finished floor level of the proposed development would be equal to or higher than many other existing properties within the town centre.

3.32 In terms of the design and use of the proposed development, having regard to SEPA's land use vulnerability guidance, the retail unit and visitor centre extension located on the ground floor would both be classed as 'least vulnerable uses'. The self-catering accommodation on the first floor would be classed as a 'highly vulnerable' use. The guidance advises that where a mix of uses are proposed, the higher of the relevant vulnerability classes should be applied. This approach has accordingly been followed by SEPA in its objection.

3.33 However, I find it is a material consideration that the highly vulnerable residential component of the development would not be at any direct risk of flooding, with its finished floor level being substantially higher than predicted flood events, including allowances for freeboard and climate change.

3.34 The extent to which the ground floor uses may flood has been calculated in the applicant's flood risk assessments (versions [1](#), [2](#) and [3](#)) and in the consultation responses from SEPA and the council's flood officer. The 1 in 200 year still water flood level is 3.86 metres above ordnance datum (AOD). The finished floor level would be marginally above this level, at 3.92 metres AOD.

3.35 The SEPA development management guidance on flood risk states that an adequate freeboard allowance (normally 0.6 metres above the design flood level) must be provided where new buildings would be in the highly and most vulnerable use categories. This is to take account of the height of waves or turbulence, and the uncertainty in estimating the probability of flooding. The proposed ground floor uses fall with the 'least vulnerable' use category, and so if the self-catering units are discounted because they would be at first floor level, SEPA guidance suggests that a freeboard allowance would not be essential for the ground floor uses. Despite this, the proposed use of demountable flood gates would effectively provide an additional informal defence equivalent to a 0.6 metre freeboard, which should in practice lessen the impact of a flood event upon the ground floor of the building. I note the council's flood officer response has recommended a separate 0.2 metre allowance for wave action, but without explanation for why this should be included in addition to the freeboard allowance, given that the freeboard allowance is already specifically to take account of wave action.

3.36 Climate change predictions indicate that in this location, still water flood levels could increase by a further 0.56 metres by the year 2080, and 0.86 metres by 2100. With wave action, it is probable that during an extreme coastal flood event, water levels would exceed the height of the demountable flood gates (which would offer flood defence to a height equivalent to the recommended freeboard based on current 1 in 200 year flood levels). In the longer-term therefore, despite the proposed provision of demountable flood gates and whilst acknowledging the inherent uncertainties over future sea level predictions, it appears inevitable that the ground floor of the building may flood during extreme high tides. Even though the ground floor uses would be within the 'least vulnerable' category, this flood risk does conflict with the flood avoidance principle in SPP, the development plan and SEPA guidance referred to above.

3.37 The application proposes a number of mitigation measures, in order to reduce the potential effects of flooding and associated risks. Flood-resilient construction would aim to

minimise any damage caused to the ground floor of the building, but I consider a more significant issue is how any potential risk to public safety would be addressed. The applicants propose to adopt a flood emergency plan, which would come into force when a flood event may be imminent. One 'advantage' of being within an area at risk of coastal flooding, rather than risk from a watercourse, is that flood events are tidal and therefore predictable. SEPA already operate a flood warning scheme in Oban, and I agree with the applicants that this would also offer appropriate warnings for Tobermory, where high tide occurs approximately 10 to 25 minutes later than Oban. With effective emergency plan procedures in place, this would enable the evacuation of the building and installation of flood gates well ahead of any flood event affecting the site. This is however reliant on the emergency plan being followed promptly and in full, which cannot be guaranteed.

3.38 An external flood refuge area is proposed to be installed to the rear of the building, which would include a small covered area. This would be available for wider public use, rather than just serving the development itself. It would be at a level above any potential flood risk, including allowances for freeboard and climate change. It would provide a means of escape from rising water, although I consider its use would also very much be a last resort, as it would provide minimal shelter and would be an uncomfortable, unpleasant experience to spend any extended amount of time. In my view, the refuge would nevertheless be fit for purpose given that tidal flood events have a short duration of approximately 2 hours.

3.39 However, given the encroachment of flood waters across the car park and towards the building would be predictable (unlike potential flash flooding which can occur with some watercourses) I consider it unlikely that this refuge area would need to be used in practice. In my view it is much more likely that individuals would have ample time to evacuate the car park and adjacent buildings ahead of these potentially becoming cut off, without reliance on the refuge area. I note there is an unmade footpath which follows the slope to higher ground to the rear of the proposed building and refuge area, providing a further potential means of escape, although its use would only be a realistic option for the able-bodied. It would also be particularly hazardous to negotiate in the dark, and I do not consider that any reliance should be placed on this route as a means of escape.

3.40 It is also possible that an extreme flood event could temporarily affect access to or egress from the self-catering accommodation, as the external access steps may be surrounded by flood water. The accommodation would not itself be at risk of flooding so would continue to be safe for occupants to remain in the accommodation during a flood event, although I recognise that this could be an unpleasant and frightening experience. The proposed flood emergency plan could however require evacuation of the self-catering accommodation when an extreme flood event is predicted, to eliminate any residual risk to its occupiers.

3.41 Finally, the provision of an emergency boat/dingy has been proposed, to be fixed to the wall of a nearby building also within the applicant's control. This is described as providing a further means of egress or rescue for anyone trapped by the flood, whether in the proposed development, in the proposed refuge area, or in another existing building within the harbour area. I consider that any reliance or need for a boat to be provided for the development to safely function would be a strong indication that the development should not be permitted. That said, based on my above assessment I do not consider a boat would need to be relied upon, but I accept that it would offer a further supplementary safeguard which (depending on the specific details of how the boat could be used and who would be permitted to use it) could offer wider benefit to Tobermory and the response to

any flood event across the harbour area as a whole. I consider the provision of a boat to be peripheral to the question of the development's acceptability however.

3.42 To conclude on the issue of flood risk, I have identified in paragraph 3.29 above that the development would be contrary to applicable development plan policies, SPP and SEPA's development management guidance which all seek to avoid development of the type proposed being located in an area at medium to high risk of flooding. This policy conflict cannot be avoided or addressed through proposed mitigation measures, although the weight which ought to be given to this policy conflict, relative to the benefits of the development which accord with other policy aims, may be affected by the precise nature of the flood risk and mitigation proposed. I return to this matter in my overall conclusions below.

### **Other matters**

3.43 The consultation response from the council's roads officer requests conditions to require two parking spaces (with a turning area) and visibility splays. The proposal does not include any private parking provision, by virtue of its location in the town centre adjacent to the main public car park. I do not consider that it would be necessary to provide additional private spaces on this basis. As no new access point is proposed, the request for a condition relating to visibility splays is also superfluous.

3.44 The applicant, supported by a number of comments in representations, considers that the development would help to reduce congestion on Main Street, where the current main convenience shop (the Co-op) is located. Whilst there is some logic to this assertion, there is no evidence to demonstrate that there would be any material improvement in the traffic situation on Main Street arising from an additional convenience retail unit being provided by the proposed development. For this reason, I have not attached weight to this matter.

3.45 It has been asserted in a representation that the proposed Argyll and Bute Local Development Plan 2 (LDP2) should be treated as a material consideration. However, this has not yet been submitted for examination and its contents could be subject to significant change. On this basis, I do not consider that the provisions of LDP2 should have any influence over the assessment of this proposal.

### **Overall conclusions**

3.46 With the exception of the site being located within an area at medium to high coastal flood risk, the development accords with the development plan in all regards. The site is the only obvious vacant land with development potential within Tobermory's designated but modest town centre, all of which fronts onto the harbour and bay.

3.47 The thrust of the local development plan is to support retail and other commercial uses in town centres generally. Area for Action 6/1 explicitly sets out an intention to support further investment into Tobermory town centre and waterfront, to enhance and reinforce its important role for the local visitor economy. I consider the proposed development would align strongly with these aims, with the provision of additional visitor centre floorspace, additional retail space, and three additional self-catering units providing visitor accommodation. The convenience retail unit would potentially also directly benefit the local community depending on the precise nature of its end use.

3.48 The site is in a prominent position on the waterfront, which is within the Tobermory Conservation Area. I consider the site's development as proposed would further enhance the character and appearance of the conservation area, which is of intrinsic value as well as contributing to the attractiveness of Tobermory (and the Isle of Mull more widely) as a visitor destination.

3.49 The site's position, on land at medium to high risk of coastal flooding, is significantly to the detriment of what I consider would otherwise be an eminently desirable and sustainable development. I consider that weight must be given to SEPA's objection to the proposed development, as well as the resultant policy conflict arising from this flood risk.

3.50 Whilst the applicant has been critical of SEPA's position on this proposal, I find that SEPA's position is clearly justified in this case. In my view, SEPA's position has not been compromised by my finding that the site is not within the functional flood plain or in a sparsely developed / undeveloped area, as the development would nevertheless be at risk of flooding and the proposed development would not align with any of the permissible forms of development identified in SPP, the development plan or SEPA's own development management guidance given the nature of the flood risk and uses proposed. It is not for SEPA to consider flood risk in a wider context; this planning balance is a matter for the development management process. I consider it would have been surprising if SEPA had not objected to this development proposal.

3.51 The fundamental question in this case is therefore whether the benefits of allowing the development would outweigh the principle of flood avoidance which would be breached. In paragraph 3.30 onwards, I have considered the precise nature of the flood risk and measures proposed by the applicant to minimise the effects. I am satisfied that there would be no significant likelihood of public safety being put at risk, principally because of the predictability and nature of coastal flood events and the ability to evacuate the development in good time, using an already established warning system operated by SEPA. Should the site not be evacuated ahead of a flood event, the development would provide a safe refuge area if egress to Main Street and higher ground became impossible. The (least vulnerable) ground floor uses may flood in extreme events, but flood resilient design and construction would minimise damage should this occur.

3.52 Taking all of the above into account, I find the acceptability of this proposal to be finely balanced. The proposed development would accord with a number of policies in the development plan, and it would directly further the delivery of the policy ambitions relating to tourism development areas and the Tobermory town centre and bay area for action. Specifically, the proposal is supported by LDP policies STRAT 1 (except in relation to flood risk); DM 1; LDP 5 (and associated supplementary guidance provisions in SG LD TOUR 1 and SG LDP TOUR 3); LDP 7 and LDP 9. Due to the site's location at medium to high risk of coastal flooding, the development would be contrary to LDP policies STRAT 1 (in relation to flood risk) and LDP 10, and also to SG LDP SERV 7 in the supplementary guidance. As the supplementary guidance is almost identical to Scottish Planning Policy's position on flood risk, the development would also be contrary to national planning policy in this regard, and the principle of flood avoidance.

3.53 However, given that public safety is very unlikely to be compromised by the development, and having regard to the significant benefits of the proposal, I agree with the council's view (reinforced by representations) that this development represents a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. In these specific circumstances, I consider that these

benefits outweigh the principle of flood avoidance, and a departure from the development plan's provisions, and national policy, in regard to flood avoidance is justified.

### **Recommendation**

3.54 For the reasons explained above, I recommend that planning permission should be granted, subject to the conditions listed in the appendix. The conditions largely reflect those [requested](#) by the council, with a small number of minor amendments in the interests of clarity.

3.55 I have recommended that one substantive change should be made to condition 6 as drafted by the council. The council's suggested condition had sought details of a route for a pedestrian link between the flooding refuge area and the town. The applicant has [clarified](#) that it would not be possible to provide a link between the site and Main Street outwith the area at risk of flooding, and my assessment above has been made on this basis. I agree with the applicant that it would be unable to comply with this aspect of the suggested condition, and I have amended the condition to remove this requirement. The applicant has indicated agreement to all other conditions.

*Christopher Warren*  
Reporter

## APPENDIX – SCHEDULE OF CONDITIONS

### General

1. The proposed development shall be carried out in accordance with the details specified in the application form dated 2nd May 2017 and the approved drawings numbered 1 of 4 to 4 of 4; these being:

Drawing No. 1667 04 rev. e – ‘Ground Floor Plan (Draft)’

Drawing No. 1667 06 rev. a – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 05 rev. b – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 06 – ‘Elevations – refuge area’

*Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.*

Standard Note: In terms of condition 1 above, the Council can approve minor variations to the approved plans in terms of Section 64 of the Town and Country Planning (Scotland) Act 1997 although no variations should be undertaken without obtaining the prior written approval of the Planning Authority. If you wish to seek any minor variation of the application, an application for a non-material amendment (NMA) should be made in writing which should list all the proposed changes, enclosing a copy of a plan(s) detailing these changes together with a copy of the original approved plans. Any amendments deemed by the Council to be material, would require the submission of a further application for planning permission.

### Design and materials

2. Notwithstanding the effect of Condition 1, no development shall commence until written details of the type and colour of external materials to be used in the construction of the building and the flooding refuge area, including render details, cladding and roofing details, window and door details, guttering details, external stair, balustrading and hand rail details, have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to integrate the development into its surroundings and having appropriate regard to the location of the development within a conservation area.*

3. Notwithstanding the effect of Condition 1, no development shall commence until detailed sections and a written specification showing the existing and the proposed levels of the site have been submitted to and approved in writing by the Planning Authority. These details shall clearly show the extent and method of the proposed site recontouring required to accommodate the development and, specifically, the approved ‘flooding refuge area’ and shall include a detailed specification of any required retaining wall or other means of slope stabilisation/retention. The development shall thereafter be completed in accordance with the approved details and methodology or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to allow for a detailed assessment of these elements of the proposed development and, in particular, their impact upon the character and appearance of the site*



*and its wider surroundings and no such detailed information having been submitted with this planning application.*

#### **Flood risk mitigation, strategy and details**

4. Notwithstanding the provisions of Condition 1, the development shall incorporate a surface water drainage system which is consistent with the principles of Sustainable urban Drainage Systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

*Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding in accordance with Policy LDP DM 10 of the adopted Argyll and Bute Local Development Plan 2015.*

Note to Applicant: Further advice on SuDS can be found in SEPA's Standing Advice for Small Scale Development – [www.sepa.org.uk](http://www.sepa.org.uk)

5. Notwithstanding the effect of Condition 1, the finished ground floor level of the approved tourist information, retail and self-catering holiday residential units building shall be 3.92 metres AOD and the approved 'flooding refuge area' shall have a finished floor level of 5.4 metres AOD, in accordance with the developer's specification and proposed flood risk mitigation strategy as contained within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

*Reason: In order to ensure that the development is constructed in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

6. No development shall commence until full details of the following flood risk mitigation strategies and 'protection by design' techniques have been submitted to and approved in writing by the Planning Authority:

- Full written details of the proposed 'flood warning' scheme, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).
- Full written details of the proposed 'briefing and guidance for guests' flood management system for the approved first floor self-catering holiday accommodation, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These required details shall also include the proposed means of recording and maintaining a detailed written log of these 'briefings'; the resulting log to be made available, at all reasonable times, for inspection by the planning authority if so required.
- Full written details of the proposed 'property level flood protection measures' for the approved ground floor tourist information facility and shop(s). These details shall include a full specification of any proposed 'stop logs', 'demountable barriers', 'flood

proof doors' and any other proposed 'protection by design' measures to be incorporated into the development, as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

- Full written details of the size, type and precise permanent location of the 'emergency boat/dinghy fixed to the wall of a nearby building' as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These details shall also detail how such a scheme will operate and who will be responsible for its implementation and continued operation together with the responsibility for any required maintenance/replacement of the proposed emergency boat/dinghy.

All of the subsequently approved details shall be implemented in full and shall be operational before the development hereby approved is first brought into use and in perpetuity thereafter.

*Reason: In order to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

### **Implementation, phasing and restriction**

7. The approved 'flooding refuge area' shall be implemented in full and shall be operational before any part of the remainder of the development hereby approved is first brought into use/occupied. The 'flooding refuge area' shall, thence after, remain available for its designated purpose.

*Reason: In order to secure an appropriate phasing of development and to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

8. The 'visitor centre' as annotated upon the approved drawings shall provide a tourist information resource which shall be operational within three months of the first occupation/use of any other part of the development hereby approved and shall thereafter be retained in perpetuity unless otherwise agreed in writing by the Planning Authority.

*Reason: In order to secure and maintain the provision of a permanent tourist information centre for Tobermory and its surrounding area, such provision being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

9. Notwithstanding the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 the residential accommodation hereby approved shall be used for short term holiday occupancy only and not as a main residence and shall not be occupied by any family, group or individual for a cumulative period of more than three calendar months in any one year. A register showing dates of arrivals and departures shall

be maintained at the premises and shall be available at all reasonable times for inspection by the Planning Authority.

*Reason: In order to define and control the permitted occupancy and use of this part of the approved development, having regard to the fact that the premises are unsuitable for occupation as a permanent dwelling due to their location within the 1 in 200 year (0.5%) coastal floodplain and an area of medium to high flood risk. The specific short-term holiday occupation of the approved residential accommodation was assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

#### **NOTE TO APPLICANT**

- The length of the permission: This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.

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