

Public Document Pack

Argyll and Bute Council

Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry



Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD

16 February 2022

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held **BY MICROSOFT TEAMS** on **WEDNESDAY, 23 FEBRUARY 2022** 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 19 January 2022 at 11.00 am (Pages 3 - 4)
 - (b) Planning, Protective Services and Licensing Committee 19 January 2022 at 2.00 pm (Pages 5 - 18)
4. **MR ASHLEY TOOLE: SUB DIVISION OF 1 NO. 2 BEDROOMED FLAT INTO 2 NO. 1 BEDROOMED FLATS: 5 POLFEARN HOUSE, TAYNUILT (REF: 19/00774/PP)**
(Pages 19 - 34)
Report by Head of Development and Economic Growth
5. **MR SEAN MURDOCH: SUB DIVISION OF 1 NO.4 BEDROOM FLAT TO 2 NO. 2 BEDROOM FLATS: FLAT 2/1, 14 SOROBA ROAD, OBAN (REF: 21/01202/PP)**
(Pages 35 - 50)
Report by Head of Development and Economic Growth
6. **CREAG DHUBH RENEWABLES LLP: CONSTRUCTION OF WIND FARM COMPRISING OF 9 WIND TURBINES (MAXIMUM BLADE TIP HEIGHT 145M), FORMATION OF 5.6KM NEW ACCESS TRACK, ERECTION OF SUB STATION BUILDING, WELFARE BUILDING TEMPORARY CONSTRUCTION COMPOUND AND 2 BORROW PITS: CREAG DHUBH WINDFARM, CREAG DUBH, NORTH EAST OF STRACHUR VILLAGE (REF: 19/02544/PP)** (Pages 51 - 94)
Report by Head of Development and Economic Growth

7. **SOUTH ISLAY DEVELOPMENT: ERECTION OF NEW COMMUNITY HUB TO REPLACE THE FORMER PAVILION, RELOCATION OF PLAY AREAS, UPGRADED ACCESS AND PARKING, INCREASED MOTOR HOME STANCES, CONSTRUCTION OF NEW TOILET/SHOWER BLOCK, SITING OF 5 NO. STORAGE CONTAINERS AND TEMPORARY CHANGE OF USE TO FACILITATE HOT FOOD TAKEAWAY VAN: PORT ELLEN PLAYING FIELDS LAND ADJACENT TO FILLING STATION, CHARLOTTE STREET, PORT ELLEN, ISLE OF ISLAY (REF: 21/01679/PP) (Pages 95 - 122)**
Report by Head of Development and Economic Growth
8. **MR JON SEAR - PORT BANNATYNE DEVELOPMENT TRUST: REPLACEMENT OF ROOF COVERING; INSTALLATION OF SOLAR PV PANELS AND FORMATION OF NEW DOOR WITH FLAT ROOF ON SINGLE STOREY PART OF PUBLIC HOUSE; AND CHANGE OF USE OF LAND TO REAR TO FORM OUTDOOR SEATING AREA WITH ASSOCIATED GABION BASKET RETAINING WALL AND FENCE: 33 - 34 MARINE ROAD, PORT BANNATYNE, ISLE OF BUTE (REF: 21/01912/PP) (Pages 123 - 146)**
Report by Head of Development and Economic Growth
9. **MR DAVID BLAIR: CHANGE OF USE OF LAND FOR SITING OF TIMBER ARK SCULPTURE (RETROSPECTIVE): LAND TO THE NORTH WEST OF COILL BEAG WOODLAND, TIGHNABRUAICH (REF: 21/02190/PP) (Pages 147 - 166)**
Report by Head of Development and Economic Growth
10. **KEY PERFORMANCE INDICATORS FQ3 2021/22 - DEVELOPMENT AND ECONOMIC GROWTH SERVICE (Pages 167 - 176)**
Report by Executive Director with responsibility for Development and Economic Growth
11. **PLANNING PERFORMANCE FRAMEWORK 2020/21 (Pages 177 - 188)**
Report by Executive Director with responsibility for Development and Economic Growth
REPORT FOR NOTING
12. **UPDATE ON PLANNING APPEAL REFERENCE: PPA-130-2080 - LAND SOUTH EAST OF CASTLE TOWARD, TOWARD (Pages 189 - 200)**
Report by Executive Director with responsibility for Development and Economic Growth

Planning, Protective Services and Licensing Committee

Councillor Gordon Blair	Councillor Rory Colville (Vice-Chair)
Councillor Mary-Jean Devon	Councillor Audrey Forrest
Councillor George Freeman	Councillor Kieron Green
Councillor Graham Hardie	Councillor David Kinniburgh (Chair)
Councillor Donald MacMillan BEM	Councillor Roderick McCuish
Councillor Jean Moffat	Councillor Alastair Redman
Councillor Sandy Taylor	Councillor Richard Trail

Contact: Fiona McCallum

Tel. No. 01546 604392

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 19 JANUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Stuart McLean, Committee Manager
Peter Bain, Development Manager
Sandra Davies, Major Applications Team Leader
Howard Young, Area Team Leader – Helensburgh & Lomond
David Moore, Senior Planning Officer
Sheila MacFadyen, Senior Solicitor
Graeme McMillan, Solicitor

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Audrey Forrest, Roderick McCuish and Jean Moffat.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES

- a) The Minute of the Planning, Protective Services and Licensing Committee held on 15 December 2021 at 10.30 am was approved as a correct record.
- b) The Minute of the Planning, Protective Services and Licensing Committee held on 15 December 2021 at 2.00 pm was approved as a correct record.
- c) The Minute of the Planning, Protective Services and Licensing Committee held on 15 December 2021 at 2.30 pm was approved as a correct record.

4. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: TAXI FARE SCALE REVIEW

In terms of Section 17 of the Civic Government (Scotland) Act 1982, the Local Authority requires to fix maximum fares and other charges in connection with the hire of taxis operating in their area and to review the scales for taxi fares and other charges on a regular basis. The new fare structure requires to come into force by 22 April 2022. The fares were last reviewed by Members on 17 June 2020 and took effect on 22 October 2020.

Consideration was given to a report advising the Committee they were now required to carry out a further review of taxi fares and other charges.

Decision

The Committee agreed:

1. to propose an increase of 15% to the maximum fares for each tariff in respect of the initial charge and subsequent charges and that this take effect from 22 April 2022;
2. to authorise the Head of Legal and Regulatory Support to advertise this proposal and to invite any responses within one month of the advertisement and report back to Members at their meeting on 23 March 2022; and
3. should no objections or representations be received in relation to the proposal to delegate to the Head of Legal and Regulatory Support, in consultation with the Chair of the PPSL Committee, to conclude the review without the requirement for the Committee to consider a further report on the review.

(Reference: Report by Executive Director with responsibility for Legal and Regulatory Support dated December 2021, submitted)

Councillor Donald MacMillan left the meeting during consideration of the foregoing item.

Councillor Jean Moffat joined the meeting at this point.

5. HELCO DEVELOPMENTS LIMITED: ERECTION OF 24 DWELLINGHOUSES: LAND NORTH EAST OF BRAESIDE, STATION ROAD, GARELOCHHEAD (REF: 19/02328/PP)

The Senior Planning Officer spoke to the terms of the report and to supplementary report number one which advised of additional late objections received following publication of the main of report of handling. He also drew Members' attention to a further 3 objections received following publication of the supplementary report from Mr Ewan Summersby, from Garelochhead Community Council and from Councillor Iain Shonny Paterson.

The site of the proposed development is a housing allocation (H-AL-3/3) within the adopted Argyll and Bute Local Development Plan 2015 (LDP). A development of 24 houses has previously been approved under applications 04/01028/DET and 07/01323/DET. The principle of the proposal and the design, layout and materials proposed accord with the policies of the LDP and LDP2. The application has attracted a considerable number of objections from the local community and the site has been removed as a specific housing allocation in LDP2. On balance it is considered that a pre determination hearing would assist Members consider the issues which have been raised by Objectors and allow them, if they wish, to present their case.

Decision

The Committee:

1. Agreed to hold a virtual discretionary hearing; and
2. instructed Officers to investigate the feasibility of holding an informal site visit with the Committee in advance of the date of this hearing.

(Reference: Report by Head of Development and Economic Growth dated 7 January 2022 and supplementary report number one dated 18 January 2022, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 19 JANUARY 2022**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Jean Moffat
Councillor Audrey Forrest	Councillor Alastair Redman
Councillor George Freeman	Councillor Sandy Taylor
Councillor Kieron Green	Councillor Richard Trail

Attending: Stuart McLean, Committee Manager
Sheila MacFadyen, Senior Solicitor
Graeme McMillan, Solicitor
Remo Serapiglia, Applicant
Robert Skinner, Applicant's Advocate
Jane Macleod, Applicant's Solicitor
Fiona Potter, Objector
Rowena Ferguson, Objector
Bob Cook, Objector – Loch Lomond & the Trossachs National Park Authority
Alastair McKie, Objector – Loch Lomond & the Trossachs National Park Authority
Amy Unit, Objector – Loch Lomond & the Trossachs National Park Authority

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Roderick McCuish and Donald MacMillan BEM.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF STREET TRADER LICENCE - 4861 (R SERAPIGLIA, LARBERT)

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, his Solicitor and Advocate opted to proceed by way of video call and joined the meeting by MS Teams.

Fiona Potter, Objector, opted to proceed by way of audio call and joined the meeting by telephone.

All the other Objectors present opted to proceed by way of video call and joined the meeting by MS Teams.

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

APPLICANT

Robert Skinner confirmed that he would speak on behalf of Mr Serapiglia who had applied to renew his street trader's licence to allow him to trade from his ice-cream van on the same terms as he presently enjoyed. He said that Mr Serapiglia came from a family that had provided a long service to the community. His father started the business in 1956 and Mr Serapiglia joined the family business when he was 17 and has continued to provide some 66 years of unbroken service to the community. He advised that Mr Serapiglia has held his street trader's licence since the inception of the Civic Government (Scotland) Act 1982 and there had been no issues with any licences since that time. He referred to Mr Serapiglia serving specialist Artisan ice-cream which was very popular and enjoyed by both the local community and tourists. He suggested that the popularity of this ice-cream was the true reason for the various trade objections as they did not want the competition. He said that objections to this application had only arisen from Luss. He advised that Mr Serapiglia had invested in the latest and greenest van, powered by battery and solar panels, meaning it had net zero carbon emissions. He added that it still had the appearance of a traditional ice-cream van. He referred to there being a long and torturous history in relation to the ice-cream van being at Luss and advised that formerly his licence had standard condition 17 attached which prevented Mr Serapiglia from trading within 100 metres of any shops selling similar produce. This was opposed in June 2017 as it amounted to unfair protection to other traders. He said there was strong support for the removal of this condition and he referred to the outcome of a Sheriff Court decision of McCluskey vs North Lanarkshire Council which concerned the restriction of burger vans operating near a school. He advised that a new condition 17 was drafted by Argyll and Bute Council to replace the old condition. This new condition had the effect that a van could not stay in a single location for more than 30 minutes and could not return to that position again within the same day. He advised that in December 2018 Mr Serapiglia sought to have his licence renewed with condition 17 removed and his argument was accepted at that time. Mr Skinner advised that the overriding purpose of licensing street traders under the 1982 Act was to preserve public order and prevent crime. He said that a condition should not be used to restrict trade and competition. He confirmed that the renewal of Mr Serapiglia's licence was granted with condition 17 removed so there was no restriction to his trading in any location. In February 2019 he advised that Mr Serapiglia applied to amend his licence to include Pier Road in Luss. He confirmed that this was granted for an agreed spot on Pier Road.

Mr Skinner said that all that was being asked for today was renewal of Mr Serapiglia's licence on the same terms as before.

Mr Skinner said that objections received were largely from local traders and any allegations they have made were disputed. He advised that Mr Serapiglia has always acted lawfully and has done all his life. He said that local objectors were making life as difficult as possible for a man that has worked all his life for long hours and not in the best of health. He said that this has involved parking to make it difficult for Mr Serapiglia to trade and coming out to the van and telling him he was not allowed to park there. He advised that Mr Serapiglia denies any breach of regulations or conditions of his licence. He said that none of the objections were tied any specific issues, time or place. He said that if Mr Serapiglia had acted illegally, one would have expected a conviction as a result. Mr Skinner advised that Mr Serapiglia has not been convicted, or charged, or spoken to by any authority. He pointed out that there has been no Police objection and that the most contentious issues raised related to a planning matter. Mr Skinner said that this was not a matter for this Committee today. He advised that the sole issue for this Committee was to

determine if there were any grounds for refusal: whether Mr Serapiglia was not a fit and proper person to hold a licence; whether he was acting as a front for someone else that was not a fit and proper person; whether there were any problems with the character or condition of the vessel, the nature of the proposed activity, the kind of person that would be in the vessel; and the possibility of undue public nuisance, or public order or safety. He said that if none of these concerned the Committee then none of these grounds for refusal applied to this application.

As far as planning was concerned, he advised that this licence was granted under the provisions of the 1982 Act and this did not, in itself, convey the right to trade where other permissions were required eg in respect of food hygiene or a landlord's consent. He said that it was a moot point as to whether or not the way Mr Serapiglia operated required planning permission. He referred to correspondence between Planning and Mr Serapiglia. He said that Mr Serapiglia, with legal assistance, had written to the planning authority setting out his reasons why planning permission was not a requirement and that to date he was still waiting on a response. Mr Skinner advised that if the planning authority believed there had been a breach of planning control they could take enforcement action. He advised that the systems and jurisdictions between licensing and planning were separate. He referred to page 3 of the letter of objection from the National Park which stated that "Planning enforcement is inevitably a lengthy process and one which is not straightforward to apply to a transient and seasonal use". Mr Skinner stressed that this Committee should not be used to bypass proper planning channels. He said that if lawful enforcement was taken and a planning application was required, Mr Serapiglia would have to obtain that. He said that if he was unable to obtain planning permission then Mr Serapiglia would have to trade in accordance with planning.

Mr Skinner said that this planning fight was for another day in front of another body and was not something this Committee could deal with today. He sought the renewal of Mr Serapiglia's street trader's licence in its present form.

QUESTIONS FROM OBJECTORS

Alastair McKie referred to paragraph 5 of schedule 1 of the 1982 Act and asked if Mr Skinner would agree that, although some of the other objections have been categorised as relating to the restriction of trade and competition, the objection of this licence on behalf of the National Park was because of the inappropriate siting of the ice-cream van in the context of nearby Listed Buildings and the Conservation Area. Mr Skinner replied that part of the National Park's objection advised that if the licence was to be granted the National Park would withdraw their objection if condition 17 was added to the licence so somehow the ice-cream van did fit into the surroundings but only for 30 minutes.

Mr McKie referred again to paragraph 5 of Schedule 1 of the 1982 Act and presented an extract of this on screen. He referred to Mr Skinner advising that there was a limited basis in which a licence could be refused. Mr McKie said that paragraph 5 set out the basis by which a licence could be refused.

He referred specifically to Ground 3 which stated "a licensing authority shall refuse an application to grant or renew a licence if, in their opinion -

(c) where the licence applied for relates to an activity consisting of or including the use of premises, or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to –

- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel,
- (ii) the nature and extent of the proposed activity,
- (iii) the kind of persons likely to be in the premises, vehicle or vessel,
- (iv) the possibility of undue public nuisance, or
- (v) public order or public safety or

(d) there is other good reason for refusing the application.”

Mr McKie said that it was his view that these grounds provided more than ample grounds for the licensing authority to refuse on the basis of the National Park objection and he asked Mr Skinner if he would agree. Mr Skinner said it must be in relation to licensing purposes and that the primary purpose of the street trader’s licence was to preserve public order or safety or prevent public nuisance. He said that these were the reasons why a licence should not be granted and not simply to preserve or benefit other traders. Mr McKie advised he was not talking about competition and restraints to traders. He said he was talking about the Committee refusing the licence on the basis of the National Park objection. He said that Mr Skinner was seeking to persuade the Committee that the National Park objection was not competent as it related to planning. Mr McKie advised that this was not the case and that there was a considerable wealth of grounds that the Committee could refuse the licence or impose conditions if granting the licence. Mr Skinner said he disputed that granting the licence would lead to public disorder and advised that no one had suggested this. He advised that if this was a planning issue that was something the planning authority should deal with.

Rowena Ferguson sought clarity from Mr Skinner when he stated that Mr Serapiglia had not been prosecuted and had nothing against his name. She said that she thought Mr Skinner had also said Mr Serapiglia had not been spoken to. She advised that this concerned her as she knew from personal experience that Mr Serapiglia had been spoken to by the Police for displaying things he should not be selling and for operating out with agreed hours. She said that she believed Mr Serapiglia had not been prosecuted but to say he had not been spoken to was a step too far. Mr Serapiglia confirmed that the Police had visited his van to check his licence and that this had happened 2 or 3 times a day. He confirmed that he had never been prosecuted.

OBJECTORS

Fiona Potter said she had nothing further to add to what was contained within her written submission where she had questioned whether or not Mr Serapiglia was a fit and proper person to hold a licence when he continued to act without referring to the planning issue which had still be resolved.

Rowena Ferguson said that she had traded for 24 years in the village of Luss and was concerned that she was categorised as someone unhappy because of her own business there. She said that she had seen a lot of unhappiness from the residents of Luss. She advised that everything Mr Serapiglia provided was provided by her business. She said this was not just about having a go at Mr Serapiglia and advised that the planning permission issue was a concern. She advised that in order for her to obtain planning permission for her business she had to go to the High Court. She said it was a lengthy, involved and expensive process with a huge number of conditions applied. She questioned why Mr Serapiglia could continue to operate without going through the same planning process. She said that she noted that previously Police Scotland had an issue

with the ice-cream van trading and she could not see any reason why that would not still stand. She also advised that it was frustrating for other businesses that received complaints from customers about the prices Mr Serapiglia charged. She said there were a lot of issues regarding breaches of the licence due to trading outwith hours. She also pointed out that Mr Serapiglia's daughter had been trading in the van when she should not have been. She said there continued to be a number of issues and this was just frustrating. She said she did not believe that Mr Serapiglia was a fit and proper person and that there was a lot of unhappiness in Luss. She asked the Committee to bring this to a close as Mr Serapiglia could trade elsewhere in Argyll and Bute.

Bob Cook referred to the submission by the National Park dated 20 July 2021 which was contained within the Agenda pack before Members and he read out the 3 grounds for objection which were detailed in the submission. He proposed that the Committee must refuse the application under these terms as the nature and the extent of the activity was not suitable for the location, namely the Pier Road area of Luss. He referred to the siting of the mobile unit for extended periods of time, on busy days to the detriment of the setting of nearby Listed Buildings and the Conservation Area. He advised that the primary aim of the National Park was to preserve and enhance the cultural heritage of the area, which he said this activity did not. He advised that in the event Members were minded to grant the licence then this must be subject to the inclusion of Standard Condition 17 relating to the duration of trade.

MEMBERS' QUESTIONS

Councillor Colville sought confirmation from Mr Skinner that he had advised that Mr Serapiglia's son had recently joined the business. Mr Skinner invited Mr Serapiglia to respond. Mr Serapiglia said that his son was already in the business and that he worked alongside him in the same way that he had worked alongside his father.

Councillor Colville commented that there was no reference made to other family members in the application. He sought clarity on what the normal process was and questioned whether other employees should have been named on the application form. The Council's Solicitor, Graeme McMillan, advised that this application was for Mr Serapiglia and not for his business. He explained that a street trader's licence was for an individual. He said that Mr Serapiglia was required to have his own street trader's licence and that any employee would also be required to have their own street trader's licence. He said that all of Mr Serapiglia's employees had their own licences which were on the same terms.

Councillor Devon referred to Mr Skinner saying that Mr Serapiglia had never been spoken to, charged or cautioned. She asked Mr Skinner if it was not the case that Mr Serapiglia had been spoken to and cautioned by Trading Standards regarding pricing. Mr Skinner invited Mr Serapiglia to respond. Mr Serapiglia said he had never been charged by Trading Standards or cautioned. He advised that he had received a letter from Trading Standards which stated they were not taking any further action. He confirmed that Trading Standards had been to his van 3 times and that they were more than satisfied with the outcome of their visits.

Councillor Moffat said she was interested to hear that while the application was only for Mr Serapiglia, it had been stated by Mr Skinner that his daughter and son were in the business. She asked if they could work at any time in the van. Mr Serapiglia said his daughter no longer worked for him and that when she did it was in other areas. He said that his other children did not work in the Luss area.

Councillor Moffat sought and received confirmation from Mr Serapiglia that his son had a street trader's licence for Argyll and Bute. He said that his daughters had licences in the past but these had been surrendered as they had other jobs.

Councillor Kinniburgh commented that the Committee were here today to consider Mr Serapiglia's application and that whether or not other family members held licences was irrelevant to the discussions today.

Councillor Trail commented that the Committee were not lawyers and he referred to Mr Skinner giving a very good character reference in his opening remarks about Mr Serapiglia. He asked Mr Skinner if this was based on his own personal experience of Mr Serapiglia or based on a briefing he was given. Mr Skinner said it was based on what Mr Serapiglia had told him. He advised that there was nothing to suggest what was said was inaccurate in anyway.

Councillor Freeman referred to the long history of this issue and asked if Mr McMillan could confirm that over a number of years the Council had received numerous complaints relating to Mr Serapiglia. Mr McMillan advised that it was important to state that consideration of this application should be based on the objections lodged and before the Committee. He said the Committee were restricted to the information before them today. He acknowledged that this was a long running issue but from the papers presented there were no objections from Police Scotland in terms of any criminal activity. He said that any other complaints about the fitness of the licence holder were set out by the objectors in their letters.

Councillor Freeman said it was clear the main issue around this renewal related to planning. He commented that Mr Skinner had said planning was not an issue but the National Park, who were the planning authority, had made it quite clear all along and over a number of years that this activity at Luss required planning permission. He asked Mr Cook to confirm that over the years he had confirmed the need for planning permission to Officers of the Council and that he had written to Mr Serapiglia to make him aware of the need for planning permission. Mr Cook confirmed that the National Park had written to Mr Serapiglia confirming the need for planning permission. He said this came to light after previous licensing decisions which gave them concern. He advised that they wrote to Mr Serapiglia and held discussions with the licensing team. He said that standard condition 18 required the licence holder to have obtained relevant planning permission which he has not.

Councillor Freeman noted that the National Park have highlighted to Mr Serapiglia on a number of occasions that he should not be trading without planning permission. He asked Mr Cook if he was aware if Mr Serapiglia took any action as a result of the planning authority's view or did he continue to trade without planning permission. Mr Cook confirmed that the National Park had written to Mr Serapiglia and that he responded to say he did not require planning permission but did not expound in anyway why not. Mr Cook said there had been no change in trading patterns as a result of the National Park's communications with Mr Serapiglia.

Councillor Freeman commented that it was clearly the planning authority's view that no application had been submitted at any time and so no decision had been made. He said that if an application was submitted and a decision was taken by the National Park to refuse the application, he would presume that Mr Serapiglia would have a right to appeal this decision and that would be the correct way to take a final view on this matter. Mr

Cook said this was correct. He advised that no application had been submitted so none of that procedure had taken place.

Councillor Hardie referred to the National Park stating that if condition 17 was attached to the licence they would have no objection. He asked why condition 17 would remove the planning objection. Mr Cook said that the second version of standard condition 17 placed a time limit on the period a van could stay in the same location. He said the van would have to move after 30 minutes and because of this short duration that would not be considered a change of use of the land where the van was sited. He advised that if the van stayed for longer than that it introduced the planning position that the location was being used for a particular purpose and required planning permission. Mr McKie added that it was beyond 30 minutes when it became a material change of use. He said that if the van stayed beyond 30 minutes and the National Park were to take enforcement action it was important to note that it would be looking at a material change of use of the land on which the ice-cream van was sited. He said this would mean the National Park would be taking enforcement action against the land owner, Argyll and Bute Council.

Councillor Colville asked Mr McMillan if there would be any reason why the Committee could not re-impose condition 17 on the licence. Mr McMillan said that standard condition 17 had already been removed by the Committee on renewal of the licence previously. At that time Mr Serapiglia had made the case why it did not apply to him. He advised that, having regard to Paragraph 5 of Schedule 1 of the 1982 Act, it was within the realms of possibility that if the Committee were minded to re-impose condition 17, it would have to do this on the basis of the evidence to prevent undue nuisance, public order or safety. He said the Committee needed to have evidence to back that up. He said the evidence before the Committee was in the Agenda pack issued.

Councillor Colville asked Mr Skinner if he would be correct to say that if the Committee were to re-impose condition 17 on the licence, it would be open to Mr Serapiglia to apply for planning permission and continue trading on the site. Mr Skinner said that would be like putting the cart before the horse. He said there needed to be a lawful reason for re-instating condition 17. He said that condition should only be re-imposed under these circumstances as stated by Mr McMillan.

Councillor Colville sought and received confirmation from Mr McMillan that Loch Lomond and the Trossachs National Park Authority were the relevant planning authority for the village of Luss.

Councillor Redman asked the objectors and Mr McKie if there was any proof regarding trading terms. Ms Unitt advised that a number of the National Park staff from the planning monitoring office and the ranger team had observed the ice-cream van trading for longer than 30 minutes over the last 2 years. She said they had not taken enforcement action on this but could do so.

Councillor Kinniburgh pointed out that condition 17 did not apply to the current licence and therefore Mr Serapiglia was entitled to trade for longer than 30 minutes. Ms Unitt advised that by doing this Mr Serapiglia was in breach of standard condition 18 where he was required to have planning permission. Councillor Kinniburgh advised that the planning matter was for another day.

Ms Ferguson said that there certainly was proof of licensing violations. She said she had images of Mr Serapiglia's daughter trading when she was not permitted to trade and that this had been supplied to the Police. She also referred to images of Mr Serapiglia trading

during lockdown and had forwarded complaints to Mr McMillan. She said there was certainly enough there for her to be very concerned.

Councillor Green referred to the discussion around condition 17 and asked the National Park if it was their position that this was something they would apply generally on a place or person. Mr Cook said that condition 17 had a very relevant crossover on what they would apply to any mobile van proposal. He said that anything there for a longer duration required planning permission and that they had many cases of a planning permission regime for mobile vans eg in Luss car park. Ms Unitt advised that Luss was unusual as nearly all of west of Loch Lomond had permitted development rights removed and that in other areas mobile operators could operate for 28 days. She said the permitted development rights were removed a number of years ago before the National Park came into being and that now traders cannot operate for one day without planning permission, if required. Mr McKie said that condition 17 was a standard condition of the licensing authority and not a National Park condition. He said that as a standard condition it was expected that this would be part of a licence and to not apply it, there would have to be exceptional or unusual circumstances. He advised that he had read the minutes when condition 17 was dis-applied and said that, despite what Mr McMillan has said, Mr Reppke at that time said it was his view that this was a perfectly lawful condition and that it was a matter for the Committee to impose or not. He said that this remained the case today. He advised that he did not think the requirement of the condition needed to be based on public order or nuisance evidence. He said he thought it would be lawful to apply it based on the objection from the National Park in respect of the impact on the Conservation Area and nearby Listed Buildings.

Councillor Freeman commented that most of this resolved around standard conditions 17 and 18. He asked Mr Cook to confirm that with the removal of condition 17 it was his view as a planning authority that planning permission was required for this vehicle to operate within Luss and that it would only be with the inclusion of standard condition 17 that planning permission would not be required. Mr Cook said yes. He advised that if the van traded in excess of 30 minutes that would require planning permission. He said that if this condition was applied and enforced by the licensing authority there would be no planning issue.

Councillor Freeman sought confirmation from Mr McMillan that the schedule of licence conditions have been checked over and reviewed by Legal Officers on a number of occasions. He also asked Mr McMillan to confirm that the schedule and standard conditions were legal documents and that he had no concerns about them not being valid. Mr McMillan said that each of the standard conditions are reviewed on a periodic basis. He considered that as a licensing authority, Argyll and Bute Council was entitled to impose these on all licence holders. He said that Officers stood by the terms of the standard conditions and their legality.

Councillor Freeman commented that street traders were required to adhere to all conditions of their licence. He pointed out that in this case condition 17 had been removed so did not apply but condition 18 was still there. He commented that the Applicant should adhere to this condition which means he should get planning permission. He asked if it was the view of the Council's Legal Officer that condition 18 relating to planning permission should apply. Mr McMillan advised that standard condition 18 required the licence holder to have any necessary planning consent as well as other statutory consents required. He said that the issue of planning consent was a matter for the National Park as the planning authority. He advised that the licensing authority could not take a conclusive view on that until the planning process had been undertaken either

through planning permission or enforcement. If there had been a breach of condition 18 there needed to be evidence that planning control had been breached. He pointed out that the Committee had, as part of the representations received today, statements of principle from the National Park that the view of the National Park was that planning permission was required. He said that having planning permission required going through necessary processes that were a matter of fact to be judged on each case. He said the Committee needed to see the outcome of the planning process to see an actual breach of process.

Councillor Freeman said it appeared quite simple that condition 18 stated that the licence holder must ensure they have obtained relevant planning consent. He said the Committee have been told that planning consent is required so from that it followed that the Applicant was not complying with condition 18. He asked Mr Cook and Mr McMillan if they would agree with his statement. Mr McMillan said he would not for the reason already given. He said the planning process and legislation and the licensing process and legislation were 2 separate issues. He advised that the question of planning had to be established through the outcome of enforcement, receipt of consent, or confirmation that planning permission was not required. Only at that point could any action be taken under the licensing regime. Any action taken before then would be premature. Mr McMillan confirmed that was his advice to the Committee. Mr Cook said he agreed with Councillor Freeman and could not see, when there was a condition on the licence which related to planning that the 2 regimes could not be seen as interconnected. He said the condition stated that the licence holder required planning permission and the National Park have advised the Council that planning permission is required. He advised that Mr Serapiglia has said he did not need planning permission and that no application has been forthcoming. He said that the onus should be on the licensing authority to pursue this. He said that he really hoped that it could be agreed that this was a licensing matter.

Councillor Kinniburgh referred to the National Park advising that Mr Serapiglia required planning permission. He asked why, to date, the National Park have not taken any enforcement action. Mr Cook said it was the condition on the licence that required planning permission to be obtained if necessary and that the licensing authority should enforce that condition.

Councillor Kinniburgh asked why the licensing authority should enforce it when Mr Serapiglia has disputed the need for planning permission. He commented that the National Park were the planning authority and Mr Serapiglia's dispute was not over the condition, his dispute was over planning. He asked why the National Park had not taken enforcement action. Mr Cook said this was a licensing condition. He said it would be very convoluted for the National Park to take enforcement action and that it should be enforced by the licensing authority. Mr McKie said the Civic Government (Scotland) Act 1982 set a legal framework for the regularisation of activity including that of a street trader. He said that in circumstances where the licence authority imposed a condition on that licence, which in this case was condition 18, although that condition made it a requirement it did not absolve the licensing authority to enforce. He said that the Applicant has chosen not to engage with the planning system and that it was not a requirement of condition 18 that the National Park take enforcement action. He said that was a matter of discretion. He advised that if any activity was regulated by condition the National Park looked to the licensing authority to enforce and regulate the matter.

Councillor Kinniburgh commented that in Mr McKie's own words condition 18 required the street trader licenced to have planning permission if it was necessary. He pointed out that it was the opinion of the Applicant that planning permission was not necessary and the

opinion of the National Park that it was necessary. Councillor Kinniburgh said that, to him, this was a dispute about planning and had to be rectified through that avenue. Noting that this has gone on for years, he said he was confused as to why the National Park had not sought to take enforcement action against Mr Serapiglia. Mr McKie said this licence did not regulate the activity of the National Park, adding that this was about restrictions placed on Mr Serapiglia's licence.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that any enforcement action taken by the National Park would be against Argyll and Bute Council.

Councillor Hardie sought and received confirmation from Mr McMillan that if this licence was renewed any planning issue should be dealt with by the National Park. Mr McMillan advised that following any actions taken by the National Park regarding the planning issue, it would be at that point the licensing authority condition could be looked at under the auspices of the licensing authority. Any time before that would be premature and would be using licensing to adjudicate a planning matter.

Councillor Moffat asked if the National Park had not been the authority that dealt with planning in this case and it was Argyll and Bute Council, could the planning issue and licensing issue have been dealt with in its entirety today. Mr McMillan advised no. He explained that this licensing hearing was convened under the 1982 Act. He advised that this Committee also dealt with planning applications at separate meetings to the Civic Government Hearings. He said it was not possible to hold hybrid meetings in order to pull in planning issues. He confirmed that the scope of the Committee's powers today were stipulated and prescribed by the terms of the 1982 Act.

Councillor Moffat sought further clarity on the issue around condition 18. She said she could not understand how it could be a valid licence when condition 18 was not being met regardless of which authority dealt with planning. Mr McMillan said it was all to do with the timing. He explained that standard condition 18 was in place and required, where necessary, planning consent along with other statutory consents to be in place. The fact of the matter was that the Applicant has advised that he does not need planning permission. It was the point of view of the National Park that planning permission was required but no application had gone through that process and no conclusive answer to that either through enforcement or the application process had been reached. Mr McMillan advised that to take enforcement against that condition, as stated before, would be premature or would be using the licensing regime to adjudicate what was a planning matter for the National Park. He advised that in his view, there was nothing before the Committee to show a breach of condition 18 at this time.

Councillor Moffat commented that this may set a precedent for others.

Councillor Kinniburgh asked again why the National Park had not taken enforcement action. Mr Cook said this was because it was a licensing condition that needed to be enforced. He said there was a much clearer route through licensing and that it should be resolved through this rather than getting into a situation where the National Park took action against everyone including the Council.

Mr Skinner said it did not become a breach of planning simply because Mr Cook said so. He advised that it had to be determined at the outset. He advised that condition 18 would only be breached if it was established that there was a requirement for planning permission and that was the advice the Committee were getting from their very competent

lawyer today. It was simply the case that until the planning matter was resolved under planning legislation there was no breach of condition 18.

Councillor Colville asked, due to the complexity of this matter, if it would be possible for the Committee to continue consideration of this hearing to allow them time to consider the detail of the McCluskey v North Lanarkshire case. Mr McMillan advised that the court case was considered by the same Committee as constituted today at renewal and it was agreed at that time to remove standard condition 17. He explained the findings of the court case and advised that the Committee could continue consideration if they wished, but it would have to be a short continuation ie to the next month, as it was not getting too far away from a 12 month deemed grant. Mr McMillan advised that he did not see a need to go into the minute detail of the provisions of the text of the McCluskey case as this Committee were dealing with a separate matter.

Councillor Colville referred to mounted Police being brought into Luss recently due to public disorder. He acknowledged this had nothing to do with the Applicant but said that as this disturbance happened right in the middle of where the application site was, if the hearing was continued, was this something the Committee could take into consideration. Mr McMillan said no. He said that if this had been the case the Committee would have heard from Police Scotland regarding disorder and it would have to have been directly related to this application and any likely safety concerns that could or had been caused.

Councillor Freeman asked Mr Cook to confirm that the issues he highlighted on screen gave the Committee a wide range of reasons why the elected Members can take decisions. Mr Cook said he would reiterate this position as a professional planning adviser. He said the Committee had the opportunity to take the matter on board.

Councillor Freeman commented that the Committee were being told to ignore the view of professional planning officers if not from Argyll and Bute Council. Mr Cook said the Committee should be taking the advice of Planning Officers and that the National Park were the Planning Officers for that area.

Councillor Forrest sought and received confirmation from Mr McMillan that condition 18 stated that planning permission needed to be obtained, if required, but in this case that had not been established. Even if it was the view of the Planning Officers, it still had to go through due process to establish that planning permission was required. If planning permission was sought and refused that would be the time to put condition 18 into effect. Mr McMillan agreed that the planning process needed to reach a conclusion and the Committee needed a decision on this before it could act on this condition. He confirmed it was his advice to the Committee that it would be premature to take action before then.

SUMMING UP

Objectors

Fiona Potter asked if Mr Serapiglia was granted his licence today and then had to make a planning application, which he had said he does not want to do, would the National Park refuse it.

Rowena Ferguson hoped the Committee realised from what they had heard today, that there was huge frustration from residents and established traders. She advised that between them, they had reported many issues to Mr McMillan and to Trading Standards and Police Scotland. She said this was not a bogus issue. She said she supported the

need for planning permission in Luss. She advised that Mr Serapiglia has already had many years to apply for planning permission and ignored it. She said that to her mind this did not make him a fit and proper person. She asked the Committee to exclude Luss from Mr Serapiglia's licence. She said they were not trying to take away his livelihood.

Alastair McKie reiterated the reasons why the National Park were opposed to this application. He advised that the primary function of the National Park was to preserve and enhance the natural beauty and setting of listed Buildings. This was at the heart of the National Park and why they were here today. He said he adopted the submissions by Bob Cook and Amy Unitt. Contrary to what Mr Skinner has said, the issues raised by the National Park directly related to the grounds set out in Paragraph 5 of Schedule 1 of the Act. He advised that the McCluskey case did not exclude per se the competency of the National Park objection. If planning matters were not relevant to Civic Government, he questioned why the Council had time trusted standard condition 18 relating to planning and standard condition 17 which also made reference to planning. As this was the case, he said it was implicit that planning did have a competent role to play in the licensing system. They were not operating completely in isolation and a degree of overlap could be seen here.

The primary position of the National Park was there was a breach of condition 18 of the licence and there was a considerable amount of evidence before the Committee that this has happened. On that basis the National Park's primary case was that the application should be refused. The National Park's secondary position was if the licence was granted it should be subject to standard condition 17 which relates to the van not exceeding 30 minutes at any location. He said this was a perfectly lawful and appropriate condition to impose. He said that if Mr Serapiglia wished to be a static trader in Luss this would cause a planning use.

He advised that the imposition of Condition 17 would be intra vires of the Committee rather than ultra vires. In that regard, Mr Reppke said this condition was lawful but at the discretion of the Committee. Mr McKie urged the Committee to either refuse the application or grant with the re-imposition of condition 17.

Applicant

Robert Skinner advised that what this Committee must not do was to assume what has yet to be established. He said it had yet to be established if planning permission was required for the way Mr Serapiglia operated his van. He said that just because Mr Cook said so, did not make that the law, it was simply his view. He pointed out that Mr Serapiglia had been operating under that regime for 3 years and that he would have expected the National Park to have taken enforcement action before now if planning permission had been required. He noted that this had yet to be done and that the National Park claimed the process would not be straightforward. He pointed out that the advice from the Council's legal adviser was that this Committee could not be used as a vehicle to bypass the proper channels. If it transpired that planning permission was required then Mr Serapiglia would be required to get that in hand and if he was unable to do that, and continued to trade, contrary to the planning determination, then that was when it would become relevant for this Committee. All this discussion was premature and the planning fight was for another day in front of another body. It was not something this Committee could properly deal with today.

Mr Skinner invited the Committee to deal with this application under the 1982 Act and to grant renewal of Mr Serapiglia's street trader's licence in its present form.

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

DEBATE

Councillor Hardie said he did not give much countenance to the argument about planning. He advised that he has seen the ice-cream van for himself without issue. He confirmed that he would accept the application and renew the licence as is.

Councillor Freeman indicated that he had drafted a Motion to approve the application subject to the removal of approval to trade at Luss from the licence. He read out the detail of the proposed Motion and also advised that he would be happy to consider the reinstatement of condition 17 to the licence.

Councillor Green agreed that this matter should be based on licensing issues and not planning. With reference to the application of standard conditions 17 and 18, one view was to not approve at all or suspend Luss. He said he was reluctant to go down either route. He said he was a bit unsure when it came to taking a decision on behalf of planning and advised that in some ways it worked the other way for him. If the Committee did not put condition 17 on any licence it could be seen to be taking a planning decision. He advised that the Committee had to be fair to the Applicant and respect the advice given by the range of professionals from the Council and the National Park. On that basis, he said he was inclined to grant the licence subject to standard condition 17 being added back on as it would be for any other licence in the area.

Councillor Redman said that based on the information before the Committee he was minded to renew the application.

Councillor Trail said he had more faith in the evidence that the local people had put forward about Mr Serapiglia's behaviour in the village than the views represented by the Advocate at the start. He advised he would like to see if it would be possible to conclude that Mr Serapiglia was not a fit and proper person to hold a licence but he was not sure if that would be a competent Motion to put forward.

Councillor Colville said he had come to the conclusion that this was a planning matter and that the licence should be granted and to leave the National Park to get on with it. He suggested not prolonging the position and to let the authority that could deal with it get on with it.

Councillor Freeman said he noted what Councillor Green had said about condition 17. He advised that across Argyll and Bute street traders had to comply with conditions 17 and 18 and that this was the only licence that did not have condition 17 attached. He advised that he would be happy to approve with the inclusion of condition 17. Councillor Green confirmed that he would be happy to second that.

Councillor Kinniburgh said that when the Committee considered the application to remove condition 17 he had been opposed to that but this is what the Committee decided to do. Having heard what has been said about Mr Serapiglia, and from his experience of Mr Serapiglia in the past, Councillor Kinniburgh said that he could appear to have an aggressive manner and that had been demonstrated one day in the Council Chamber. Having said that, Councillor Kinniburgh said he did not believe there was anything before the Committee to say that Mr Serapiglia was not a fit and proper person to hold a licence. No representation has been received from Police Scotland so there was nothing to back

up that view. Having heard all the evidence today, he advised that the Committee could only deal with licensing issues and that any planning issue was irrelevant at this time. He said he believed the planning issue was a matter for the National Park and Mr Serapiglia to sort out. The fact remained that the Committee removed condition 17 in the past and from the evidence heard today, he said he believed the Committee would be unwise to re-impose that on the licence.

Motion

To agree to grant renewal of Mr Serapiglia’s street trader’s licence no. 4861 in the form it currently exists.

Moved by Councillor David Kinniburgh, seconded by Councillor Graham Hardie.

Amendment

To agree to approve the application with the inclusion of Condition 17.

Moved by Councillor George Freeman, seconded by Councillor Jean Moffat

A vote was taken by calling the roll.

Motion

Amendment

Councillor Colville
Councillor Forrest
Councillor Hardie
Councillor Kinniburgh
Councillor Redman
Councillor Taylor

Councillor Devon
Councillor Freeman
Councillor Green
Councillor Moffat
Councillor Trail

The Motion was carried by 6 votes to 5 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant the renewal of Mr Serapiglia’s street trader’s licence no. 4861 in the form it currently existed.

It was noted that written confirmation of this decision would be issued within 7 days and that Mr Serapiglia’s licence would not be issued until after the 28 day appeal period.

(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

Reference No: 19/00774/PP

Planning Hierarchy: Local Development

Applicant: Mr Ashley Toole

Proposal: Subdivision of 1 no. 2 bedroomed flat into 2 no. 1 bedroomed flats

Site Address: 5 Polfearn House, Taynuilt, Argyll

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Subdivision of 1 no. 2 bedroomed flat into 2 no. 1 bedroomed flats
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted as a minor departure to the provisions of the Local Development Plan subject to the conditions and reasons appended to this report and that the Scottish Government be 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.

(C) HISTORY:

04/01470/COU - Alterations and Sub-Division of Hotel to form 11 Flats
Granted: 22.09.2004.

10/00033/PP – Alterations and extension
Granted: 04.03.2010.

No pre-application advice has been sought.

(D) CONSULTATIONS:

Argyll and Bute Council Roads Authority

Report dated 15.05.2019 advising no objection to the proposed development.

Scottish Water

Letter dated 23.04.2019 advising no objection.

Scottish Environment Protection Agency (SEPA)

Letters dated 13.05.2019 and 12.06.2019 objecting in principle to the proposed development on the basis that it may place buildings and persons at risk of flooding contrary to Scottish Planning Policy (SPP). SEPA further advise that the proposal will increase the number of properties at flood risk, and constitutes an island of development with no safe access / egress.

Letter dated 08.11.2019 objecting to the proposed development on the basis of lack of information with regards to flood risk.

SEPA have maintained this objection despite continued efforts by officers to elicit a more pragmatic and 'case specific' response, and have confirmed this as their final position on 7th January 2022.

JBA Consulting Ltd

Report dated 29.04.2019 advising no objection to the proposed development but providing advisory comments advising that the finished floor levels and the existing footprint of the dwelling are not being altered and that post development flood risk will therefore likely be similar to pre development risk. The FRA commented that no history of the site flooding had been submitted however in the wider area the River Awe had flooded historically. It is further advised that a formal Flood Risk Assessment is not required.

Report dated 18.11.2019 advising defer decision to allow for additional information to be submitted with regard to emergency access / egress during a 1 in 200 year flood event.

Report dated 26.11.2019 advising no objections as the agent has provided information that a safe pedestrian access and egress from the site, can be made to the south west of the development across the adjacent field to Shore Cottage and House. This access route gently elevates to higher ground over easy terrain and a relatively short distance.

The above represents a summary of the comments made. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Neighbour Notification procedures, closing date 23.05.2019.

(F) REPRESENTATIONS:

No representation have been received regarding the proposed development.

(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:	No
(iv)	A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:	No
<hr/> (H) PLANNING OBLIGATIONS		
(i)	Is a Section 75 agreement required:	No
<hr/> (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No		
<hr/> (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.	
	<u>Argyll and Bute Local Development Plan, 2015</u>	
	LDP STRAT 1 – Sustainable Development LDP DM 1 – Development within the Development Management Zones (<i>Countryside Zone</i>) LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment LDP 8 – Supporting the Strength of our Communities LDP 9 – Development Setting, Layout and Design LDP 10 – Maximising our Resources and Reducing our Consumption LDP 11 – Improving our Connectivity and Infrastructure	
	<u>Supplementary Guidance</u>	
	SG 2 – Sustainable Siting and Design Principles SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs) (<i>North Argyll</i>) APQ) SG LDP ENV 14 – Landscape SG LDP HOU 1 – General Housing Development including Affordable Housing SG LDP SERV 7 – Flooding and Land Erosion, The Risk Framework SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes SG LDP TRAN 6 – Vehicle Parking Provision	
(i)	List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.	
	Argyll and Bute Sustainable Design Guidance, 2006 Scottish Planning Policy (SPP), 2014 SEPA Development Management Guidance: Flood Risk SEPA Flood Risk and Land Use Vulnerability Guidance Consultation Responses Argyll and Bute proposed Local Development Plan 2 (November 2019)	

The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time:

Policy 39 – Construction Standards for Private Access

(K)	Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:	No
(L)	Has the application been the subject of statutory pre-application consultation (PAC):	No
(M)	Has a sustainability check list been submitted:	No
(N)	Does the Council have an interest in the site:	No
(O)	Requirement for a hearing:	No
(P)	Assessment and summary of determining issues and material considerations	

Planning permission is sought for the subdivision of a single two bedroomed flat split over two storeys (ground floor and first floor) into two separate one bedroom flats utilising the same access/egress arrangements and wholly contained within the existing building without the need for any extension or material external alteration.

In terms of the adopted Argyll and Bute Local Development Plan the site is located within the Countryside zone wherein policy LDP DM 1 gives encouragement of up to small scale development consisting of a change of use or redevelopment of an existing building on appropriate sites and subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing in the settlements on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

All works to facilitate the subdivision of the flat into two separate units are internal with no material works proposed to the exterior of the building.

The property the subject of this application was formerly a small part of a substantial country house hotel known as Polfearn Hotel, which was previously sub-divided to form 11 individual flatted apartments (16 beds in total) following planning permission granted in 2004. Previously, the hotel accommodated approximately 13 double guest rooms, one

single guest room and a two double-bedroom manager's apartment plus a separate residential chalet. It is estimated that, when at capacity, the previous hotel would have accommodated approximately 35 people. The redevelopment of this building into residential flats has a current total capacity of approximately 26 people.

The proposal subject of this application is to sub-divide the two-bedroomed flat number 5 into two separate one-bedroomed flats which will be known as flats no. 5 and no.5A. The existing Flat No. 5 is a two bedroom flat served by an existing glazed lantern entrance vestibule at ground floor level, with its bedrooms, kitchen, dining room and bathroom located on the ground floor, with a living room located within the roof void and accessed via an internal stair. It is proposed to subdivide this space to provide a small one-bedroom ground floor flat and a separate one-bedroom flat split over the remaining part of the ground floor and retaining the existing first floor living room. The larger flat will be served via the existing entrance vestibule and the smaller one by an existing rear doorway and by replacing an existing window to the front elevation with a single doorway.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this building which was previously sub-divided to form individual apartments.

However, the site is within the coastal flood risk area and at the limits of the fluvial flood plain of the River Awe (which is tidal at this point), as per the SEPA Flood Maps (2014). Accordingly, SEPA has objected to the proposal advising that they categorise the proposed development as one seeking to add 'buildings used for dwelling houses', which comprises a 'Highly Vulnerable Land Use' within an area of 'medium to high coastal and fluvial flood risk'. Whilst SEPA acknowledge that the development would have the same footprint, they state that it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance.

SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management guidance on flood risk.

SEPA have commented, in this case, that a detailed flood risk assessment may allow them to look in more detail at the flood risk liability presented by the current application for planning permission.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently an 11 apartment residential complex, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having one bedroom whereas the current flat has two bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council's Flood Advisors, who acknowledge that the site is within the indicative limits of coastal and at the margin of the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that

as the property is an existing flat, the finished floor levels and the existing footprint of the dwelling are not being altered and that post development flood risk will therefore likely be similar to the pre development risk.

JBA are satisfied that a safe pedestrian access and egress from the site, can be made to the south west of the development across the adjacent field to Shore Cottage and House. This access route gently elevates to higher ground over easy terrain and a relatively short distance.

In respect of the suggestion that the developer may wish to consider the submission of a detailed flood risk assessment, his Agent has advised that, in their opinion and that of their Client a flood risk assessment would only duplicate the views of JBA, the Council's Flood Advisors who have no objection to the application. The Agent also advises that further time and money would be unnecessarily wasted on this. Officers have considered this stance carefully and, through their negotiations with SEPA, have concluded that, in their opinion, such a report would be unlikely to lift the objection in principle.

Thus whilst it must be accepted that the proposed development is contrary to both national and local flood risk planning policy, it is the recommendation of this report that the Scottish Government be notified of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA, under the Town And Country Planning (Notification Of Applications) (Scotland) Direction 2009.

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

The proposed development is a minor departure to the adopted Local Development Plan, expressly Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 which require development to be located outwith areas of significant flood risk.

(R) Reasons why planning permission should be granted

The proposal to subdivide the flat into two separate units is considered to be an acceptable small scale change of use development within this area of the 'Countryside Zone' and relating to a small part of a larger building in lawful use as a development of residential apartments. The proposed development would be in accordance with the relevant provisions of the Local Development Plan in all respects but one.

The site is within the coastal flood risk area and at the limits of the fluvial flood plain of the River Awe (which is tidal at this point), as per the SEPA Flood Maps (2014). Accordingly, SEPA has objected to the proposal advising that they categorise the proposed development as one seeking to add 'buildings used for dwelling houses', which comprises a 'Highly Vulnerable Land Use' within an area of 'medium to high coastal and fluvial flood risk'. Whilst SEPA acknowledge that the development would have the same footprint, they state that it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance. The proposed development must therefore be considered contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential

accommodation within what is currently an 11 apartment residential complex, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having one bedroom whereas the current flat has two bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any ‘real world’ change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

Notwithstanding the departure to policy LDP 10 and SG LDP SERV 7, the proposal accords with Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG2, SG LDP ENV 13, SG LDP ENV 14, SG LDP HOU 1, SG LDP SERV 7, SG LDP TRAN 4 and SG LDP TRAN 6 of the adopted ‘Argyll and Bute Local Development Plan’ 2015 and there are no other material considerations, including issues raised by third parties, which would warrant anything other than the application being determined in accordance with this reasoning.

(S) Reasoned justification for a departure to the provisions of the Development Plan

The considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently an 11 apartment residential complex, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having one bedroom whereas the current flat has two bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any ‘real world’ change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

(T) Need for notification to Scottish Ministers or Historic Scotland: Yes

Author of Report: Judith Stephen Date: 31.01.2022

Reviewing Officer: Tim Williams Date: 31.01.2022

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

CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 19/00774//PP**GENERAL**

1. The development shall be implemented in accordance with the details specified on the application form dated **15.04.2019**; supporting information and, the approved drawings listed in the table below unless the prior written approval of the Planning Authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location Plan	1926 03		18.04.2019
Plan and Elevations as Existing	1926 01		18.04.2019
Plan and Elevations as Proposed	1926 02		18.04.2019

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

Note to Applicant:

- 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 Sections 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. Failure to comply with this requirement constitutes a breach of planning control under Section 123(1) of the Act.
- 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.

Both the Notification of Initiation and Notification of Completion forms referred to above are available via the following link on the Council's website:

<https://www.argyll-bute.gov.uk/planning-and-environment/make-planning-application>

- Please note the advice and guidance contained in the consultation response from the Council's flood advisors, JBA Consulting Ltd which is available to view via the following link on the Council's Public Access System. Should you wish to discuss any of the points raised in the response you are advised to contact JBA direct.

<https://www.argyll-bute.gov.uk/planning-and-environment/find-and-comment-planning-applications>

- No walls, fences, hedges etc. will be permitted within the verge at the access with the public road.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 19/00774/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy and Key Planning Policies

In terms of the adopted Argyll and Bute Local Development Plan the site is located within the Countryside Zone (CZ) wherein policy LDP DM 1 gives encouragement of up to small scale development consisting of a change of use or redevelopment of an existing building on appropriate sites and subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 3 assesses applications for their impact on the natural, human and built environment. As the site falls within the North Argyll Area of Panoramic Quality (APQ) consideration has to be given to the provisions of SG LDP ENV 13 which seeks to ensure that developments within an APQ are of a suitable scale and design to ensure no adverse impact on the character of the APQ.

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing subject to compliance with policy LDP DM 1 on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

Policy LDP 9 and SG 2 seek developers to produce and execute a high standard of appropriate design and ensure that development is sited and positioned so as to pay regard to the context within which it is located consolidating the existing settlement and taking into account the relationship with neighbouring properties to ensure no adverse privacy or amenity issues.

Policy LDP 10 and SG LDP SERV 7 seeks to resist development within medium to high risk flooding areas (1:200 or greater annual probability of flooding) and developments on the functional floodplain unless in certain very specific circumstances (none of which apply to the currently proposed development).

Policy LDP 11 supports all development proposals that seek to maintain and improve internal and external connectivity by ensuring that suitable infrastructure is delivered to serve new developments. SG LDP TRAN 4 and SG LDP TRAN 6 expand on this policy seeking to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision. This policy background is reiterated in the policies contained within pLDP2, specifically Policy 39 which seeks to ensure that accesses serving developments are of an appropriate standard to ensure that they function safely and effectively to ensure no road safety issues arise.

No representations have been received regarding the proposed development.

B. Location, Nature and Design of Proposed Development

Planning permission is sought for the subdivision of a single two-bedroom flat into two one-bedroom flats utilising the same access/egress arrangements.

All works to facilitate the subdivision of the flat into two separate units are internal with no material works proposed to the exterior of the building.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this building which was previously sub-divided to form individual apartments.

The proposal accords with the provisions of Policies LDP 8, LDP 9, SG 2 and SG LDP HOU 1 which collectively give support to new residential developments compliant with settlement strategy policy LDP DM 1 and where they relate to the existing landscape and take into account the relationship with neighbouring properties.

C. Road Network, Parking and Associated Transport Matters.

The proposal is served by a private road situated off the B845 Barcaldine – Bonawe Ferry – Taynuilt – Taychreggan Road. In their response to the application the Roads Engineer has raised no objection to the proposed development due to the existing private access and parking arrangements being adequate.

The proposal is considered acceptable in terms of Policy LDP DM 11, SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure that proposed developments are served by a safe means of vehicular access and have an appropriate parking and turning area within the site. This approach also satisfies the requirements of Policy 39 of pLDP2 which seek to achieve the same outcome for proposed developments.

D. Infrastructure

The application does not propose any change to the existing water supply which is via connection to the public systems within the control of Scottish Water. The applicant will require to make contact with Scottish Water to secure separate connections for each unit should planning permission be granted.

The proposal is considered acceptable in terms of Policy LDP DM 11 which seeks to ensure the availability of suitable infrastructure to serve proposed developments and gives support to private drainage arrangements where connection to the public system is not feasible.

E. Flood Risk

The site has been identified as having the potential to flood and therefore consultation has been undertaken with SEPA and the Council's Flood Risk Advisors, JBA Consulting Ltd (JBA).

SEPA has categorised the proposed development as a 'highly vulnerable land use' and has objected to the development in principle on the basis that it may place buildings and persons at risk of flooding, contrary to Scottish Planning Policy (SPP).

The application site is within the coastal flood risk area and at the limits of the fluvial flood plain of the River Awe (which is tidal at this point), as per the SEPA Fluvial Flood Maps (2014). These flood maps show that the application site and its wider surroundings lies within the medium likelihood (1 in 200 year) fluvial flood extent of the SEPA Flood Map and may, therefore, be at medium to high risk of coastal flooding and, possibly fluvial flooding from the River Awe as it lies at the edge of its functional floodplain.

SEPA advise that Paragraph 255 of the SPP states that "*the planning system should promote a precautionary approach to flood risk from all sources*", as well as flood avoidance and flood reduction, where appropriate. Paragraph 256 stipulates that, "*the planning system should prevent development which would have significant probability of being affected by flooding*".

SEPA further advise that, based on their flood maps, it appears that there is no safe (dry) access/egress from the property and that, in line with their duties under the Flood Risk

Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management, they are not supportive of additional highly vulnerable developments being in an area with no safe access/egress.

SEPA's 'Development Management Guidance on Flood Risk' (July 2018) states that,

“Proposed developments should not be located in areas at medium to high risk from fluvial or coastal flooding (or low to medium areas for civil infrastructure). Other most vulnerable uses will only be acceptable in low to medium risk areas if the hazard can be alleviated through appropriate mitigation.

Where this is not possible, some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should be applied within the context of the issues listed in paragraph 264 of SPP and our Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure that it is suitable for the location and degree of flood risk. In general, the following types of development may be acceptable in areas that are at risk of fluvial or coastal flooding:

a) Developments classed as water compatible or that are considered to be essential infrastructure which require a flood risk location for operational reasons. The operational need for the development is for the planning authority to determine.

b) Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.

c) Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.

d) Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.

e) Development in built up areas protected by an existing or planned flood protection scheme, where the standard of protection is appropriate for the vulnerability of the land use. “

The SEPA Land Use Vulnerability Guidance seeks to classify developments into a series of five specific land use types which range from 'Most Vulnerable Uses' (at the most vulnerable end of the scale) down to 'Water Compatible Uses' (at the least vulnerable end). The development the subject of this application has been categorised by SEPA as a 'Highly Vulnerable Land Use' (the second most vulnerable to flood risk) because it proposes development comprising 'buildings used for dwelling houses'.

SEPA's guidance states that development falling within the 'Highly Vulnerable Land Use' category will only be acceptable within the medium to high flood risk area if one of the following exceptions apply:

- *Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*
- *Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.*

- *Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.*
- *The site is protected by a flood protection scheme of the appropriate standard that is already in existence and maintained, is under construction, or is planned for in a current flood risk management plan.*

Officers must accept that SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management framework on flood risk.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently an 11 apartment residential complex, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having one bedroom whereas the current flat has two bedrooms. The proposed subdivision will be achieved primarily through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. The maximum occupancy level of a building is limited solely by the size of the accommodation within that building. Given that the proposed development will not increase the size of the building or the floor space area within it, there will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any ‘real world’ increase in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council’s Flood Advisors, who acknowledge that the site is within the indicative limits of coastal and at the margin of the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that as the property is an existing flat, the finished floor levels and the existing footprint of the dwelling are not being altered and that post development flood risk will therefore likely be similar to the pre development risk.

JBA are satisfied that a safe pedestrian access and egress from the site, can be made to the south west of the development across the adjacent field to Shore Cottage and House. This access route gently elevates to higher ground over easy terrain and a relatively short distance.

SEPA have been asked to consider this position as falling within the first of their exceptions quoted above – that the development could reasonably be accepted as the *redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*

SEPA have considered this position by referring it to their planning and flood risk task group but have maintained their objection, stating that they, *“appreciate that Members may find it difficult to understand how the proposals lead to an increase in vulnerability as there will be no increase in the number of bedrooms or footprint of the buildings. We however view the proposals as an increase in the number of residential units and therefore the number of people at risk could also potentially increase. In line with SPP we are taking a precautionary approach to avoiding and reducing flood risk where appropriate.”*

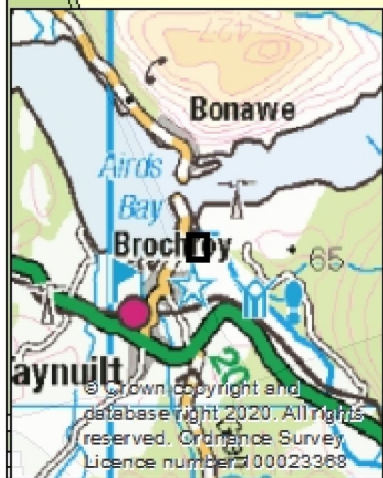
This is disappointing but perhaps not altogether surprising. Nevertheless, officers consider that the pragmatic and proportionate approach in this specific case would be to notify the Scottish Government of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA.

In the event that Members are minded to approve the application in light of the recommendation by officers and having regard to National and Local Planning Policy with an outstanding objection from SEPA, this must be notified to Scottish Ministers. This requirement is set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 ('the Direction').

Planning Circular 3/2009: Notification of Planning Applications sets out the process that will be followed in such notification cases under the Direction:

"Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter."

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Location Plan Relative to Planning Application: 19/00774/PP



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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

Reference No: 21/01202/PP

Planning Hierarchy: Local Development

Applicant: Mr Sean Murdoch

Proposal: Subdivision of 1 no. 4 bedroom flat to 2 no. 2 bedroom flats

Site Address: Flat 2/1, 14 Soroba Road, Oban

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Subdivision of 1 no. 4 bedroom flat to 2 no. 2 bedroom flats
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted as a minor departure to the provisions of the Local Development Plan subject to the conditions and reasons appended to this report and that the Scottish Government be 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.

(C) HISTORY:

No relevant planning history.

(D) CONSULTATIONS:

Argyll and Bute Council Roads Authority

Report dated 13/09/21 advising no objection to the proposed development.

Scottish Environment Protection Agency (SEPA)

Letter dated 16/08/21 objecting in principle to the proposed development on the basis that it may place buildings and persons at risk of flooding contrary to Scottish Planning Policy (SPP).

SEPA have maintained this objection despite continued efforts by officers to elicit a more pragmatic and 'case specific' response, and have confirmed this as their final position on 7th January 2022.

JBA Consulting Ltd

Report dated 15/07/21 advising no objection to the proposed development but providing advisory comments for prospective purchasers to be made aware of the potential flood risk of the property and the need for an emergency evacuation plan in the case of an extreme flood event.

Health and Safety Executive (HSE)

Report dated 08/07/21 advising that the site does not currently lie within the consultation distance of a major hazard site or major accident hazard pipeline, therefore, at present HSE does not need to be consulted.

The above represents a summary of the comments made. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Neighbour Notification procedures, closing date 02/08/21.

(F) REPRESENTATIONS:

No representation have been received regarding the proposed development.

(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:	No
(iv)	A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:	No

(H) PLANNING OBLIGATIONS

(i)	Is a Section 75 agreement 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, 2015

- LDP STRAT 1 – Sustainable Development
- LDP DM 1 – Development within the Development Management Zones (*Settlement Zone of Oban*)
- LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
- LDP 8 – Supporting the Strength of our Communities
- LDP 9 – Development Setting, Layout and Design
- LDP 10 – Maximising our Resources and Reducing our Consumption
- LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

- SG 2 – Sustainable Siting and Design Principles
- SG LDP ENV 14 – Landscape
- SG LDP HOU 1 – General Housing Development including Affordable Housing
- SG LDP SERV 7 – Flooding and Land Erosion, The Risk Framework
- SG LDP TRAN 6 – Vehicle Parking Provision
- SG LDP TRAN 7 – Airport Safeguarding

(i) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.

- Argyll and Bute Sustainable Design Guidance, 2006
- Scottish Planning Policy (SPP), 2014
- SEPA Development Management Guidance: Flood Risk
- SEPA Flood Risk and Land Use Vulnerability Guidance Consultation Responses
- Argyll and Bute proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time.

There are no provisions of pLDP2 that may be afforded significant weighting in the determination of this application.

(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 (PAC):	No
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(M)	Has a sustainability check list been submitted:	No
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(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

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

Planning permission is sought for the subdivision of a first floor four bedroom flat into two separate two bedroom flats utilising the same access/egress arrangements and wholly contained within the existing building without the need for any extension or material external alteration.

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015, the application site is located within the main town centre of Oban where Policy LDP DM 1 gives encouragement to sustainable forms of development subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing in the settlements on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

All works to facilitate the subdivision of the flat into two separate units are internal with no works proposed to the exterior of the building.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses.

However, the site is completely overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014) due to the proximity of the site to the Black Lynn Burn and accordingly SEPA has objected to the proposal advising that they categorise the proposed development as one seeking to add 'buildings used for dwelling houses', which comprises a 'Highly Vulnerable Land Use' within an area of 'medium to high fluvial flood risk'. Whilst SEPA acknowledge that the development would have the same footprint, they state that it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance.

SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management guidance on flood risk.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people

would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council's Flood Advisors, who acknowledge that the site is within the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that as the property is a flat, considerably elevated above surrounding ground level, internal flooding to either of the proposed properties is very unlikely. JBA further advise that if the two flats are to be sold it is recommended that potential purchasers are made aware of the potential flood risk and the possible need for an emergency evacuation plan.

Thus whilst it must be accepted that the proposed development is contrary to both national and local flood risk planning policy, it is the recommendation of this report that the Scottish Government be notified of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA, under the Town And Country Planning (Notification Of Applications) (Scotland) Direction 2009.

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

The proposed development is a minor departure to the adopted Local Development Plan, expressly Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 which require development to be located outwith areas of significant flood risk.

(R) Reasons why planning permission should be granted

The proposal to subdivide the flat into two separate units is considered to be an acceptable small scale development within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses. The proposed development would be in accordance with the relevant provisions of the Local Development Plan in all respects but one.

The site is overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014) due to the proximity of the site to the Black Lynn Burn and accordingly SEPA has objected to the proposal advising that, whilst the development would have the same footprint, it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance. The proposed development must therefore be considered contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were

to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

Notwithstanding the departure to policy LDP 10 and SG LDP SERV 7, the proposal accords with Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG2, SG LDP ENV 13, SG LDP ENV 14, SG LDP HOU 1, SG LDP SERV 7 and SG LDP TRAN 6 of the adopted 'Argyll and Bute Local Development Plan' 2015 and there are no other material considerations, including issues raised by third parties, which would warrant anything other than the application being determined in accordance with this reasoning.

(S) Reasoned justification for a departure to the provisions of the Development Plan

The considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

(T) Need for notification to Scottish Ministers or Historic Scotland: Yes

Author of Report: Fiona Scott Date: 27/01/22

Reviewing Officer: Tim Williams Date: 27/01/22

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

CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 21/01202//PP**GENERAL**

1. The development shall be implemented in accordance with the details specified on the application form dated **07/06/21**; supporting information and, the approved drawings listed in the table below unless the prior written approval of the Planning Authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
As Existing and Scheme Design	2125 01		08/06/21

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

Note to Applicant:

- 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 Sections 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. Failure to comply with this requirement constitutes a breach of planning control under Section 123(1) of the Act.
- 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.

Both the Notification of Initiation and Notification of Completion forms referred to above are available via the following link on the Council's website:

<https://www.argyll-bute.gov.uk/planning-and-environment/make-planning-application>

- Please note the advice and guidance contained in the consultation response from the Council's flood advisors, JBA Consulting Ltd which is available to view via the following link on the Council's Public Access System. Future occupiers should be made aware of the potential flood risk on the site. Should you wish to discuss any of the points raised in the response you are advised to contact JBA direct.

<https://www.argyll-bute.gov.uk/planning-and-environment/find-and-comment-planning-applications>

2. Prior to the development commencing an emergency evacuation plan shall be submitted to an approved in writing by the planning authority in consultation with the Council's flood advisor. Thereafter the development shall be implemented and operated in accordance with the approved plan.

Reason: In order to ensure suitable access is retained in the event of a flood.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/01202/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy and Key Planning Policies

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015, the application site is located within the main town centre of Oban where Policy LDP DM 1 gives encouragement to sustainable forms of development subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing in the settlements on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

Policy LDP 9 and SG 2 seek developers to produce and execute a high standard of appropriate design and ensure that development is sited and positioned so as to pay regard to the context within which it is located consolidating the existing settlement and taking into account the relationship with neighbouring properties to ensure no adverse privacy or amenity issues.

Policy LDP 10 and SG LDP SERV 7 seeks to resist development within medium to high risk flooding areas (1:200 or greater annual probability of flooding) and developments on the functional floodplain unless in certain very specific circumstances (none of which apply to the currently proposed development).

Policy LDP 11 supports all development proposals that seek to maintain and improve internal and external connectivity by ensuring that suitable infrastructure is delivered to serve new developments with SG LDP TRAN 6 expanding on this policy seeking to ensure developments are served an appropriate parking provision.

No representations have been received regarding the proposed development.

B. Location, Nature and Design of Proposed Development

Planning permission is sought for the subdivision of a first floor four bedroom flat into two separate two bedroom flats utilising the same access/egress arrangements.

All works to facilitate the subdivision of the flat into two separate units are internal with no works proposed to the exterior of the building.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses.

The proposal accords with the provisions of Policies LDP 8, LDP 9, SG 2 and SG LDP HOU 1 which collectively give support to new residential developments within the defined settlement where they relate to the existing settlement and take into account the relationship with neighbouring properties.

C. Road Network, Parking and Associated Transport Matters.

The property comprises the first floor of a tenement building situated within the main town centre of Oban with no off street access or parking provision. In their response to the

application the Roads Engineer has raised no objection to the proposed development due to the site being within the defined town centre where it would be served by existing on-street parking provision and public car parks.

The proposal is considered acceptable in terms of Policy LDP DM 11 and SG LDP TRAN 6 which seek to ensure an appropriate parking provision is available to serve proposed developments.

D. Infrastructure

The application does not propose any change to the existing water supply and foul drainage arrangements which are via connection to the public systems within the control of Scottish Water. The applicant will require to make contact with Scottish Water to secure separate connections for each unit should planning permission be granted.

The proposal is considered acceptable in terms of Policy LDP DM 11 which seeks to ensure the availability of suitable infrastructure to serve proposed developments and gives support to private drainage arrangements where connection to the public system is not feasible.

E. Flood Risk

The site has been identified as having the potential to flood and therefore consultation has been undertaken with SEPA and the Council's Flood Risk Advisors, JBA Consulting Ltd (JBA).

SEPA has categorised the proposed development as a 'highly vulnerable land use' and has objected to the development in principle on the basis that it may place buildings and persons at risk of flooding, contrary to Scottish Planning Policy (SPP).

The application site is completely overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014). These flood maps show that the application site and its wider surroundings lies within the medium likelihood (1 in 200 year) fluvial flood extent of the SEPA Flood Map and may, therefore, be at medium to high risk of flooding from the Black Lynn Burn. The site also lies within the functional floodplain.

SEPA advise that Paragraph 255 of the SPP states that "*the planning system should promote a precautionary approach to flood risk from all sources*", as well as flood avoidance and flood reduction, where appropriate. Paragraph 256 stipulates that, "*the planning system should prevent development which would have significant probability of being affected by flooding*".

SEPA further advise that, based on their flood maps, it appears that there is no safe (dry) access/egress from the property and that, in line with their duties under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management, they are not supportive of additional highly vulnerable developments being in an area with no safe access/egress.

SEPA's 'Development Management Guidance on Flood Risk' (July 2018) states that,

"Proposed developments should not be located in areas at medium to high risk from fluvial or coastal flooding (or low to medium areas for civil infrastructure). Other most vulnerable uses will only be acceptable in low to medium risk areas if the hazard can be alleviated through appropriate mitigation.

Where this is not possible, some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should

be applied within the context of the issues listed in paragraph 264 of SPP and our Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure that it is suitable for the location and degree of flood risk. In general, the following types of development may be acceptable in areas that are at risk of fluvial or coastal flooding:

a) Developments classed as water compatible or that are considered to be essential infrastructure which require a flood risk location for operational reasons. The operational need for the development is for the planning authority to determine.

b) Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.

c) Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.

d) Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.

e) Development in built up areas protected by an existing or planned flood protection scheme, where the standard of protection is appropriate for the vulnerability of the land use. “

The SEPA Land Use Vulnerability Guidance seeks to classify developments into a series of five specific land use types which range from ‘Most Vulnerable Uses’ (at the most vulnerable end of the scale) down to ‘Water Compatible Uses’ (at the least vulnerable end). The development the subject of this application has been categorised by SEPA as a ‘Highly Vulnerable Land Use’ (the second most vulnerable to flood risk) because it proposes development comprising ‘buildings used for dwelling houses’.

SEPA's guidance states that development falling within the ‘Highly Vulnerable Land Use’ category will only be acceptable within the medium to high flood risk within a built-up area if one of the following exceptions apply:

- *Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*
- *Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.*
- *Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.*
- *The site is protected by a flood protection scheme of the appropriate standard that is already in existence and maintained, is under construction, or is planned for in a current flood risk management plan.*

Officers must accept that SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management framework on flood risk.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. The maximum occupancy level of a building is limited solely by the size of the accommodation within that building. Given that the proposed development will not increase the size of the building or the floor space area within it, there will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any ‘real world’ increase in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council's Flood Advisors, who acknowledge that the site is within the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that as the property is a flat, considerably elevated above surrounding ground level, internal flooding to either of the proposed properties is very unlikely. JBA further advise that if the two flats are to be sold it is recommended that potential purchasers are made aware of the potential flood risk and the possible need for an emergency evacuation plan.

SEPA have been asked to consider this position as falling within the first of their exceptions quoted above – that the development could reasonably be accepted as the *redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*

SEPA have considered this position by referring it to their planning and flood risk task group but have maintained their objection, stating that they, *“appreciate that Members may find it difficult to understand how the proposals lead to an increase in vulnerability as there will be no increase in the number of bedrooms or footprint of the buildings. We however view the proposals as an increase in the number of residential units and therefore the number of people at risk could also potentially increase. In line with SPP we are taking a precautionary approach to avoiding and reducing flood risk where appropriate.”*

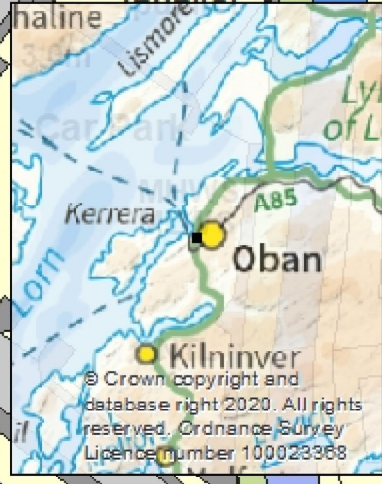
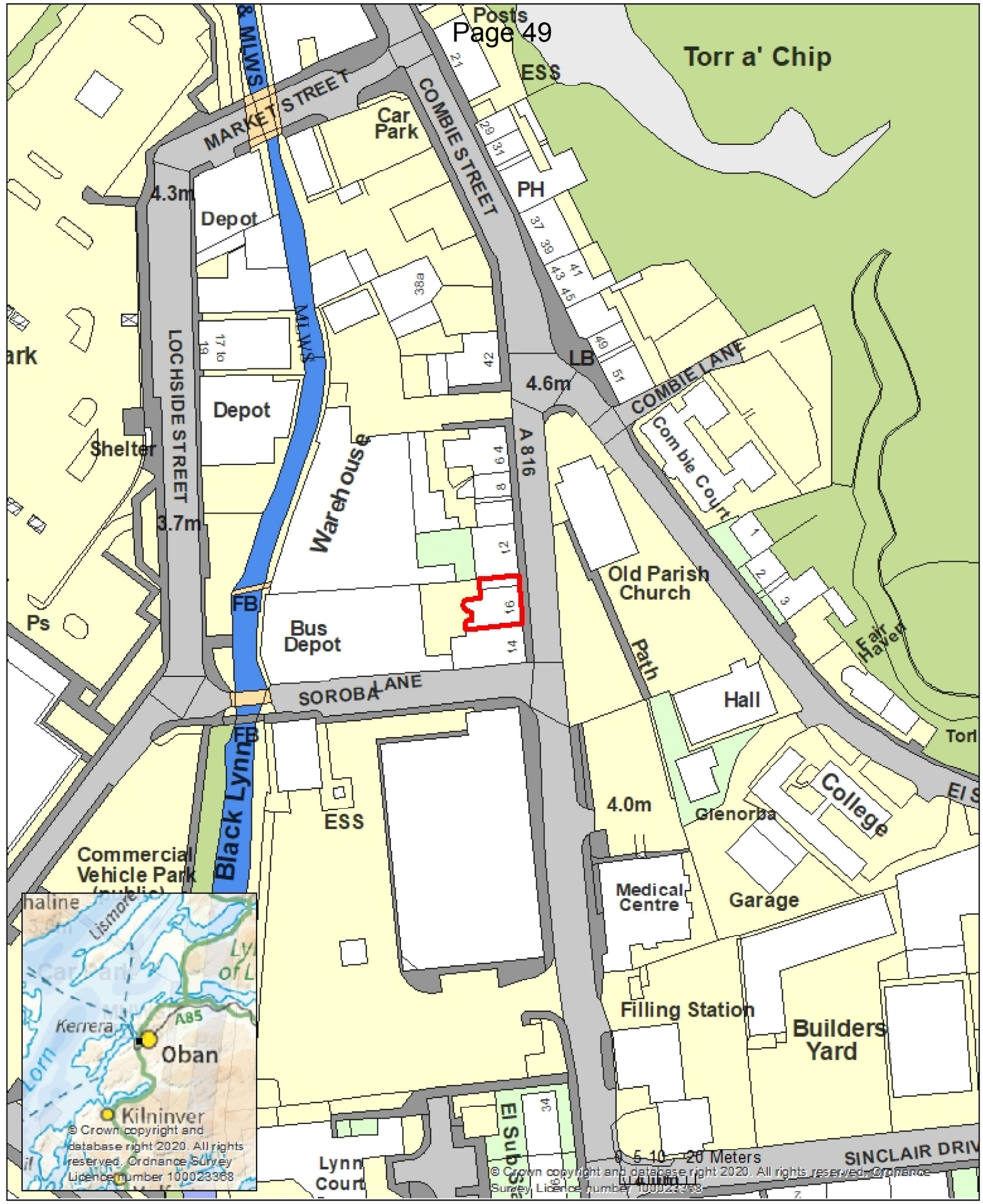
This is disappointing but perhaps not altogether surprising. Nevertheless, officers consider that the pragmatic and proportionate approach in this specific case would be to notify the Scottish Government of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA.

In the event that Members are minded to approve the application in light of the recommendation by officers and having regard to National and Local Planning Policy with an outstanding objection from SEPA, this must be notified to Scottish Ministers. This requirement is set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 (‘the Direction’).

Planning Circular 3/2009: Notification of Planning Applications sets out the process that will be followed in such notification cases under the Direction:

“Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter.”

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Location Plan Relative to Planning Application: 21/01202/PP



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**Argyll and Bute Council
Development & 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

Reference No: 19/02544/PP

Planning Hierarchy: Major Application

Applicant: Creag Dhubh Renewables LLP

Proposal: Construction of wind farm comprising of 9 wind turbines (maximum blade tip height 145m), formation of 5.6km new access track, erection of substation building, welfare building, temporary construction compound and 2 borrow pits

Site Address: Creag Dhubh Windfarm, Creag Dubh, North East of Strachur Village, Argyll

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

i) Development Requiring Express Planning Permission

- 9 wind turbines up to 145m to blade tip and each with a rated output of up to 4MW, giving a total output of up to 36MW
- 9 crane hardstandings with dimensions of 45m x 23m
- 9 wind turbine foundations
- Approximately 5.6km of new permanent access tracks, including 1 turning area, and upgrades to 5.9km of existing forestry tracks
- Electrical and communication underground cables running along sections of the access track
- A substation and control building
- Temporary construction compound with storage facilities and welfare facilities.
- Formation of two 'borrow pits' i.e. temporary mineral workings
- Formation of watercourse crossings

ii) Other Specified Operations

- **Grid connection (subject to separate Section 37 application).**
-

RECOMMENDATION: This proposal is recommended for REFUSAL for the reasons detailed in this report.

Note: In the event that Members are minded to GRANT planning permission against the recommendation of Officers the proposal will be required to be notified to Scottish Ministers due to the fact that NatureScot has objected.

(C) HISTORY:

04/01551/DET - Erection of a 50 Metre Anemometer Mast (Temporary), Site 2 Kilometres North East of The Summit of Creagan An Eich, Strachur, Argyll & Bute - Application Approved 11.11.2004

13/01063/PREAPP - Erection of wind turbine, Land to South East of Creagan an Eich Strachur, Argyll & Bute – Closed

17/02309/SCOPE - Scoping opinion for the proposed erection of 9 wind turbines (139m high to blade tip), Creag Dhubh Windfarm, Strathlachlan, Cairndow, Argyll & Bute – Opinion Issued 19.12.2017

19/00599/PAN - Proposal of application notice for proposed wind farm and associated infrastructure, Creag Dhubh Windfarm, Upper Succoth, Strachur, Argyll & Bute, PA27 8DW – Closed 13.06.2019

20/00167/PNFOR - Formation of forest track, Ardno, South East of St Catherines Strachur, Argyll & Bute – Prior Notification, no objection 07.02.2020

(D) CONSULTATIONS:

NatureScot (18th February 2020) – requested Supplementary Information in the form of satellite tag data for golden eagle G/LG3 to help validate the EIAR and allow them to comment fully on the likely significant impacts on the NHZ14 population as well as any appropriate mitigation measures.

NatureScot (25th September 2020) – requested Supplementary Information in the form of additional viewpoints to enable them to reach a reasoned conclusion on the significant effects of the proposal on the environment. These included: Inveraray Castle ground, from the Garden Bridge area; Inveraray Castle Estate, Aray Bridge; southern approach to Inveraray, south of Furnace (A83 Tourist route); and the northern approach to Loch Fyne/Inveraray from the A83 Tourist route.

NatureScot (9th July 2021) – objects given the significant adverse effects the proposal will have on the Special Landscape Qualities (SLQs) of the Loch Lomond and the Trossachs National Park (LLTNP). These effects cannot be mitigated to a level that would remove NatureScot's objection to this proposal. NatureScot also provide detailed advice on ornithology and peatland.

Historic Environment Scotland (HES) (13th March 2020) – No objection. The predicted impacts on nationally important heritage assets would not be of such a magnitude as to warrant an objection to the proposal.

HES (8th March 2021) (Comments on the Supplementary Environmental Information (SEI)) – No objection. The predicted impacts on nationally important

heritage assets would not be of such a magnitude as to warrant an objection to the proposal. The SEI does not alter their view.

Transport Scotland (7th February 2020) – no objection subject to conditions to: secure approval of the proposed route for any abnormal loads on the trunk road network prior to the commencement of deliveries to site; to secure approval of any accommodation measures required including the removal of street furniture, and traffic management; and to ensure acceptable additional signing or temporary traffic control is undertaken by a recognised Quality Assured traffic management consultant.

SEPA - Scottish Environmental Protection Agency (12th March 2020) – object on the grounds of lack of information on peat management. A comprehensive Peat Management Plan (PMP), which provides full details on peat excavation, management and restoration as appropriate is required. SEPA will review this objection if their concerns are adequately addressed. Advice is also provided on Flood Risk and their Regulatory Requirements.

SEPA (21st April 2020) (updated response following review of outline Peat Management Plan (PMP) (Additional Information) - Objection maintained. In summary, in order for the objection to be removed, the planning application would need to be modified to achieve the following: Re-siting of the construction compound away from areas of deep peat, or adoption of a different design which would not result in deep peat excavation; Removal of proposals to place peat in areas without appropriate hydrological connectivity, or provision of evidence which confirm suitable hydrology; and Removal of proposals to fill drains with excavated peat. Installation of suitable dams to block drains and allow peat to re-form naturally would be acceptable.

SEPA (1st June 2020) – No Objection. SEPA have subsequently received a copy of a revised Outline Peat Management Plan (Creag Dhubh Windfarm Supplementary Information, Appendix 13.4), (dated May 2020). SEPA have reviewed the document and are able to confirm that the proposed revisions will meet their requirements. SEPA therefore withdraw their objection, provided the revisions will be accommodated exactly as described. A copy of the revised OPMP to be sent to ABC.

Scottish Water (11th February 2020) – No objection. Applicant to be aware that this does not confirm the proposal can currently be serviced. Advise that the proposal is within a drinking water catchment where a Scottish Water abstraction is located and it is essential that water quality and water quantity in the area are protected. Advise that they will not accept any surface water connections into their combined sewer system.

Royal Society for the Protection of Birds (RSPB) (12th March 2020) – object until further golden eagle satellite tag data is provided and will review their position if data is made available.

Marine Scotland Science (MSS) (30th January 2020) – no comment as the proposal has a capacity of less than 50MW.

Scottish Rights of Way and Access Society (ScotWays) (3rd March 2020) – No objection. Requests that right of way SA32 remains open and free from obstruction during and after any proposed works.

Ministry of Defence (MoD) (14th February 2020) – no objection to the proposal subject to conditions to ensure that: the development is fitted with MOD accredited

aviation safety lighting and that prior to the commencement of construction they are provided with: the date construction starts and ends; the maximum height of construction equipment; and the latitude and longitude of every turbine (this information is vital as it will be plotted on flying charts to make sure that military aircraft avoid this area).

National Air Traffic Services (NATS) (3rd February 2020) – no safeguarding objection.

Ofcom (10th February 2020) – no comment. Information provided via the Spectrum Information System.

Loch Lomond and Trossachs National Park (LLTNP) (2nd September 2020) – object to the proposal for the following reasons: the proposal will result in a significant adverse effect on the Special Landscape Qualities of the Argyll Forest area of the National Park by introducing a new built landscape feature to the Landscape Character Type (LCT) of Steep Ridges and Mountains; and the proposed development will have a significant adverse effect on visual amenity affecting views from the Arrochar Alps, Ben Donich and Beinn Bheula and the Cowal Way Long Distance Route approaching this gateway into the Park.

Argyll District Salmon Fishery Board (ADSFB) (7th February 2020) – No Objection subject to condition that robust pre and post development surveys are carried out to demonstrate that there has been no damage to salmon populations or their habitat caused by the construction of the project.

Argyll & Bute Council (ABC), Consultant Landscape Architect (November 2020) - recommends refusal on the grounds of significant landscape and visual effects.

ABC Consultant Landscape Architect (1st March 2021) – reissue of advice following review of additional Supplementary Information (received December 2020) comprising 4 additional visualisations from the Inveraray designed landscape and the A83 near Furnace. ABC's Consultant Landscape Architect continues to recommend refusal on the grounds of significant landscape and visual effects.

ABC Local Biodiversity Officer (26th February 2020) – No objection. Advice provided in regard to: fish monitoring (Species Monitoring Plan); Peat survey; bats (Site Monitoring Plan); Otter (Species Action Plan – CEMP); Pine Marten (Watching Brief); badger; Red Squirrel (watching brief and Species Plan); Fresh Water Pearl Mussel; Salmonid fish (pollution protection plan); Ornithology (RSPB); treatment of excavations (Soil & Peat Management Plan and restoration); Borrow Pits (further details, restoration plan to be included in CMS); and provisions of a Construction Environmental Management Plan (CEMP)

ABC Environmental Health (Bute & Cowal) (27th February 2020) – no objection subject to conditions: to restrict noise immissions; report to demonstrate compliance with noise limits; following a noise complaint the employment of independent consultant to assess noise immissions; provision of all calculations, audio recordings and raw data following complaint; continuous logging of wind speed, wind direction and power generation data; and submission of details of nominated representative to act as a point of contact for local residents in regard to noise complaints.

ABC Flood Risk Assessor (21st February 2020) – no objection subject to conditions to ensure that: Watercourse crossings are designed to pass the 1 in 200 year plus climate change (56% allowance) flood event; and Surface water drainage is designed in accordance with CIRIA C753 and is in operation prior to the start of construction.

ABC Roads (30th March 2020) – No objection, subject to conditions relating to: improvement of the existing access; agreement of the design & construction of the access; access surfacing; surface water drainage; carriageway width across bellmouth; video record of road corridor (A815 to site including junction); route for abnormal loads; accommodation measures – traffic management consultant; signs etc. to be removed and replaced after each movement to maintain road safety; programming of deliveries; verge and carriageway reinstatement; and Transportation of abnormal loads not to coincide with peak travel times. ABC Roads also advise that a Road Opening Permit will be required for work on or adjacent to the road corridor.

ABC - West of Scotland Archaeologist Service (4th February 2020) – raised no objection to the proposal.

Strachur Community Council (SCC) (3rd March 2020) – make the following comments: the development will have an advantage to the local area in the form of income derived from any Community Benefit Scheme; it is possible that the development could disadvantage the local economy, through loss of income to the hospitality sector, if, due to the partial industrialisation of its landscape setting, Strachur becomes less attractive as a destination for hotel guests, holiday lets and day tourists (including users of the Loch Lomond & Cowal Way); and the visibility of the development from the Strachur area is due mainly to the southernmost two turbines. For example, the visualisation show that these, and no others, will be clearly visible from Stachurmore, Balliemanoach Cottage and Glen Sluain. If these turbines were omitted from the development, the visual impact of the whole wind farm on the local Strachur area would be significantly reduced.

Strachur Community Council (27th April 2021) – have looked at the Supplementary Information, December 2020 and have no further comments, to add their original comments.

RSPB – further response on Supplementary Information outstanding.

Scottish Forestry (reconsulted) – no response at time of writing

Civil Aviation Authority– no response at time of writing

Infratil Airports Europe Limited (Prestwick Airport) – no response at time of writing

CSS Spectrum Management Services – no response at time of writing

The Joint Radio Company Limited – no response at time of writing

ABC Core Paths – no response at time of writing

Cairndow Community Council – no response at time of writing

Furnace Community Council – no response at time of writing

Inveraray Community Council – no response at time of writing

Lochgoil Community Council – no response at time of writing

(E) PUBLICITY:

Advert Type:	Expiry Date:
ENVASA - ENVASA Addendum EA Advert	14.03.2021
ENVASA - ENVASA Addendum EA Advert	11.10.2020
ENVASA - ENVASA Addendum EA Advert	24.05.2020
ENVASS - Environmental Assessment	06.03.2020
MREG20 - Regulation 20 Advert Major Application	28.02.2020

(F) REPRESENTATIONS:

At time of writing a total of 16 letters of representation have been received, comprising: 14 objections and 2 in support. These include objections from Mountaineering Scotland; the Argyll Raptor Study Group and a letter of support from Lochgoil Community Trust. In summary the objections raised the following issues:

- Adverse Landscape & Visual Impact (including cumulative) with unacceptable scale, height, siting and overtopping. Specific locations which will be affected include: Cowal, Beinn Bheula, Ben Donich, Loch Fyne, A815, Strachlachlan, Inveraray, Lochgilphead, Beinn Cruachan, central Arrochar Alps (The Cobbler), Beinn Ime, Beinn Luibhean, Beinn Narnain, Beinn an Lochain, Binnean, Strachurmore, Fhidleir, Bealach a'Mhaim Balliemeanoch Cottage, Glen Sluain, Loch Lomond and the Cowal Way, and Strachur.
- Access track will scar the landscape
- Adverse Impact on Area of Significant Protection
- Adverse Impact on North Argyll Area of Panoramic Quality
- Adverse impact on Loch Lomond and the Trossachs National Park
- Contrary to SPP, SNH Policy, Scottish Energy Strategy, Onshore Wind Policy Statement; Local Development Plan, Spatial Framework for wind farms and ABC's Landscape Wind Energy Capacity Study 2017;
- Adverse Ornithological Impact – Golden Eagle, White-Tailed Eagle, Hen Harrier & Merlin.
- Adverse Ecological Impact
- Adverse Noise & Shadow Flicker Impact
- Adverse Impact on Property Values
- Adverse Impact on Tourism & Recreation – natural scenery, walking, cycling, hill walking, mountaineering
- Tourism is one of the main sources of Scotland's income
- Efficiency of Technology
- Community Benefit does not outweigh adverse environmental impacts

- Climate Change benefits must be balanced against environmental costs
- 36MW capacity is not so vital to Scotland's climate ambitions that its adverse impact should be dismissed
- Adverse Cumulative Impact on Loch Lomond & the Trossachs National Park
- Socio-economic benefits do not outweigh environmental considerations
- Adverse Impact on Local Road Infrastructure - disruption; road safety for school children

In summary, the letters of support raise the following issues:

- Renewable energy produces minimal environmental impact
- Increase electricity demand
- All forms of energy production involve a cost
- Long-term environmental benefit
- Potential for financial community benefit
- Trust that transportation plans will be put in place so to minimise the impact on residents and holidaymakers.
- The proposal seeks to minimise the view of the turbines from most perspectives.
- Significant effort has been made to assess and minimise the likely effects of the development on local wildlife.
- Trust that concerns relating to Golden Eagle and peatland will be addressed to the satisfaction of the relevant regulatory/advisory bodies before work progresses.
- Energy production in Scotland should be centred on renewables, communities have a part to play in supporting and driving that change.
- Proposal provides opportunity for communities to invest and benefit from sustainable energy generation.

Comment: The material planning issues raised by Objectors and Supporters are addressed in Appendix A of this report.

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 representation are available for viewing on the Council web site at www.argyll-bute.gov.uk

(G) SUPPORTING INFORMATION

i) Environmental Impact Assessment Report (EIAR): Yes

EIAR (October 2019) comprising:

Volume 1 – Non-technical Summary

Volume 2 – Written Statement

Volume 3 – Figures (A3) & Visualisations (large format)

Volume 4 – Appendices

Confidential Annex, Ornithology,

Supplementary Information

Peat Management Plan, March 2020

Confidential, Ornithology, March 2020
Peat Management Plan, May 2020
Confidential, Ornithology, May 2020
Viewpoint 19, Inveraray Castle Garden Bridge, September 2020
Landscape & Visual, December 2020 Part 1
Landscape & Visual, December 2020 Part 2

- ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: Not required
- iii) A design or design/access statement: Yes
- iv) A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc.: Yes - Design and Access Statement, Flood Risk Assessment, Drainage Impact Assessment, Drainage/SUDS layout, Transport Assessment, and Habitat Survey

(H) PLANNING OBLIGATIONS

Is a Section 75 (S75) agreement required: No

-
- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**
 - (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.**

Local Development Plan Policies

LDP STRAT 1 – Sustainable Development
LDP DM1 – Development within the Development Management Zone
LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
LDP 5 – Supporting the Sustainable Growth of Our Economy
LDP 6 - Supporting the Sustainable Growth of Renewables
LDP 9 – Development Setting, Layout and Design
LDP 10 – Maximising our Resources and Reducing our Consumption
LDP 11 – Improving our Connectivity and Infrastructure

Local Development Plan – Supplementary Guidance Policies

SG LDP ENV 1 – Development Impact on Habitats, Species and Our Biodiversity (i.e. biological diversity)
SG LDP ENV 6 – Development Impact on Trees / Woodland
SG LDP ENV 7 – Water Quality and the Environment
SG LDP ENV 11 – Protection of Soil and Peat Resources
SG LDP ENV 13 –Development Impact on Areas of Panoramic Quality (APQs)
SG LDP ENV 14 –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 19 –Development Impact on Scheduled Ancient Monuments
SG LDP ENV 20 – Development Impact on Sites of Archaeological Importance
SG LDP SERV 1 – Private Sewerage Treatment Plants and Wastewater (i.e. drainage) systems
SG LDP SERV 2 – Incorporation of Natural Features / Sustainable Systems (SUDS)
SG LDP SERV 3 – Drainage Impact Assessment (DIA)
SG LDP SERV 5 – Waste Related Development and Waste Management
SG LDP SERV 5(b) – Provision of Waste Storage and Collection Facilities within New Development
SG LDP SERV 6 – Private Water Supplies and Water Conservation
SG LDP SERV 7 – Flooding and Land Erosion – The Risk Framework for Development
SG LDP MIN 2 – Mineral Extraction
SG LDP TRAN 1 – Access to the Outdoors
SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
SG LDP TRAN 6 –Vehicle Parking Provision
SG LDP TRAN 7 –Safeguarding of Airports
Supplementary Guidance 2 (December 2016)
[Supplementary Guidance 2 - Windfarm map 1](#)
[Supplementary Guidance 2 - Windfarm map 2](#)

Note: The Full Policies are available to view on the Council's Web Site at: www.argyll-bute.gov.uk

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

- National Planning Policy Framework 3 (NPF3), Scottish Government (June 2014)
- Draft National Planning Policy Framework 4 (NPF4), (November 2021)
- Scottish Planning Policy (SPP), Scottish Government (June 2014)
- The future of energy in Scotland: Scottish Energy Strategy, Scottish Government (December 2017)
- Onshore Wind Policy Statement, Scottish Government (January 2017)
- Onshore wind - policy statement refresh 2021: consultative draft
- SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017)
- Argyll & Bute Landscape Wind Energy Capacity Study, SNH and ABC (2017)
- United Kingdom Forestry Standard, Forestry Commission (December 2017)
- Policy on Control of Woodland Removal, Forestry Commission Scotland (2009)
- Historic Environment Policy for Scotland (HEPS 2019)
- Managing Change in the Historic Environment Guidance Notes.
- Planning Advice Note 1/2011 'Planning and Noise'
- Views of statutory and other consultees
- Legitimate public concern or support expressed on relevant planning matters
- Argyll and Bute proposed Local Development Plan 2 (November 2019) – The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the

settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 14 – Bad Neighbour Development

Policy 19 – Schedule Monuments

Policy 35 – Design of New and Existing, Public Roads and Private Access Regimes

Policy 36 – New Private Accesses

Policy 38 – Construction Standards for Public Roads

Policy 39 – Construction Standards for Private Access

Policy 43 – Safeguarding of Aerodromes

Policy 58 – Private Water Supplies and Water Conservation

Policy 63 – Waste Related Development and Waste Management

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: This proposal is a Schedule 2 EIA Development and EIA is required.

(L) Has the application been subject of statutory pre-application consultation (PAC): Yes

(M) Has a sustainability check list been submitted: No separate consideration of the proposal's degree of sustainability is required as the concept is implicit within the EIA process.

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

(O) Requirement for hearing (PAN41 or other): No.

Sixteen letters of representation have been received comprising 14 objection and two support.

The reasons for refusal relate to landscape and visual issues and at the time of the committee, in addition to this report, Members will be provide with paper copies of key viewpoints and visualisations from the LVIA which will allow for an informed decision to be reached.

On the basis of the above, and having regard to the approved guidelines for hearings, it is considered that a hearing would not add value to this assessment.

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

The site is situated over 1km to the northeast of the village of Strachur, with the proposed wind turbines located approximately 3km from the village. The wind farm would be located on the slopes of Creag Dhubh, 484m AOD at its summit, and partially below Creag an t-Suidheachain, across an area of commercial forestry and open moorland.

Permission is sought for 25 years and the proposal would comprise: 9 turbines of various heights up to 145m to blade tip and each with a rated output of up to 4MW, giving a total output of up to 36MW; 9 crane hardstandings with dimensions of 45m x 23m; approximately 5.6km of new permanent access tracks, including 1 turning area, and upgrades to 5.9km of existing forestry tracks; electrical and communication underground cables running along sections of the access track; a substation and control building. In addition to these components that will be there for the operational life of the development there will be a temporary construction compound with storage facilities and welfare facilities.

In terms of the SPP's requirement for spatial frameworks for onshore wind energy proposals and the Spatial Framework for Argyll & Bute as set out in SG2 (December 2016) the site is located within a Group 2 area (Areas of significant protection) due to the mapped presence of Class 2 nationally important carbon-rich soils, potentially of high conservation value and restoration potential.

Noise, Shadow Flicker and other potential residential amenity impacts during construction and operation phases are not a concern in this case.

NatureScot & Loch Lomond & the Trossachs National Park have objected to the proposal on the grounds that it would have an adverse effect on the special qualities and that the objectives of the designation and the overall integrity of the area would be compromised. NatureScot considers that these effects cannot be mitigated.

RSPB object to the proposal on the grounds of insufficient Golden Eagle data (it should be noted that this has been provided and a further response is outstanding)

No objections have been raised by any other consultees, subject to appropriate conditions.

At time of writing a total of 16 letters of representations have been received, comprising: 14 objections and 2 letters of support.

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

(R) Reasons why Planning Permission should be REFUSED

In summary, the proposal is considered contrary to National & Local Policy and Guidance expressed in: NPF3, SPP; Onshore Wind Policy Statement; Energy Strategy; the adopted Local Development Plan and associated Supplementary Guidance; and guidance published by the Council in the 'Argyll & Bute Landscape Wind Energy Capacity Study'; insofar as it will have an adverse effect on special qualities of Loch Lomond and the Trossachs National Park and the objectives of the designation and the overall integrity of the area would be compromised and it is not considered that these adverse impacts can be mitigated. It is also considered that the proposal will have significant adverse landscape and visual impacts. Furthermore, that as a consequence of the proposals significant adverse landscape and visual impacts, the proposed development may influence public attitudes to a point where tourists might become dissuaded from visiting. The full recommended reasons for refusal appear on the following page.

(S) Reasoned justification for a departure to the provisions of the Development Plan: N/A

(T) Need for notification to Scottish Ministers or Historic Scotland: In the event that Members are minded to GRANT planning permission against the recommendation of Officers the proposal will be required to be notified to Scottish Ministers due to the fact that NatureScot has objected.

Author of Report: Arlene Knox **Date:** 10th February 2022

Reviewing Officer: Sandra Davies **Date:** 11th February 2022

Fergus Murray
Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION: 19/02544/PP

1. Loch Lomond & the Trossachs National Park (LLTNP)

The location and scale of the proposal represents a step change in the proximity, prominence and visual intrusion of wind farms on this western part of the Loch Lomond and the Trossachs National Park giving rise to significant effects on some of the National Parks Special Landscape Qualities. The scale and location of the proposal will result in a significant adverse effect on four Special Landscape Qualities of the National Park – Arrochar’s Mountainous and Distinctive Peaks; A Remote Area of High Hills and Deep Glens; Tranquility; and The Easily Accessible Landscape Splendour. Significant effects will result in relation to two sets of qualities:

- Specific effects on the Argyll Forest area and in particular to the views west from the distinctive hilltops, ridges and glens closest to the proposed turbines and the general experience of remoteness, isolation and stillness experienced in these locations.
- General qualities of tranquillity and landscape splendour applicable to the LLTNP as a whole, but which are also well expressed in the study area on its western edge.

Consequently, the proposal would result in a significant adverse effect on some of the Special Landscape Qualities of Loch Lomond and the Trossachs National Park, and the objectives of the designation and the overall integrity of the area would be compromised.

Taking into account that NatureScot and the National Park Authority have both objected to this proposal and having due regard to the above it is considered that the proposal is contrary to the provisions of SG LDP ENV 14 – Landscape; Supplementary Guidance 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; and LDP 6 - Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan; SPP; The future of energy in Scotland: Scottish Energy Strategy (December 2017); Onshore Wind Policy Statement; SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017); and ‘Argyll & Bute Landscape Wind Energy Capacity Study’ SNH and ABC (2017);

2. Landscape Effects

The proposal would have significant adverse effects on part of the Steep Ridges and Mountains Landscape Character Type principally extending up to 4km from the development site. The proposal would introduce new large-scale infrastructure to this unit of the Landscape Character Type and would detract from the sharp ridges and open tops which are key characteristics of the Landscape Character Type. The proposed turbines would dominate the narrow extent and intimate scale of Succoth Glen.

The Rocky Coastland Landscape Character Type comprises a narrow intermittent coastal fringe on both the north-west and south-east coasts of Loch Fyne. This a small-scale, settled landscape which is highly sensitive to large wind turbines. The proposal would not be located in the Landscape Character Type but would lie in close proximity to unit LCT53 (1) and within approximately 6km from unit LCT53 (2) which

covers the Inveraray area. Argyll & Bute Council consider that there would be significant adverse effects on LCT53 (1) in the Strachur area. These effects would principally relate to the effects of the introduction of new large-scale infrastructural features which would dominate the scale of settlement and detract from the setting of this small part of the *Rocky Coastland* LCT.

Having due regard to the above it is considered that the proposal is contrary to the provisions of SG LDP ENV 14 – Landscape; Supplementary Guidance 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; and LDP 6 - Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan; SPP; The future of energy in Scotland: Scottish Energy Strategy (December 2017); Onshore Wind Policy Statement; SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017); and ‘Argyll & Bute Landscape Wind Energy Capacity Study’ SNH and A&BC (2017);

3. Visual Effects

Visibility of the proposed wind farm would be focussed at the head and middle sections of Upper Loch Fyne within Argyll & Bute (but with views also from the summits and elevated slopes and ridges of the Arrochar Alps and other mountains within the Loch Lomond & the Trossachs National Park). The wooded nature of the shores and slopes above Loch Fyne will restrict visibility of the proposal with more open views occurring in the Strachur, Inveraray areas, from the open waters of the loch and intermittently from the A83 and the adjacent north-western fringes of Loch Fyne within Argyll & Bute. Argyll & Bute Council consider that the following significant adverse effects would occur on visual amenity within the Council area:

- ***On sections of the important tourist route of the A83.*** While woodland screens views from much of the A83, there would be intermittent open views between Minard and Furnace, from Dalchenna to Inveraray and on elevated shoulders around VP10 and above Minard Castle in the Tullochgorm area which offer expansive views along Loch Fyne when travelling north-eastwards. The full vertical extent of turbines would not be seen although the proposal would introduce built features on the presently open skyline of hills and ridges which backdrop and frame views along Loch Fyne to its dramatic head and in an area where very little obvious large built infrastructure is currently present this increasing the focus provided by the proposed turbines. Additional Viewpoint 23 from near Furnace further demonstrates these effects.
- ***Views from settlement on the north-western shores of Loch Fyne*** Representative VPs 4, 12 and 16 are located in Inveraray, Furnace and Minard. It is accepted that effects on Furnace would not be significant due to screening by landform and woodland. The Cultural Heritage section of the EIAR found no significant effects on the Inveraray Conservation Area with reference to key views. This appraisal additionally considers views from the Shore Walk which is popular with visitors and concludes that effects would be significant taking into account the high susceptibility and value (and therefore sensitivity) of VP4, the magnitude of change would be medium (taking into account the proximity of the development, the extent and composition of the view and its horizontal spread but also the relatively limited vertical extent of turbines visible) resulting in a significant effect. In Minard while many residential properties within this settlement face directly across the loch towards Lachlan Bay and therefore away from the proposal, views would be more direct and open for walkers and

watercraft users on the loch itself. The turbines would interrupt views to the Arrochar Alps within the Loch Lomond & the Trossachs National Park, with some highlighted against the darker backdrop of these mountains increasing visibility in certain lighting conditions.

- **Strachur area** Views from in and around Strachur including from the A886 on the approach to the core of this settlement and from the open waters of Strachur Bay where there are moorings. The southern-most (up to two) turbines would be intrusive and would appear visually precarious in some close views (for example EIAR VP3) due to their location on very steep slopes and in views from the A815 and from the Cowal Way where it is aligned in Glen Succoth.
- **Views from within the Inveraray Castle GDL** including from the popular walk to Dun na Cuaiche on the approach to and from the watch tower and its surrounds. Although the wind farm would be seen in the least dramatic part of the view from Dun na Cuaiche (away from Inveraray town and the mountains of the Loch Lomond & the Trossachs National Park) it would be distracting, with some turbines visible above hub height and with the movement of blades clearly seen over the skyline of the long and relatively low Creag Dhubh ridge. The Watch Tower has two window openings facing south-west towards Inveraray and down Loch Fyne and south-east directly towards the Creag Dhubh ridge and the proposal.

Having due regard to the above it is considered that the proposal is contrary to the provisions of SG LDP ENV 14 – Landscape; Supplementary Guidance 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; and LDP 6 - Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan; SPP; The future of energy in Scotland: Scottish Energy Strategy (December 2017); Onshore Wind Policy Statement; SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017); and ‘Argyll & Bute Landscape Wind Energy Capacity Study’ SNH and ABC (2017).

4. Effects on valued landscapes

There would be visibility of the proposal from parts of the Area of Panoramic Quality (APQ) designated area around Loch Fyne. While the APQ is mapped as a terrestrial designation, Loch Fyne is an essential part of the panoramic quality of this part of the designation. The proposal would not be located in the APQ designated area around Loch Fyne but would have indirect effects on some of its special qualities. These comprise significant adverse effects on the dramatic head of Loch Fyne, experienced in more distant intermittent views from the north-western side of Loch Fyne and from the open waters of Loch Fyne (VPs 10, 11 and 16 demonstrate these views although it should be noted that no viewpoint has been produced in the EIAR from the loch itself). Significant cumulative effects would occur with the operational Clachan Flats on some of these long views along Loch Fyne where both wind farms would interrupt and distract from the dramatic mountains of the LLTNP. The proposal would significantly adversely affect the presently open and uncluttered hills which provide a backdrop and frame views across and along Loch Fyne seen from the elevated views from within APQ such as Dun na Cuaiche summit.

Having due regard to the above it is considered that the proposal is contrary to the provisions of SG LDP ENV 13 –Development Impact on Areas of Panoramic Quality (APQs); SG LDP ENV 14 – Landscape; Supplementary Guidance 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; and LDP 6 - Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan; SPP; The future of energy in Scotland: Scottish Energy Strategy (December 2017); Onshore Wind Policy Statement; SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017); and ‘Argyll & Bute Landscape Wind Energy Capacity Study’ SNH and ABC (2017).

5. Tourism and Recreation Effects

As detailed in reason for refusal no.1, the proposal would result in a significant adverse effect on some of the Special Landscape Qualities of Loch Lomond and the Trossachs National Park and consequently, the objectives of the designation and the overall integrity of the area would be compromised. The presence of adverse landscape and visual impacts on Loch Lomond and the Trossachs National Park would suggest that the development may influence public attitudes to a point where tourists might become dissuaded from visiting. Whilst the proposed wind farm is not within the Loch Lomond and the Trossachs National Park, it will be visible from within the National Park and an inappropriately scaled and sited development will raise issues in relation to scenic sensitivity and capacity to absorb large scale development.

Having due regard to the above, the proposal poses adverse impacts on tourism and recreation and is therefore inconsistent with the provisions of: SG LDP TRAN 1 – Access to the Outdoors; 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; SG LDP ENV 13 –Development Impact on Areas of Panoramic Quality (APQs); SG LDP ENV 14 –Landscape; and SG 2 Renewable Energy of the Argyll & Bute Local Development Plan, SPP (2014) and the Onshore Wind Policy Statement in this respect.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 19/02544/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The site is located within the Development Management Zone 'Very Sensitive Countryside' as defined by the Local Development Plan. Within 'Very Sensitive Countryside', Policy LDP DM 1 – Development within the Development Management Zones, encourages sustainable forms of renewable energy related developments on appropriate sites. It is considered that the proposal is contrary to the provisions of Policy LDP DM1 – Development within the Development Management Zones, as the site is not considered to be 'appropriate' for the proposed wind farm due to the significant adverse landscape and visual effects the proposal will have. Furthermore, it is considered that due to these adverse effects the proposal cannot be considered to be sustainable. The proposal must also be considered in relation to all other policies of the Local Development Plan and Supplementary Guidance where these are relevant. This assessment is detailed below.

Having due regard to the above it is considered that the proposal is contrary to the provisions of LDP DM1 – Development within the Development Management Zones; SPP; and NPF3

B. SUPPORTING THE SUSTAINABLE GROWTH OF RENEWABLES

ABC is keen to ensure that Argyll & Bute continues to make a positive contribution to meeting the Scottish Government's targets for renewable energy generation. These targets are important given the compelling need to reduce our carbon footprint and reduce our reliance on fossil fuels. The Council will support renewable energy developments where these are consistent with the principles of sustainable development and it can be adequately demonstrated that there would be no unacceptable significant adverse effects.

C. LOCATION, NATURE AND DESIGN OF PROPOSED DEVELOPMENT

The site is situated over 1km to the northeast of the village of Strachur, with the proposed wind turbines located approximately 3km from the village. The wind farm would be located on the slopes of Creag Dhubh, 484m AOD at its summit, and partially below Creag an t-Suidheachain, across an area of commercial forestry and open moorland.

Permission is sought for 25 years and the proposal would comprise: 9 turbines of various heights up to 145m to blade tip and each with a rated output of up to 4MW, giving a total output of up to 36MW; 9 crane hardstandings with dimensions of 45m x 23m; approximately 5.6km of new permanent access tracks, including 1 turning area, and upgrades to 5.9km of existing forestry tracks; electrical and communication underground cables running along sections of the access track; a substation and control building. In addition to these components that will be there for the operational life of the development there will be a temporary construction compound with storage facilities and welfare facilities.

Battery Storage - The proposal does not include a battery storage facility.

Borrow Pits - to minimise the volume of stone brought onto site, it is proposed that on-site borrow pits are excavated at two locations as the sole source of aggregate for

access tracks, hardstandings, and as structural fill for the substation, construction compound and beneath each foundation as required. The borrow pit search areas are proposed to be subject to further and more detailed site investigation prior to construction, to confirm the available stone yield and its quality. Details, confirming these parameters, will be contained within a site-specific Construction Method Statement (CMS), agreed with ABC as local planning authority, prior to commencement of development. This would need to be secured by planning condition in the event that the proposal receives planning permission.

Infrastructure

Scottish Water has no objection, however, the applicant should be aware that this does not confirm that the proposal can currently be serviced. A review of Scottish Water's records indicates that the proposed activity falls within a drinking water catchment where a Scottish Water abstraction is located. Loch Eck supplies Loch Eck Water Treatment Works (WTW) and it is essential that water quality and water quantity in the area are protected. In the event that planning permission is granted an informative will be required to highlight Scottish Water's requirements in this regard. Scottish Water also advise that no surface water connection are accepted into their combined sewer system.

Grid Network & Cables - The grid connection will be considered separate from the planning process by means of an Electricity Act Section 37 application to the Scottish Government (upon which the Council would be consulted in its capacity as Planning Authority).

D. SPATIAL FRAMEWORK FOR WIND FARMS

Supplementary Guidance has been prepared in accordance with SPP which provides a Spatial Framework for wind farms and wind turbine developments over 50 metres high, which identifies: Areas where wind farms will not be acceptable; Areas of significant protection; and Areas which may have potential for wind farm development. The Spatial Framework as set out in the SG demonstrates that the site is located in a Group 2 area 'Areas of Significant Protection' where wind farms may be acceptable and proposals will need to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.

E. NET ECONOMIC IMPACT, INCLUDING LOCAL AND COMMUNITY SOCIO-ECONOMIC BENEFITS SUCH AS EMPLOYMENT, ASSOCIATED BUSINESS AND SUPPLY CHAIN OPPORTUNITIES

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewables and SPP (2014) require applications for wind turbine developments to be assessed against net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.

During the construction stage, 91 man year equivalent jobs will be created within the Argyll & Bute region and 36 man year equivalent jobs in Scotland. The construction period will provide the greatest potential for employment and economic activity at a local scale. During the operational stage, eight man year equivalent jobs will be created within the Argyll & Bute region and seven man year equivalent jobs in Scotland. There will also be potential supply chain benefits during the construction phase with workers making use of local accommodation and other facilities. If taken up, the offer of a 10% stake in the proposed development could also have material benefits for the local community. An annual community fund for the local community

equal to £5000 per MW would generate annual income of up to £180,000. The fund would be managed with long-term goals in mind to deliver meaningful benefits to the community.

Strachur Community Council have commented that the development will have an advantage to the local area in the form of income derived from any Community Benefit Scheme.

It should be noted that Community Benefit is not considered to be a 'material planning consideration' in the determination of planning applications. In the event that permission were to be granted, the negotiation of any community benefit, either directly with the local community or under the auspices of the Council, would take place outside the application process. It is understood from the ES that the applicant is proposing to follow Scottish Government guidance on best practice for community benefit associated with onshore renewable energy developments in this regard.

Having due regard to the above the proposals net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities has been assessed and it is concluded that the proposal is consistent with the provisions of Supplementary Guidance 2 (December 2016); LDP DM1 – Development within the Development Management Zones; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; LDP 6 - Supporting the Sustainable Growth of Renewables; SPP and the Onshore Wind Policy Statement in this regard.

F. THE SCALE OF CONTRIBUTION TO RENEWABLE ENERGY GENERATION TARGETS

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against the scale of contribution to renewable energy generation targets. This proposal could generate up to 36MW of renewable electrical energy which would contribute towards the Scottish Government's updated renewable energy targets.

Having due regard to the above the proposals scale of contribution to renewable energy generation targets has been assessed and it is concluded that the proposal is consistent with the provisions of SG 2; Supplementary LDP STRAT 1 – Sustainable Development; LDP DM1 – Development within the Development Management Zone; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; LDP 6 - Supporting the Sustainable Growth of Renewables; SPP; and the Onshore Wind Policy Statement (2017) in this regard.

G. EFFECT ON GREENHOUSE GAS EMISSIONS

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against their effect on greenhouse gas emissions. The proposed development could prevent the emission CO₂ by generating electricity from renewable sources over its proposed 25 year operational life, when compared to grid mix electricity generation;

Having due regard to the above the proposals effect on greenhouse gas emissions has been assessed and it is concluded that the proposal is therefore consistent with the provisions of 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; LDP 6 - Supporting the Sustainable Growth of Renewables; SPP and the Onshore Wind Policy Statement in this regard.

H. IMPACTS ON COMMUNITIES AND INDIVIDUAL DWELLINGS, INCLUDING VISUAL IMPACT, RESIDENTIAL AMENITY, NOISE AND SHADOW FLICKER (INCLUDING CUMULATIVE IMPACTS).

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against impacts on communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker.

The Environment Protection Officer notes that the wind farm is planned for a rural partially afforested on the slopes of Creag Dubh. The nearest occupied residential properties include: Islay Cottage, Succothmore H1, Succothmore (Fernoch) H2, Succothmore Cottage H3, Ardchyline Farm, and Laglingarten. The main issues of concern to Environmental Health are: noise, air quality, lighting and private water supplies.

Construction Noise – An assessment of predicted construction noise was undertaken in accordance with BS5228:2009 and the results reported in the ES. It is anticipated that the impact of construction activities on nearest residential properties will not be significant outwith the limited time period that the access track is being upgraded. It is requested that a condition requiring the submission of a construction or environmental management plan should include details of measures to ensure the occurrence of noise or vibration nuisance during the construction phase including operational hours.

Air Quality - The Environment Protection Officer has confirmed that there are no matters associated with the proposal that are considered to pose a threat to ambient air quality objectives. The main potential risk to air quality nuisance during the construction phase, including dust from vehicles travelling along access tracks. The applicant has stated that a Construction Environmental Management Plan (CEMP) will be prepared and this should include control of dust etc. and a condition to require compliance with this should be considered.

Lighting - The Environmental Protection Officer has confirmed that the wind farm development itself is unlikely to require significant lighting and given that there are no known sensitive receptors within a reasonable distance of the proposed construction activities, it is not anticipated that light pollution will be a matter to control via planning condition.

Private Water Supplies - The Environmental Protection Officer notes that the ES has determined that there are no active private water supplies in the area that may be impacted by the development and therefore no further investigation or mitigation measures are deemed necessary.

The Environment Protection Officer recommends that conditions are also attached to the planning permission to restrict noise immissions; report to demonstrate compliance with noise limits; following a noise complaint the employment of independent consultant to assess noise immissions; provision of all calculations, audio recordings and raw data following complaint; continuous logging of wind speed, wind direction and power generation data; and submission of details of nominated representative to act as a point of contact for local residents in regard to noise complaints.

Shadow Flicker

Under certain combinations of geographical position and time of day, the sun may pass behind the rotors of a wind turbine and cast a shadow over neighbouring properties. Government guidance advises that if separation (10 x rotor diameters) is provided between turbines and nearby dwellings 'shadow flicker' should not generally result in adverse effects. Under accepted good practice and guidance, this will ensure that shadow flicker will not present a problem. The Shadow Flicker Assessment undertaken has confirmed that there are no residential properties within 11 rotor diameters (1012m) of the proposed turbines. There is therefore no potential for shadow flicker to affect the amenity of residential properties.

Visual Impact is addressed in the Landscape and Visual Impact section of this report below.

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse impacts on communities and individual dwellings, including, residential amenity, noise and shadow flicker and is therefore consistent with the provisions of 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; LDP 6 - Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; SPP (2014); and the Onshore Wind Policy Statement (2017) in this regard.

I. LANDSCAPE AND VISUAL IMPACTS (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any landscape and visual impacts including wild land.

NatureScot initially requested Supplementary Information in the form of additional viewpoints to enable them to reach a reasoned conclusion on the significant effects of the proposal on the environment. These included: Inveraray Castle ground, from the Garden Bridge area; Inveraray Castle Estate, Aray Bridge; southern approach to Inveraray, south of Furnace (A83 Tourist route); and the northern approach to Loch Fyne/Inveraray from the A83 Tourist route. Having considered these NatureScot has advised that this proposal will have significant adverse effects on the Special Landscape Qualities (SLQs) of the Loch Lomond and the Trossachs National Park (LLTNP) and they object to the proposal. NatureScot further advise that these effects cannot be mitigated to a level that would remove their objection

Landscape - The location and scale of Creag Dhubh wind farm represents a step change in the proximity, prominence and visual intrusion of wind farms on this western part of the Loch Lomond and the Trossachs National Park (LLTNP) giving rise to significant adverse effects on the Special Landscape Qualities (SLQs). Notably there would be significant effects from the upper slopes and summits of some of the LLTNP's most distinctive and rugged mountain peaks in the very popular Arrochar Alps area, and from areas on the edge of the LLTNP near Strachur. The proposal is located in the uplands immediately west of the Arrochar Alps on the east side of Loch Fyne. The turbines lie in very close proximity to the LLTNP boundary (1.5km) arranged in an evenly spaced line below the ridge of Creag Dhubh. The Zone of Theoretical Visibility (ZTV) indicates the location of the proposed turbines, the extent of visibility and the

viewpoint locations (EIAR Volume 3: Figures, Figure 7.2, ZTV to blade tip height with LVIA viewpoints).

Appraisal of effects on Loch Lomond and the Trossachs National Park - LLTNP is one of only two National Parks in Scotland identified in SPP as a nationally important designation that merits the highest level of protection. Under the National Park (Scotland) Act 2000 and SPP, the LLTNP is recognised to have SLQs that are of outstanding national importance and expressed in the character of the area being distinctive and coherent. The LLTNP places the protection and enhancement of these SLQs at the centre of the National Park Partnership Plan 2018 – 2023.

Loch Lomond and the Trossachs National Park Special Landscape Qualities - The LLTNP is celebrated for the scenic quality of its landscape, a product of its highly diverse landscape character (Landscape character assessment Loch Lomond and Trossachs National Park). The Landscape Character Areas (LCAs) identified in this report, inform the SLQs of the LLTNP, which can go beyond the boundaries of each LCA and the LLTNP, as they seek to capture the experiential qualities of the LLTNP and the contribution of its component parts and surroundings. The LLTNP's SLQs relate primarily to its physical, natural and cultural heritage attributes and perceptions, including the experience of its mountains, lochs and glens. In particular, the "Cobbler and the Arrochar Alps are distinctive landmark summits which [...] signify a dramatic transition between the Park landscape and the Argyll area beyond" (Special Qualities of Argyll Forest). These mountains are highly valued and extremely popular with hill walkers and mountaineers who enjoy their remoteness, wildness, physical challenge and visual drama within easy access of Central Scotland. In addition, the areas on the edge of the LLTNP near Strachur include the promoted Cowal Way Long Distance Route (LDR) and a key route (A815). As such, the key areas affected include the popular visitor destination and form an important part of the LLTNP's identity.

Creag Dhubh wind farm and the assessment baseline - At present, in views west, from the distinctive hills and summits (as represented by the viewpoints EIAR Volume 3: Visualisations, Viewpoints (VPs) 5, 8 and 13), operational wind farms are perceived as much more distant, beyond Loch Fyne and Glen Fyne hills. Most are only noticeable on a clear day in good visibility primarily due to distance. Clachan Flats (9 turbines c 100m to tip) is more noticeable (as represented by VP5 and 8). In marked contrast, Creag Dhubh wind farm due to its larger turbines (c145m to tip) and closer proximity, clearly on the same side of Loch Fyne as the LLTNP, appears much more visually intrusive and more prominent on a close ridgeline that marks the edge of this upland area.

Special Landscape Qualities affected by the proposal - Significant effects will result in relation to two sets of qualities:

- Specific effects on the Argyll Forest area and in particular to the views west from the distinctive hilltops, ridges and glens closest to the proposed turbines and the general experience of remoteness, isolation and stillness experienced from these locations.
- General qualities of tranquillity and landscape splendour applicable to the LLTNP as a whole, but which are also well expressed in the study area on its western edge.

The following SLQs are those which NatureScot consider are most relevant and at risk from significant effects: Arrochar's mountainous and distinctive peaks; a remote area of high hills and deep glens; Tranquility; and the easily accessible landscape splendour.

Arrochar's mountainous and distinctive peaks - A distinctive mountain group, popularly called the Arrochar Alps. These hills are visually striking, curiously Y-shaped and rocky with craggy peaks and crests. Each is distinctive and recognisable. They are highly visible from the shores and open waters of Loch Long and Loch Lomond and offer spectacular panoramas from their summits. Although popular with climbers, nevertheless the tops harbour a sense of remoteness and stillness. Creag Dhubh wind farm would significantly adversely affect the spectacular panoramic views from the central Arrochar peaks – The Cobbler, Ben lme (Munro) and Ben Narnain (Munro) – as represented by the Cobbler VP13. There would also be significant visual effects from some hillviews across the Arrochar Alps area within the LLTNP, where many of the closest summits and ridges would have views of the turbines as represented by for example Beinn Bheula VP5 and Ben Donich VP8. The combination of the scale, linear extent and vertical form of the development, its location on the edge of the dramatic open upland landscape and the framing of views by the landform, all contribute to the adverse effects. Effects are exacerbated where the turbines and the movement of their blades are intervisible with, and compete with, the visual drama of the distinctive peaks. The sense of remoteness and stillness will be significantly compromised, detracting from the experience of the panorama. As part of a spectacular panorama, there is merit in the ridge that marks the edge of the upland area being maintained as an open and simple horizon with an undeveloped and remote character. At present, the exact extent of the LLTNP is unclear when experienced from the upper slopes and summits, such as the Cobbler, where the experience of expansive dramatic panoramas borrows from the wider landscape context. However, the location of these turbines, so close to the LLTNP boundary, would accentuate the north western extent of the LLTNP, interrupting the expansive panorama and significantly compromising the experience of these spectacular panoramic views to the west at distances of around 3 – 15km. This proposal will appear incongruous intruding into this distinctive and highly sensitive landscape context. These effects are considered to be significant on the appreciation of this SLQ in relation to key hill summits and associated slopes and ridges in the west of the LLTNP.

A remote area of high hills and deep glens - A mountainous area of distinctive summits rising above forested slopes and steep-sided, glacially carved troughs filled with sea lochs, lochs or flat-bottomed glens. The uplands are rugged and wild, especially in the north, and the whole area has a sense of remoteness and isolation. At present, the predominance of nature/natural processes and the general abundance of obvious built development is well expressed across the Arrochar Alps. The slopes and summits provide a high degree of physical challenge and sense of remoteness due to their elevation and the experience of climbing slowly for several hours, gradually leaving behind the relatively developed areas below. However, this proposal will introduce very large structures into the uplands that form the edge horizon to these hills/mountains; bringing development into areas where it is currently minimal. This will erode the current sense of wildness, remoteness and isolation, and diminish the sense of achievement gained from the physical challenge of climbing the rugged terrain. The turbines would be seen in outward looking views, at times intervisible with the distinctive peaks of the LLTNP, detracting from the wildness of these hills and distinctive summits. The sense of wildness, remoteness and isolation would therefore be significantly adversely affected in relation to rugged peaks and ridges close to the proposed turbines (as represented by VPs 5, 8 and 13) and in parts of glens (as represented by VP3). This adverse effect will be exacerbated where the turbines appear to be within the LLTNP. These effects are considered to be significant on the appreciation of this SLQ in relation to high hills in the west of the LLTNP and in parts of glens.

Tranquility - Relating to the uncrowded places, where there is a predominance of natural sounds and sights experienced with the many settings of the LLTNP. This sense of peacefulness is enhanced by the small scale of human settlement within the expansive landforms, and by the general absence of large-scale development. Currently activity and movement is focussed in some of the glens/lower lying areas; while the uplands are generally quiet with a strong sense of naturalness. The proposal would introduce prominent built structures, into the open uplands with the movement of blades distracting from this otherwise still and quiet landscape. At present, tranquillity is generally well expressed in the areas affected by this proposal, as existing developments are not having a notable influence on how this quality is experienced. This quality would be adversely affected in areas close to the proposed wind farm with views of the turbines: including several accessible hilltops within 3 – 15km (including significant effects at VPs 5, 8 and 13) and small sections of the Cowal Way within the LLTNP, (for example VP3). These effects are considered to be significant on the appreciation of this SLQ.

The easily accessible landscape splendour - Relating to the LLTNP and its hills' accessibility from major centres of population in central Scotland (half of Scotland's population within one hour's easy travel). It is also a major draw for visitors from all over the world and as such a tourist destination. Hills such as the Cobbler (VP13) are very well known and much visited. Large numbers of people visit the Arrochar Alps to enjoy the scenic panoramas and experience the sense of expansiveness and space created by the juxtaposition of hills and lochs, and receding layers of hills. The introduction of a scaleable element into this part of the panorama where there are no other built scale indicators detracts from the grandeur and splendour of the mountain landscape. Visitors would experience views of the proposed turbines and significant effects when looking west, as part of a dramatic panorama, from many hilltops and ridges in the distinctive Arrochar Alps area within the LLTNP and when looking east towards the LLTNP from higher ground in the west. These effects are considered to be significant on the appreciation of the SLQ.

Cumulative - The proposed wind farm would, due to its location, larger turbines and closer proximity, appear as a much more prominent addition to operational wind energy schemes. This proposal is significantly closer to the LLTNP boundary (1.5km) and will relate to neither the pattern of existing wind farm development nor the character of the landscape. At present, wind farms are limited to western Loch Fyne, with the separation of Loch Fyne between the wind farms and the LLTNP. However, this proposal spreads development across the loch into uplands of east Loch Fyne where it is much more closely associated with the LLTNP's popular western hills/Arrochar Alps (EIAR Volume 3: Figures, Figure 7.13, Cumulative wind farms in LVIA study area).

Loch Lomond and the Trossachs National Park - the National Park Authority objects to the proposal for the following reasons: the proposal will result in a significant adverse effect on the Special Landscape Qualities of the Argyll Forest area of the National Park by introducing a new built landscape feature to the Landscape Character Type (LCT) of Steep Ridges and Mountains; and the proposed development will have a significant adverse effect on visual amenity affecting views from the Arrochar Alps, Ben Donich and Beinn Bheula and the Cowal Way Long Distance Route approaching this gateway into the Park.

ABC Consultant Landscape Architect's most up-to-date advice which takes into account all Supplementary Information (comprising 4 additional visualisations from the Inveraray designed landscape and the A83 near Furnace) provided by the applicant is as follows:

The proposal and its design – the proposal comprises 9 turbines, up to 145m high to blade tip, located on the steep forested south-eastern slopes of the narrow ridge of Creag Dhubh. The proposal includes 5.6km of new access track, substation building and other ancillary development. The linear layout of the turbines responds to the landform of the narrow ridge of Creag Dhubh but while the turbines have a gently curving arrangement, the strong geometric alignment of the development is pronounced and contributes to adverse effects from elevated views (particularly from the hill summits within the LLTNP). The proposal is also commonly seen ‘end-on’ from the Strachur area and turbines appear visually unbalanced because of their location on very steep slopes. This effect is demonstrated in EIAR VP3.

The Wind Farm Felling and Restocking Plans (Figures 6.5 and 6.6) appear identical to the Forest Baseline Felling and Restocking Plans (Figures 6.3 and 6.4). Both plans perpetuate the poor design and limited species diversity of the existing woodland within Succoth Glen and do not conform to best practice design set out in the UK Forestry Standard.

2017 Argyll & Bute Landscape Wind Capacity Study - The proposed wind farm lies within the Steep Ridgeland and Mountains Landscape Character Type (LCT) as identified in the 2017 Argyll & Bute Landscape Wind Energy Capacity Study (LWECS). The proposed turbines, which would be up to 145m high to blade tip, would fall within the ‘Very Large’ typology considered in the LWECS. The LWECS concludes that the combined landscape and visual sensitivity of this LCT is high to wind turbines of this size and that the value of this landscape is also high. Key constraints to wind energy development include the proximity of the LCT to the Loch Lomond and Trossachs National Park (LLTNP) and the Ben Lui Wild Land Area, elevated views from hills in the LLTNP and potential effects on the dramatic head of Loch Fyne and on the setting of the designed landscape and planned settlement of Inveraray. The proposed wind farm also lies close to the boundary of the *Rocky Mosaic* LCT which covers the north-western and south-eastern shores of Loch Fyne. The LWECS finds that this small scale, settled and diverse LCT would have a high sensitivity to larger wind turbines. 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.

Landscape effects

ABC’s Consultant Landscape Architect is in agreement with the LVIA that the proposal would have significant adverse effects on part of the Steep Ridges and Mountains LCT principally extending up to 4km from the development site. The proposal would introduce new large-scale infrastructure to this unit of the LCT and would detract from the sharp ridges and open tops which are key characteristics of the LCT. The proposed turbines would dominate the narrow extent and intimate scale of Succoth Glen. The Rocky Coastland LCT comprises a narrow intermittent coastal fringe on both the north-west and south-east coasts of Loch Fyne. This a small-scale, settled landscape which is highly sensitive to large wind turbines. The proposal would not be located in the LCT but would lie in close proximity to unit LCT53 (1) and within approximately 6km from unit LCT53 (2) which covers the Inveraray area. The Council’s Consultant Landscape Architect considers that there would be significant adverse effects on LCT53 (1) in the Strachur area. These effects would principally relate to the effects of the introduction of new large-scale infrastructural features which would dominate the scale of settlement and detract from the setting of this small part of the *Rocky Coastland* LCT.

Effects on valued landscapes

The proposed development site is not covered by any landscape designations or other recognised landscape interests. It would however lie within 1km of the **Loch Lomond and Trossachs National Park (LLTNP)** where it would be principally visible from higher hill slopes and summits in the western part of the Park. Effects on the LLTNP are not considered in detail in this review as it lies outside Argyll & Bute. However, it should be noted that significant adverse effects would be likely to occur on views from key hill summits on the western edge of the Park, including from Beinn an Lochain, Ben Donich, Ben Arthur and Beinn Bheula. This proposal would be likely to adversely affect some of the SLQs of the LLTNP including *Arrochar's mountainous and distinctive peaks* which are important because of their popularity with climbers and the spectacular panoramas and the sense of remoteness and stillness experienced from their summits. This proposal would also be likely to contribute to significant cumulative effects on views and on LLTNP SLQs experienced from some of these hills when seen together with the operational Clachan Flats wind farm.

There would be visibility of the proposal from parts of the Area of Panoramic Quality (APQ) designated area around Loch Fyne. The APQ is not defined as separate named areas and there are no citations setting out the reasons for designation/special qualities of the designated area. Policy LDP 3 applies to the locally designated natural and built environment and seeks to avoid developments with significant adverse effects on the special qualities or integrity of these designations. This appraisal considers the APQ covering both the eastern and western shores and the mountainous head of Loch Fyne as a whole. While the APQ is mapped as a terrestrial designation, Loch Fyne is an essential part of the panoramic quality of this part of the designation.

Special qualities are likely to focus on views to the dramatic head of Loch Fyne which is backdropped by the Arrochar Alps (located within the LLTNP) and the steep-sided narrow ridges and hills which contain the upper loch, the rich diversity of the shores of the loch, which feature a number of GDLs, farmland and settlement and which contrast with the open hills which backdrop and frame views across and along the loch.

Operational wind farms are seen from parts of the APQ around Loch Fyne but these appear distant from the loch and are set well back from immediately containing upland skylines. The proposal would not be located in the APQ designated area around Loch Fyne but would have indirect effects on some of its special qualities. These comprise significant adverse effects on the dramatic head of Loch Fyne, experienced in more distant intermittent views from the north-western side of Loch Fyne and from the open waters of Loch Fyne (VPs 10, 11 and 16 demonstrate these views although it should be noted that no viewpoint has been produced in the EIAR from the loch itself). Significant cumulative effects would occur with the operational Clachan Flats on some of these long views along Loch Fyne where both wind farms would interrupt and distract from the dramatic mountains of the LLTNP. The proposal would significantly adversely affect the presently open and uncluttered hills which provide a backdrop and frame views across and along Loch Fyne seen from the elevated views from within APQ such as Dun na Cuaiche summit. Effects from lower elevation views would be unlikely to be significant (provided turbine locations are not radically altered during any micro-siting) due to the limited vertical extent of turbines visible on containing upland skylines, for example, from Inveraray Shore Walk (VP4). The scenic diverse fringes of Loch Fyne would not be significantly affected by the proposal.

The **Inveraray Castle GDL** is an important landscape feature integral to the special character of Upper Loch Fyne. Historic Environment Scotland have not objected to the proposal but comment that they consider the assessment set out in EIAR under-

estimates the level of effect on the more sensitive areas of the GDL and the Castle and therefore on the GDL as a whole. The proposal would be visible from parts of the GDL notably from the Garden Bridge, to the east and south-east of the castle and from the approach to, and from, the summit area of Dun Na Cruaiche and the 18th Century Category A-listed Watch Tower. This appraisal does not consider effects on the cultural importance of this GDL. It does however evaluate effects on views from the GDL as it comprises a popular destination for visitors/walkers in the Loch Fyne area.

Visual effects

Visibility of the proposed wind farm would be focussed at the head and middle sections of Upper Loch Fyne within Argyll & Bute (but with views also from the summits and elevated slopes and ridges of the Arrochar Alps and other mountains within the LLTNP). The wooded nature of the shores and slopes above Loch Fyne will restrict visibility of the proposal with more open views occurring in the Strachur, Inveraray areas, from the open waters of the loch and intermittently from the A83 and the adjacent north-western fringes of Loch Fyne within Argyll & Bute.

The LVIA under-estimates sensitivity and the magnitude of change for some representative viewpoints lying within Argyll & Bute. ABC's Consultant Landscape Architect considers that the following significant adverse effects would occur on visual amenity within the Council area:

- **On sections of the important tourist route of the A83.** While woodland screens views from much of the A83, there would be intermittent open views between Minard and Furnace, from Dalchenna to Inveraray and on elevated shoulders around VP10 and above Minard Castle in the Tullochgorm area which offer expansive views along Loch Fyne when travelling north-eastwards. The full vertical extent of turbines would not be seen although the proposal would introduce built features on the presently open skyline of hills and ridges which backdrop and frame views along Loch Fyne to its dramatic head and in an area where very little obvious large built infrastructure is currently present this increasing the focus provided by the proposed turbines. Additional Viewpoint 23 from near Furnace further demonstrates these effects.
- **Views from settlement on the north-western shores of Loch Fyne** Representative VPs 4, 12 and 16 are located in Inveraray, Furnace and Minard. It is accepted that effects on Furnace would not be significant due to screening by landform and woodland. The Cultural Heritage section of the EIAR found no significant effects on the Inveraray Conservation Area with reference to key views. This appraisal additionally considers views from the Shore Walk which is popular with visitors and concludes that effects would be significant taking into account the high susceptibility and value (and therefore sensitivity) of VP4, the magnitude of change would be medium (taking into account the proximity of the development, the extent and composition of the view and its horizontal spread but also the relatively limited vertical extent of turbines visible) resulting in a significant effect. In Minard while many residential properties within this settlement face directly across the loch towards Lachlan Bay and therefore away from the proposal, views would be more direct and open for walkers and watercraft users on the loch itself. The turbines would interrupt views to the Arrochar Alps within the LLTNP, with some highlighted against the darker backdrop of these mountains increasing visibility in certain lighting conditions.
- **Strachur area** Views from in and around Strachur including from the A886 on the approach to the core of this settlement and from the open waters of Strachur Bay

where there are moorings. The southern-most (up to two) turbines would be intrusive and would appear visually precarious in some close views (for example EIAR VP3) due to their location on very steep slopes and in views from the A815 and from the Cowal Way where it is aligned in Glen Succoth.

- **Views from within the Inveraray Castle GDL** including from the popular walk to Dun na Cuaiche on the approach to and from the watch tower and its surrounds. Although the wind farm would be seen in the least dramatic part of the view from Dun na Cuaiche (away from Inveraray town and the mountains of the LLTNP) it would be distracting, with some turbines visible above hub height and with the movement of blades clearly seen over the skyline of the long and relatively low Creag Dhubh ridge. The Watch Tower has two window openings facing south-west towards Inveraray and down Loch Fyne and south-east directly towards the Creag Dhubh ridge and the proposal.

There would also be views from the grounds and gravel terrace immediately around Inveraray Castle (EIA-R VP6) and from the Garden Bridge (SI VP19). Additional visualisations provided in December 2020 in this area include Viewpoint 20 from the road between the castle and the Garden Bridge, Viewpoint 21 from Kilmalieu Cemetery and Viewpoint 22 from the Aray Bridge. While a lesser vertical and horizontal extent of the turbines would be visible in these lower elevation views than from Dun na Cuaiche, moving turbine blades seen on the presently open skyline of Creag Dhubh would be visually distracting. Effects would be adverse but no significant.

Cumulative landscape and visual effects - The operational Clachan Flats and An Suidhe wind farms would be variously seen together and sequentially with this proposal from the Loch Fyne area. The wide spacing between these existing wind farms and this proposal, and the generally limited extent of visibility, would be unlikely to result in significant adverse cumulative effects experienced within Argyll & Bute. This proposal is likely, however, to have significant combined cumulative effects with the operational Clachan Flats wind farm on views from some of the Arrochar Alps within the LLTNP (in particular from Beinn an Lochain and Beinn Ime).

Conclusions - This proposal would occupy a highly sensitive location at the head of Loch Fyne and close to the LLTNP. Sensitivity is also increased due to its proximity to Inveraray and the Inveraray Castle GDL. ABC advised the applicant that the proposed location of the wind farm was highly sensitive in their scoping consultation.

While the ridge of Creag Dhubh provides screening, limiting the vertical extent of turbines visible from the shores and open waters of Upper Loch Fyne, greater visibility of turbines would be experienced from more elevated views from Dun na Cuaiche within the Inveraray Castle GDL and also in views from the high slopes, ridges and summits of the Arrochar Alps within the LLTNP. Effects on some of the SLQs of the LLTNP are likely to be significantly affected by this proposal. Within Argyll & Bute, the proposal would be likely to incur significant adverse effects on parts of the *Steep Ridges and Mountains* and *Rocky Coastland* LCTs in the vicinity of Strachur, on some of the special qualities of the APQ which is designated around Loch Fyne and on views from the Strachur area, Inveraray town and Inveraray Castle GDL, on short sections of the A83 and areas of settlement on the north-western side of Loch Fyne and also from the open waters of upper Loch Fyne. It is recommended that this proposal should be refused on the basis of these significant landscape and visual effects.

Mitigation

NatureScot, ABC Landscape Consultant & Strachur Community Council have all referred to mitigation in their responses.

NatureScot - The Creag Dhubh wind farm proposal is significantly taller and closer to the LLTNP, resulting in significant effects on the SLQs of the LLTNP, notwithstanding that the development is located outside of its administrative boundary. The location, scale, proximity, prominence, visual intrusion and linear arrangement in the upland landscape are all determining factors in influencing the degree of impact upon the LLTNP's SLQs. Significant effects have been identified, including to the immediate south near Strachur, from the LLTNP's western hills and from the west side of Loch Fyne in views across the loch to the LLTNP. Mitigation capable of reducing some of these effects would be likely to involve some significant changes to the proposal, including for example, removing turbines 1 and 2 at the southern end of the scheme would eliminate most effects on the section of Cowal Way, properties and roads to the southeast of Strachur. While reducing the size of turbines or positioning them lower on the eastern slope may reduce effects on views from the west side of Loch Fyne and from within the LLTNP, NatureScot advise that significant adverse effects are likely to remain in relation to the distinctive and landmark summits, connecting ridges and hill slopes of the western hills in the LLTNP as detailed above.

ABC Consultant Landscape Architect has advised that mitigation of significant adverse visual effects could potentially be achieved by reducing the height of turbines. Although this measure alone would be unlikely to mitigate effects from Dun na Cuaiche, it could negate impacts from lower parts of the Inveraray Castle GDL and from the shore walk within Inveraray town. Moving turbines to a lower elevation on the slopes of Succoth Glen, in combination with a reduction in the height of turbines, could avoid visibility from Dun Na Cuaiche but may make the proposal unviable in terms of wind capture. Significant adverse effects from the popular summits, ridges and upper slopes of the LLTNP Mountains would persist even if this mitigation could be implemented. In addition, significant adverse effects on views from the Strachur area, including views from the A886, should be mitigated by omission of the two southernmost turbines. These turbines are particularly prominent and appear dislocated and unbalanced because of their location on steep slopes.

Strachur Community Council have commented that the visibility of the development from the Strachur area is due mainly to the southernmost two turbines. For example, the visualisation show that these, and no others, will be clearly visible from Stachurmore, Balliemeanoch Cottage and Glen Sluain. If these turbines were omitted from the development, the visual impact of the whole wind farm on the local Strachur area would be significantly reduced.

Forestry

ABC Consultant Landscape Architect has advised that the proposal could also be the catalyst for speedier enhancement of forestry in the Succoth Glen and it is recommended that, should the Council be minded to grant permission, this should be on the condition that an improved Wind Farm Forest Design Plan is agreed with significant increases in broadleaved planting and open space within the glen floor and side valleys, along tributary burns and upper margins.

In the event that Members are minded to grant planning permission it is recommended that the mitigation detailed above is explored with the applicant prior to a decision being issued and conditions are attached to secure any agreed mitigation (e.g. removal of turbines 1 and 2) and an improved Wind Farm Forest Design Plan.

Having due regard to the above it is concluded that the proposal will have a significant adverse Landscape and Visual impact on National and Local designations and is therefore contrary to the provisions of SG LDP ENV 13 –

Development Impact on Areas of Panoramic Quality (APQs); 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; Onshore Wind Policy Statement, (2017); SNH Siting and Designing Wind Farms in the Landscape Guidance, (August 2017); and the ‘Argyll & Bute Landscape Wind Energy Capacity Study’ SNH and ABC (2017)

J. EFFECTS ON NATURAL HERITAGE INCLUDING BIRDS (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP (2014) require applications for wind turbine developments to be assessed against any impact they may have on natural heritage including birds.

General Ecology

ABC Local Biodiversity Officer has no objection to the proposal and provides the following advice: highlights discrepancy in Peat survey (deep peat should be considered as >50cm not 1.0m; bats should be included in the Site Monitoring Plan; Otter to be included in the Species Action Plan in the CEMP; keep a watching brief for Pine Marten; keep a watching brief for Red Squirrel and include it in the Species Plan; further details on the treatment of excavations to be provided in a Soil & Peat Management Plan (including restoration); Borrow Pits - further details, restoration plan to be included in CMS; and provision of a Construction Environmental Management Plan (CEMP)

Fish

Argyll District Salmon Fishery Board (ADSFB) – Eachaig and Argyll DSFB request that if the development is given planning permission, that robust pre and post development surveys are carried out to demonstrate that there has been no damage to salmon populations or their habitat caused by the construction of the project.

ABC Local Biodiversity Officer has no objection to the proposal and provides the following advice in respect to fish: fish monitoring should be included in the Species Monitoring Plan; Fresh Water Pearl Mussel – no action required; and in the interests of protecting Salmonid fish – a pollution protection plan should be provided for the River Cur;

Ornithology

NatureScot requested Supplementary Information in the form of satellite tag data for golden eagle G/LG3 to help validate the EIAR and allow them to comment fully on the likely significant impacts on the NHZ14 population as well as any appropriate mitigation measures. Having been provided with this data they advise that the G/LG3 golden eagle satellite tag data suggests the Predicting Aquila Territories (PAT) model does not accurately reflect eagle activity and the predicted areas of higher activity. Whilst NatureScot recognise that the proposal may have an adverse localised impact on a number of protected bird species, it is unlikely to create a Natural Heritage Zone (NHZ) population level risk. However, it should be noted that the potential impacts in the EIAR are underestimated. The G/LG3 range is constrained by topography, neighbouring ranges, forestry etc. and is noted as having poor productivity in recent years, all of

which makes it potentially more vulnerable to abandonment as acknowledged in the EIAR. NatureScot strongly advise that, should planning permission be granted, a Habitat Management Plan should be developed to improve the condition of the G/LG3 range and NatureScot support the post construction monitoring as proposed in EIAR Chapter 11 Ornithology section 11.12.2 Mitigation During Operation Phase. NatureScot request further information is provided regarding the Identiflight aerial detection system in terms of effecting shutdown and practicality.

The Royal Society for the Protection of Birds noted in their scoping response in 2017 that this wind farm falls within the core (3km) range of an occupied eagle territory, territory LG3. They welcomed the inclusion of the satellite tag data for the eagle territory A22 as well as the NHZ14 population model. They also note the inclusion of PAT modelling of the LG3 eagle territory, however this is no longer thought to be an adequate method to predict golden eagle use of a site. One of the LG3 birds was satellite tagged last year, this data is available to the applicants and is essential for them to make a fully informed evaluation of the impact the wind farm will have on the pair in this territory. RSPB asked that ABC request the applicants provide this satellite tag information and until this is made available they object to this application but will review their position if the data is made available. This information has been provided to the RSPB. At time of writing no response has been received.

The Argyll Raptor Study Group have also written a letter of representation objecting to the proposal. It should be noted that the satellite tag data was also sent to them to afford them the opportunity to comment further. However, at time of writing no further response has been received.

ABC Local Biodiversity Officer has no objection to the proposal and defers to the RSPB for provision of Ornithological advice

In light of the fact that NatureScot are satisfied with the proposal in terms of Ornithological impact, subject to the aforementioned conditions. It is considered that the proposal is acceptable in this regard.

Trees/Woodland

Scottish Forestry – no response at time of writing. Should Members be minded to approve this application. It is recommended that the response from Scottish Forestry is secured prior to making any decision.

In light of the fact that no response has been received from Scottish Forestry it is not possible to conclude whether or not the proposal is consistent with policy in this regard. Specifically: SG LDP ENV 1 – Development Impact on Habitats, Species and Our Biodiversity (i.e. biological diversity); SG LDP ENV 6 – Development Impact on Trees/Woodland; SG 2 Renewable Energy; LDP STRAT 1 – Sustainable Development; 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 (2014); Onshore Wind Policy Statement; and the Scottish Government's Policy on 'Control of Woodland Removal' (Forestry Commission Scotland 2009).

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse impacts on any of the other relevant natural heritage interests including birds and is therefore consistent

with the provisions of: SG LDP ENV 1 – Development Impact on Habitats, Species and Our Biodiversity (i.e. biological diversity); SG LDP ENV 7 – Water Quality and the Environment; SG LDP ENV 11 – Protection of Soil and Peat Resources; 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 (2014); Onshore Wind Policy Statement; and the Scottish Government’s Policy on ‘Control of Woodland Removal’ (Forestry Commission Scotland 2009);

K. IMPACTS ON CARBON RICH SOILS, USING THE CARBON CALCULATOR (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, Supplementary Guidance 2 and SPP (2014) require applications for wind turbine developments to be assessed against any impact they may have on carbon rich soils, using the carbon calculator

Peatland

NatureScot note that the applicant identifies areas of peatland and effort has been made to site most of the construction and infrastructure to reduce impacts with further investigation and micro-siting proposed to reduce the magnitude of effect on peat. As a result, the area which may be affected by the proposed wind farm is not considered by NatureScot to be of National Interest for its peatland habitat.

Given that the development will result in a net loss of peatland habitat and some loss of peat, NatureScot advise that a Peat Landslide Hazard Risk Assessment should be carried out prior to construction. In addition, NatureScot strongly advise that, should planning permission be granted, the current peat restoration plans are developed into an integrated Peat Habitat Restoration or Management Plan to ensure maximum benefit and minimum risk from the reuse of excavated peat.

Deep peat

Both NatureScot and the ABC’s Local Biodiversity Officer note a discrepancy in the applicants description of deep peat (>1.0) and advise that in accordance with current guidance (Scottish Government, Scottish Natural Heritage, SEPA (2017) Peatland Survey. Guidance on Developments on Peatland, on-line version only) deep peat is all peat over 0.5 in depth.

The Scottish Environmental Protection Agency originally objected on the grounds of lack of information on peat management, and requested a comprehensive Peat Management Plan (PMP), providing full details on peat excavation, management and restoration as appropriate. SEPA advised that they would review this objection if their concerns were adequately addressed. In response to this, an Outline Peat Management Plan was submitted by the applicant as additional information. SEPA maintained their objection, and advised that in order for the objection to be removed, the planning application would need to be modified to achieve the following: re-siting of the construction compound away from areas of deep peat, or adoption of a different design which would not result in deep peat excavation; removal of proposals to place peat in areas without appropriate hydrological connectivity, or provision of evidence which confirm suitable hydrology; and removal of proposals to fill drains with excavated peat. Installation of suitable dams to block drains and allow peat to re-form naturally

would be acceptable. A further revised Outline Peat Management Plan was submitted by the applicant which SEPA reviewed and have confirmed that the proposed revisions meet their requirements. SEPA have therefore withdrawn their objection, provided the revisions will be accommodated exactly as described.

Spatial Strategy (SPP & SG2) - The site is located within a Group 2 area as defined by SPP and Supplementary Guidance due to the mapped presence of Class 2 nationally important carbon-rich soils, potentially of high conservation value and restoration potential. According to SNH's narrative accompanying the Carbon and Peatland 2016 map, the map "*can only indicate that carbon-rich soils, deep peat and priority peatland habitat are likely to be present and that the presence, or potential presence, of such resources is not a ban on development*". Following the advice of SNH and SEPA, it is not considered that this status would be an impediment to the proposal being permitted subject to conditions to secure a Peat Management Plan and a Peat Landslide Hazard Risk Assessment.

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse impacts on carbon rich soils, using the carbon calculator and is therefore consistent with the provisions of it therefore consistent with the provisions of SG LDP ENV 1 – Development Impact on Habitats, Species and Our Biodiversity(i.e. biological diversity); SG LDP ENV 11 – Protection of Soil and Peat Resources; 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.

L. PUBLIC ACCESS, INCLUDING IMPACT ON LONG DISTANCE WALKING AND CYCLING ROUTES AND THOSE SCENIC ROUTES IDENTIFIED IN THE NPF (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP (2014) require applications for wind turbine developments to be assessed against any impact they may have on public access, including impact on long distance walking and cycling routes and those scenic routes identified in NPF3.

The Scottish Rights of Way and Access Society (ScotWays) has advised that the National Catalogue of Rights of Way (CROW) shows that right of way SA32 is affected by the area outlined in red on the site layout with turbine IDs plan. It appears that access will be taken from the right of way on to the proposed site. As there is no definitive record of rights of way in Scotland, there may be other routes that meet the criteria to be rights of way but have not been recorded as they have not yet come to ScotWays notice. Additionally, it may be of interest to note that this route is promoted in Scotways popular book Scottish Hill Tracks. The long distance route the Cowal Way uses part of the above noted right of way. The Society requests that right of way SA32 remains open and free from obstruction during and after any proposed works. There may now be general access rights over any property under the terms of the Land Reform (Scotland) Act 2003. Scotways would strongly recommend also consulting the Core Paths Plan, prepared by the Council's own access team as part of their duties under this Act.

The Council's Access Officer – at time of writing no response has been received.

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse physical impacts on public access, including impact on long distance walking and cycling routes and those scenic routes identified in the NPF and is therefore consistent with the provisions of SG 2 Renewable Energy, SG LDP TRAN 1 – Access to the Outdoors; 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.

M. IMPACTS ON THE HISTORIC ENVIRONMENT, INCLUDING SCHEDULED MONUMENTS, LISTED BUILDINGS AND THEIR SETTINGS (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any impact they may have on the historic environment, including scheduled monuments, listed buildings and their settings.

Historic Environment Scotland – initial view was that the proposals do not raise historic environment issues of national significance and therefore they did not object. Upon receipt they reviewed the Supplementary Environmental Information (SEI), which consisted of a Landscape and Visual Impact Assessment (LVIA) report with additional visualisations and assessment of impacts in response to the request from ABC and NatureScot. HES note that some of the additional viewpoints are taken from within the Inveraray Castle Inventory Garden and Designed Landscape (GDL 00223) and the category A listed Aray Bridge (LB 11545). The additional visualisations from these assets confirm HES's views that the proposal would have an adverse impact on the setting of the designated assets, but that these would not be so adverse as to raise issues of national interest. HES are therefore content that the SEI does not demonstrate any change to the assessed effects on the historic environment. HES are satisfied that the SEI does not demonstrate an impact that raises issues of national interest for their remit and confirm that they have no additional comments to add to their previous response. HES note that the assessment of impacts on the historic environment has not been revised and confirm that it does not object to the proposal.

The West of Scotland Archaeology Service (WOSAS) raised no objection to the proposal, it has advised that it agrees with the cultural heritage section of the EIAR and that the proposal raises no significant direct or indirect archaeological issues. This is mainly due to the location, rugged topography, high altitude and the lack of finds when the area was surveyed archaeologically.

Having due regard to the above it is concluded that the proposal will not have any adverse impacts on the historic environment, including scheduled monuments, listed buildings and their settings and is therefore consistent with the provisions of 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 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; the Onshore Wind: Policy Statement and the Historic Environment Policy for Scotland 2019 (HEPS) in this respect.

N. IMPACTS ON TOURISM AND RECREATION (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any impact they may have on tourism and recreation.

Strachur Community Council – comment that it is possible that the development could disadvantage the local economy, through loss of income to the hospitality sector, if, due to the partial industrialisation of its landscape setting, Strachur becomes less attractive as a destination for hotel guests, holiday lets and day tourists (including users of the Loch Lomond & Cowal Way).

Mountaineering Scotland have also written a letter of representation objecting to this proposal. Concerns of particular relevance are raised in paragraphs: 14, 18, 26, 28 and 29 of their representation which may be summarised as follows:

- the important context within which the proposal is located – just outside the National Park (1km) and within 13km of the Arrochar Alps, an immensely important area for Scottish mountaineering and hill-walking;
- the National Park and North Argyll APQ follow fairly arbitrary boundaries in the vicinity of the proposal – these designations recognise the quality of the landscape in the immediate vicinity of the proposal and such recognition is not consistent with approving a wind farm the size and altitude proposed in this location;
- the proposal lies partly within the North Argyll APQ, just outside the National Park and close to the Arrochar Alps, a major draw for mountaineering recreation and tourism – while the site itself may be unexceptional, it is set within a high quality and valued mountain landscape;
- As far as mountaineering tourism and recreation is considered, the benign conclusion of the EIAR is unwarranted and greater caution regarding potential adverse tourism and recreation impacts is merited when faced with application set within high quality landscapes;
- The proposal would materially change the perceived character of the presently largely recessive landscape as seen from the Arrochar Alps. This is an area of substantial mountaineering significance, highly accessible from the Central Belt yet a true Highland landscape. Wind farms are not absent in the wider view but, with the regrettable exception of Clachan Flats, their impact is muted by distance and good siting. The proposal does not offer these mitigations and manages to be visible from all the summits from which Clachan Flats is not visible. It would have an impact wholly disproportionate to the climate benefits to be gained from such a small development in the wrong location.

It is likely that the hill walkers accessing the Loch Lomond and the Trossachs National Park western hills who will be most affected by this proposal and it is this group of people who may be put off making repeat visits to the hills.

ABC also regards landscape as being a particularly valued asset both in terms of its intrinsic qualities and in terms of its value to the tourism economy. For all types of development the maintenance of landscape character is an important facet of decision-making in the countryside in Argyll & Bute, regardless of the scale of development proposed. The Council's Local Development Plan Policy LDP 6 identifies impacts on tourism and recreation as a material consideration in the assessment of wind turbine developments on the basis that inappropriate developments with significant adverse effects which contribute to the degradation of landscape character are unlikely to be in the interests of the Argyll tourism economy.

It is considered that current research on the impact of wind farms on tourism is based upon the existing situation where approved wind farms are generally well sited and scaled. Officers are of the view that the outcome of such research may be different if it were to consider and encompass wind farms which are inappropriately sited and scaled (such as is considered to be the case here). It is considered that the proposal would result in a significant adverse effect on some special qualities of the Loch Lomond and the Trossachs National Park and the objectives of the designation and the overall integrity of the area would be compromised.

The presence of these adverse landscape and visual impacts in the the Loch Lomond and the Trossachs National Park would suggest that the development may influence public attitudes to a point where tourists might become dissuaded from visiting. This protection of the National Park in regard to recreation is supported by SPP, Para 84.

Whilst the proposed windfarm is not within the Loch Lomond and the Trossachs National Park, it will be visible from within these areas and an inappropriately scaled and sited development will raise similar issues in relation scenic sensitivity and capacity to absorb large scale development.

Having due regard to the above, it is considered that the proposal will have an adverse impact on tourism and recreation and is therefore inconsistent with the provisions of: SG LDP TRAN 1 – Access to the Outdoors; 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; SG LDP ENV 13 –Development Impact on Areas of Panoramic Quality (APQs); SG LDP ENV 14 –Landscape; and SG 2 Renewable Energy of the Argyll & Bute Local Development Plan, SPP and the Onshore Wind Policy Statement in this respect.

O. AVIATION, DEFENCE AND SEISMOLOGICAL RECORDING (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any impact they may have on Aviation, Defence and Seismological Recording.

The Ministry of Defence has no objection to the proposal subject to conditions to ensure that: the development is fitted with MOD accredited aviation safety lighting and that prior to the commencement of construction they are provided with: the date construction starts and ends; the maximum height of construction equipment; and the latitude and longitude of every turbine (this information is vital as it will be plotted on flying charts to make sure that military aircraft avoid this area).

National Air Traffic Services (NATS) has no safeguarding objection to this proposal.

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse impacts on aviation and defence interests and seismological recording and is therefore consistent with the provisions of: Policy LDP 6 – Supporting the Sustainable Growth of Renewables; SG LDP TRAN 7 –Safeguarding of Airports and SG 2 Renewable Energy of the Argyll & Bute Local Development Plan, SPP and the Onshore Wind: Policy Statement in this respect.

P. IMPACTS ON TELECOMMUNICATIONS, BROADCASTING INSTALLATIONS AND TRANSMISSION LINKS (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any impact they may have on telecommunications, broadcasting installations and transmission links.

Ofcom have no comment and advised that information is provided via the Spectrum Information System (SIS). CSS Spectrum Management and the Joint Radio Company have not responded. No significant environmental effects on any such receptors are identified in ES.

Having due regard to the above it is concluded that the proposal will not have any adverse impacts on telecommunications, broadcasting installations and transmission links (including cumulative impacts) and is therefore consistent with the provisions of SG 2, Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan, SPP (2014) and the Onshore Wind Policy Statement in this respect.

Q. IMPACTS ON ROAD TRAFFIC AND ADJACENT TRUNK ROADS (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, SG 2 Renewable Energy and SPP require applications for wind turbine developments to be assessed against any impact they may have on road traffic and adjacent trunk roads.

Transport Scotland has no objection to the proposal subject to conditions to: secure approval of the proposed route for any abnormal loads on the trunk road network prior to the commencement of deliveries to site; to secure approval of any accommodation measures required including the removal of street furniture, and traffic management; and to ensure acceptable additional signing or temporary traffic control is undertaken by a recognised Quality Assured traffic management consultant. The reasoning for these conditions is to ensure that the transportation of abnormal loads will not have any detrimental effect on the trunk road network.

ABC Roads have no objection, subject to conditions relating to: improvement of the existing access; agreement of the design & construction of the access; access surfacing; surface water drainage; carriageway width across bellmouth; video record of road corridor (A815 to site including junction); route for abnormal loads; accommodation measures – traffic management consultant; signs etc. to be removed and replaced after each movement to maintain road safety; programming of deliveries; verge and carriageway reinstatement; and Transportation of abnormal loads not to coincide with peak travel times. ABC Roads also advise that a Road Opening Permit will be required for work on or adjacent to the road corridor.

Having due regard to the above it is concluded that subject to the recommended conditions the proposal will not have any adverse impacts on road traffic and adjacent trunk roads and is therefore consistent with the provisions of SG2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables; SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes of the Argyll & Bute Local Development Plan, SPP (2014) and the Onshore Wind Policy Statement in this respect.

R. EFFECTS ON HYDROLOGY, THE WATER ENVIRONMENT AND FLOOD RISK (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, Supplementary Guidance 2: Renewable Energy and SPP require applications for wind turbine developments to be assessed against effects on hydrology, the water environment and flood risk.

The Scottish Environment Protection Agency (SEPA) - Flood risk – advise that although the site appears to lie outwith the SEPA Flood Map, they have identified a number of small watercourses within the site boundary for which they do not hold flood risk information and recommend that advice is sought from ABC's Flood Risk Management Authority, who may have local knowledge and/or possess flood records.

SEPA further advise that the removal of trees to enable the construction of wind farms can have a variety of hydrological impacts. Therefore, careful consideration should be given to the extent of deforestation and proposed flood risk mitigation measures. Given that the proposed land use is 'essential infrastructure' and the turbines would be outwith the SEPA Flood Hazard Maps, they have no objection on flood risk grounds.

ABC's Flood Risk Assessor – Flood Risk - has no objection to the proposal and recommends that planning conditions to the effect of the following should be attached to any planning permission granted for this application: watercourse crossings to be designed to pass the 1 in 200 year plus climate change (56% allowance) flood event; and Surface water drainage should be designed in accordance with CIRIA C753 and be in operation prior to the start of construction.

Having due regard to the above it is concluded that effects on hydrology, the water environment and flood risk have been considered and subject to the recommended conditions the proposal is therefore consistent with the provisions of SG 2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan, SPP and the Onshore Wind Policy Statement in this respect.

S. THE NEED FOR CONDITIONS RELATING TO THE DECOMMISSIONING OF DEVELOPMENTS, INCLUDING ANCILLARY INFRASTRUCTURE, AND SITE RESTORATION (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, Supplementary Guidance 2: Renewable Energy and SPP (2014) require applications for wind turbine developments to be assessed against the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration.

The proposal has been designed with an operational life of 25 years. At the end of the operational period it would be decommissioned and the turbines dismantled and

removed. Any alternative to this action would require permission from ABC and so is not considered in the ES. Policy LDP 6 requires conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration. Should planning permission be granted conditions will be required to ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

Having due regard to the above it is concluded that subject to the recommended conditions the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration has been considered and the proposal is therefore consistent with the provisions of SG 2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan, SPP and the Onshore Wind Policy Statement in this respect.

T. OPPORTUNITIES FOR ENERGY STORAGE (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, Supplementary Guidance 2: Renewable Energy and SPP (2014) require applications for wind turbine developments to be assessed against any opportunities for energy storage which exist. There is no provision for battery energy storage in this scheme.

Having due regard to the above it is concluded that opportunities for energy storage have been considered and the proposal is therefore consistent with the provisions of SG 2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan, SPP and the Onshore Wind Policy Statement in this respect.

U. THE NEED FOR A ROBUST PLANNING OBLIGATION TO ENSURE THAT OPERATORS ACHIEVE SITE RESTORATION (INCLUDING CUMULATIVE IMPACTS)

Policy LDP 6 – Supporting the Sustainable Growth of Renewables, Supplementary Guidance 2: Renewable Energy and SPP (2014) require applications for wind turbine developments to be assessed against the need for a robust planning obligation to ensure that operators achieve site restoration. This matter can be covered by planning conditions or a legal agreement consistent with other projects across Argyll & Bute in the event that the proposal obtains planning permission.

Having due regard to the above it is concluded that subject to the recommended conditions the need for a robust planning obligation to ensure that operators achieve site restoration (including cumulative impacts) has been considered and the proposal is therefore consistent with the provisions of SG 2 Renewable Energy, Policy LDP 6 – Supporting the Sustainable Growth of Renewables of the Argyll & Bute Local Development Plan, SPP (2014) and the Onshore Wind Policy Statement in this respect.

V. Scottish Planning Policy, The Scottish Energy Strategy, Onshore Wind Policy Statement 2017

SPP – National Parks

Para 212, SPP 2014 states that: *“Development that affects a National Park ... should only be permitted where: the objectives of designation and the overall integrity of the area will not be compromised; or any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance”*.

Para 213, SPP 2014 states that: *“Planning decisions for development within National Parks must be consistent with paragraphs 84 – 85”*.

Paras 84 & 85, SPP 2014 National Parks state that: *“National Parks are designated under the National Parks (Scotland) Act 2000 because they are areas of national importance for their natural and cultural heritage. The four aims of national parks are to: • conserve and enhance the natural and cultural heritage of the area; • promote sustainable use of the natural resources of the area; • promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and • promote sustainable economic and social development of the area’s communities”*.

And ...85. *“These aims are to be pursued collectively. However if there is a conflict between the first aim and any of the others then greater weight must be given to the first aim. Planning decisions should reflect this weighting”*. Paragraph 213 also applies to development outwith a National Park that affects the Park

The Scottish Energy Strategy (SES) 2017 - The SES was published in December 2017 and sets out the Scottish Government’s strategy through to 2050, marking a ‘*major transition*’ over the next three decades in terms of energy management, demand reduction and generation. The SES sets two new targets for the Scottish energy system by 2030: The equivalent of 50% of the energy for Scotland’s heat, transport and electricity consumption to be supplied from renewable sources; and, an increase by 30% in the productivity of energy use across the Scottish economy. The SES recognises that reaching the 50% target by 2030 ‘will be challenging’ but the target demonstrates ‘the Scottish Government’s commitment to a low carbon energy system and to the continued growth of the renewable energy sector in Scotland’.

These energy and climate change goals mean that onshore wind must continue to play a vital role in Scotland’s future – helping to decarbonise our electricity, heat and transport systems, boosting our economy, and meeting local and national demand.

The Statement goes on to state that: *‘This means that Scotland will continue to need more onshore wind development and capacity, in locations across our landscapes **“where it can be accommodated”**’*.

‘Onshore Wind: Policy Statement’ (December 2017) – The onshore wind policy statement sets out the Scottish Government’s position on onshore wind and supports the aims of the Scottish Energy Strategy:

*“25. The Scottish Government acknowledges the way in which wind turbine technology and design is evolving, and fully supports the delivery of large wind turbines in landscapes judged to be capable of accommodating them **without significant adverse impacts**”*.

Having due regard to the above it is considered that the proposal is contrary to the provisions of SPP, the Scottish Energy Strategy 2017 and Onshore Wind Policy Statement 2017, in that it cannot constitute ‘sustainable development’, as it is considered that it cannot be accommodated on the chosen site without

significant adverse landscape and visual impacts on nationally and locally designated landscapes (Loch Lomond and the Trossachs National Park and Area of Panoramic Quality) contrary to the provisions of these documents, which represent the Scottish Governments most up to date position on this type of development.

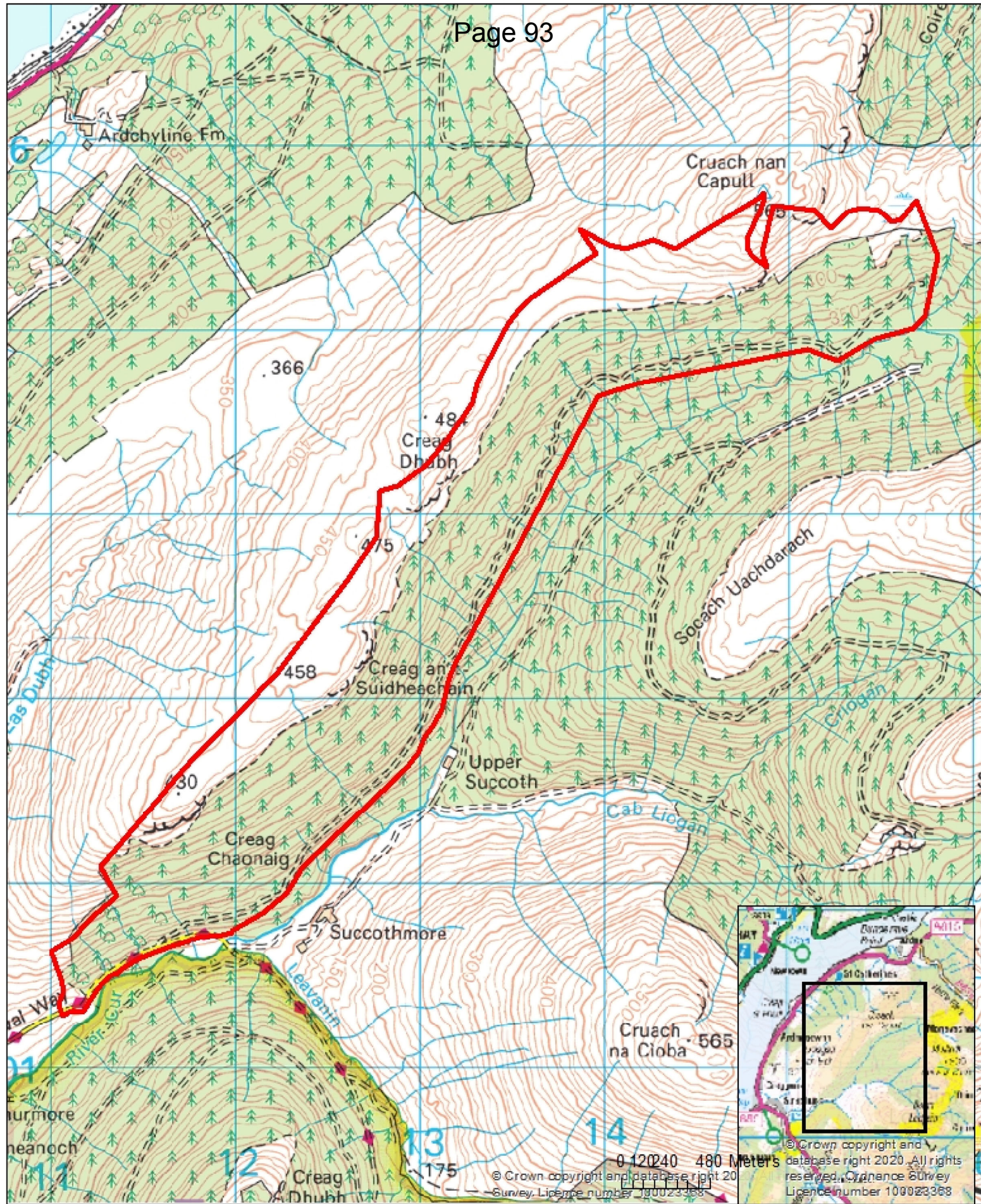
Appendix - Representations Received for: 19/02544/PP

Objection

1. Iain MacPhillimy, 2 Swedish Houses, Strachur, Cairndow, Argyll, PA27 8DJ - 25th February 2020
2. Hugh Gilbert, Cladach, Strachur, PA27 8BY, 25th February 2020
3. Argyll Raptor Study Group, David C Jardine, The Old Schoolhouse, 26 Kilmartin, Lochgilphead, Argyll, PA318RN, 27th February 2020
4. Margaret Paterson, Achnamara, Strachur, Argyll, PA27 8DP 25TH February 2020;
5. Norman C Mack, Stonefield, Letters Way, Strachur, PA27 8DP 25th February 2020;
6. Morag Blunt, Tigh An Struan, Midletters, Strachur, Argyll, PA27 8DP, 25th February 2020
7. E Mack, Stonefield, Mid-Letters, Strachur, PA27 8DP
8. Ishbel Fraser, Ardfracoch, Strachur, PA278BY 26th February 2020
9. Lorna McLean, Cladach Strachur Cairndow Argyll & Bute, PA27 8BY 25th February 2020
10. Ian Hopkins, Flat 1/2 179 High Street Rothesay Isle of Bute Argyll & Bute, PA20 9BS 25th February 2020
11. Mountaineering Scotland (24th February 2020) –
12. E A Campbell, Crossaig, Strachur, Cairndow, Argyll & Bute, PA27 8BY 21st February 2020
13. Mr David Campbell, Crossaig Strachur Cairndow Argyll & Bute, PA27 8BY, 22nd February 2020
14. Graham Clark, 2 Ferrybank Cottages Colintrave Argyll & Bute, PA22 3AR 26th February 2020

Support

1. (15) Mr Leslie Earle, Glendarg Letters Way, Strachur, Cairndow, Argyll & Bute PA27 8DP, 23rd February 2020
2. (16) Tim King, Lochgoil Community Trust, The Village Hall Lochgoilhead, PA24 8AQ 4th May 2020



Location Plan Relative to Planning Application: 19/02544/PP



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

Delegated 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

Reference No: 21/01679/PP
Planning Hierarchy: Local
Applicant: South Islay Development
Proposal: Erection of new community hub to replace the former pavilion, relocation of play areas, upgraded access and parking, increased motorhome stances, construction of new toilet/shower block, siting of 5no. storage containers and temporary change of use to facilitate hot food takeaway van.

Site Address: Port Ellen Playing Fields Land Adjacent To Filling Station
Charlotte Street Port Ellen Isle Of Islay

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of new 'Community Hub / Pavilion' building;
- The relocation of an existing children's playparks to an alternative location within the application site boundary and provision of 1.1m high fence;
- The installation of 3no. spectator shelters along the southern boundary of the existing football pitch;
- The installation of 5.0m high metal fencing to the western boundary of the existing football pitch;
- The installation of 4no. storage containers to provide ancillary storage for sports equipment;
- The installation of 1no. storage container to provide storage for rental e-bikes;
- The alteration of the existing vehicular access and formalisation of parking to provide a 15no. space car park with 2no. EV charging points, 5no additional spaces, 2no. accessible spaces, and 10no. cycle stands;
- The change of use of land to form an extension to an existing short-stay motorhome site comprising the formation of 8no. new hardstandings each with a motorhome hookup and alteration of existing access to the motorhome site;
- The erection of a toilet/shower/laundry block building;
- The temporary change of use of land (sui generis) for the siting of a hot food takeaway van (temporary for 3 years); and
- Landscaping and formation of external seating areas.

(ii) **Other specified operations**

- Removal of existing play equipment.
-

(B) **RECOMMENDATION:**

Planning permission be approved subject to a pre determination Hearing and the conditions recommended and attached.

(C) **CONSULTATIONS:**

Scottish Water replied 21.10.2021 with no objections subject to standard connection procedures.

Area Roads Mid Argyll Kintyre And Islay replied 08.11.2021 with a deferred decision pending further information. Further response received 09.02.2021 with approval subject to conditions to be attached.

Environmental Health replied 09.11.2021 and 10.02.2022. No objections but highlighted potential for ground contamination to be investigated and provided information relating to motorhomes and licences. Advice provided verbally on limitation to hours of operation in response to concerns raise by applicants re. disturbance.

West of Scotland Archaeological Services replied 10.12.2021 with a phased condition request regarding retrieved objects and artefacts.

(D) **HISTORY:**

13/02751/PP Alteration and erection of extension to pavilion – Approved – 20.02.2014

15/02481/PP Change of use of land to form 5 motorhome short-stay parking bays with associated facilities including chemical toilet waste disposal building **approved** 20.11.2015.

21/00441/PP Use of land for the siting of mobile hot food van, 3 containers for sport changing facilities/sports equipment storage and bike hire/storage and formation of associated parking and turning area **withdrawn** 05.07.2021

21/00442/PP Change of use of land for the siting of 3 storage containers on hardcore base **withdrawn** 13.07.2021

21/00743/PP Erection of new community hub to replace the existing pavilion, relocation of play area, formation of parking and motorhome pitches, electric vehicle charging points and erection of toilet/shower block **withdrawn** 21.06.2021

(E) **PUBLICITY:**

Regulation 20 advert expired 25.11.2021 Oban Times
Neighbour notification expired 19.11.2021

(F) **REPRESENTATIONS:**

There have been a total of thirty seven objections. A list of the objectors are included in Appendix B whilst a summary of the issues raised is provided below.

Summary of issues raised:

Detrimental to the community in every aspect of the proposal. The proposal is out of character for the village and constitutes over development. The design of the new hall is not reflective of the local vernacular and the storage containers will be an eyesore and their use should be incorporated in the new building. The design of the building is inadequate for the potential users.

Comment: The design of the new pavilion is similar but larger than the previous building. The design has been finalised after several rounds of community consultation where comments have been considered. A design which is large enough to store larger items was felt to be intrusive within the site and its surroundings.

The containers are therefore needed to hold some portable structures for the users i.e. football or rugby goals, grass maintenance machines, ebikes for rental. The storage rooms in the new pavilion will offer space to store smaller or personal belongings for regular use i.e. bowling balls, mats, strips etc. Their positioning to the extremity of the site allows for landscaping to mitigate their visibility as part of the wider landscaping plan.

This is a change of use from community facilities to tourism accommodation resulting in a general loss of amenity/green space to the community. The proposal is contrary to the original health and wellbeing ethos of the playing fields. All green space and playing fields should be retained.

Comment: A small area of the playing fields will be incorporated into the expansion of the motorhome site. This will help to address previously raised community concerns regarding motorhomes parking on public land around the village, or directly outside private properties. The income from an additional eight hook-ups is intended to maintain and sustain the wider playing fields site and the new building. Proposals to fund the creation of additional amenity space have been considered subject to further funding and community consultation.

The caravan/campervan/camp should be out of the town centre and out of sight from main roads. There will be an unacceptable increase in noise and disturbance. The site is too close to the Ramsay Hall which holds late functions.

Comment: This site is for motorhome parking and facilities (showers/toilets/recycling point/laundry) only. There are already four motorhome spaces on The filling station site beside the playing fields. The site will be landscaped to minimise visual intrusion.

Currently the four motorhomes have had no record of complaints about the users of the site.

When there are late night functions planned in the Ramsay Hall, any users of the motorhome site will be made aware of this in advance at times of booking through online media.

The location of the play area is worse than at present.

Comment: The play area is being re-located closer to the main playing fields building following community consultation. The new site will be levelled and suitably drained to allow more effective use all year round. The long term plan for the area is to add new equipment when funding is available. The proposed play area location will allow for better supervision/visibility from the café and community hall.

The new road, parking and increased vehicle activity will result in an unacceptable increase in carbon emissions. The roads infrastructure cannot cope with any increase of large vehicles. The parking site should not be next to the filling station.

Comment: The new parking will not increase the number of large vehicles on the site and will encourage responsible parking. The amount of parking on site reflects current and projected usage in a formalised, segregated system.

Encouraging more camper vehicles will stretch capacity on the ferries.

Comment: Noted

There will be a lack of day to day management. Management by committee is not an acceptable body for a commercial venture.

Comment: Noted

The use of the new building and any facilities by groups has not been made clear. There is a lack of plans to cater for multi sports in the existing playing fields.

Comment: Noted

Lack of shower/changing facilities in new building

Comment: Noted

The removal of the original building should not have happened.

Comment: Noted

The proposal is a poor investment, the money should be spent on Ramsay Hall. The cost of the development seems inappropriate. It is an unnecessary commercial money making vanity project

Comment: Noted

An increase in motor homes will have a detrimental effect on hotel/BnB businesses

Comment: Noted

The resignation of board members is a result of this plan which they did not support. Lack of community support will be detrimental to the plans.

Comment: Noted

The proposal does not offer cultural or social benefits to the community but instead the erosion of the way of life on the island.

Comment: Noted

(G) SUPPORTING INFORMATION

Has the application been the subject of:

(i) EIAR: No

(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: No

(iii) A design or design/access statement: Yes

Extensive background on the design and the rationale of the layout which has been informed by public meetings and advice from council officers.

The document outlines the:

- recent history of the site and transfer of ownership,
- community involvement in the design and layout of the plans presented,

- the various land-uses proposed and their spatial interactions,
- further development proposals for the wider area,
- the background to the motor homes development and its contribution to tourism and maintenance of the amenity space,
- the budget for the projects.

(iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No

(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' Adopted March 2015

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones
LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
LDP 5 - Supporting the Sustainable Growth of our Economy
LDP 8 – Supporting the Strength of our Communities
LDP 9 – Development Setting, Layout and Design
LDP 10 - Maximising our Resources and Reducing our Consumption
LDP 11 – Improving Our Connectivity and Infrastructure

'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted)

Landscape and Design

SG LDP ENV 14 – Landscape

Historic Environment and Archaeology

SG LDP ENV 17 - Development in Conservation Areas and SBEAs
SG LDP ENV 20 – Development Impact on Sites of Archaeological Importance

Support For Industry And Business – Main Potential Growth Sector: Tourism

SG LDP TOUR 1 - Tourist Facilities and Accommodation, including Static and Touring Caravans
SG LDP TOUR 3 - Promoting Tourism Development Areas
SG LDP RET 3 – Retail Development in the Key Rural Settlements, Villages and Minor Settlements

Sport, Leisure, Recreation And Open Space

SG LDP REC/COM1 - Sport, Recreation and Community Facilities

SG LDP REC/COM2 - Safeguarding Sports Fields, Recreation Areas and Open Space Protection Areas

Bad Neighbour Development

SG LDP BAD 1 - Bad Neighbour Development

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources And Consumption

SG LDP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems

SG LDP SERV 2 - Incorporation of Natural Features / Sustainable Drainage Systems (SuDS)

SG LDP SERV 4 - Contaminated Land

SG LDP SERV 5 (b) – Provision of Waste Storage and Collection Facilities in New Development

Transport (Including Core Paths)

SG LDP TRAN 4 - New and Existing, Public Roads and Private Access Regimes

SG LDP TRAN 6 - Vehicle Parking Provision

Departures From the Local Development Plan

SG LDP DEP – Departures to the Local Development Plan

(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 3/2013. None.

- Scottish Planning Policy
- Consultations
- Representations raising material planning considerations
- Argyll and Bute proposed Local Development Plan 2 (November 2019) – The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:
 - Policy 14 – Bad Neighbour Development
 - Policy 23 – Tourist Development, Accommodation, Infrastructure and Facilities
 - Policy 24 – Existing Tourism Uses
 - Policy 26 – Informal Public Outdoor Recreation and Leisure Related Development
 - Policy 35 – Design of New and Existing, Public Roads and Private Access Regimes
 - Policy 37 – Development Utilising an Existing Private Access or Existing Private Road

- Policy 39 – Construction Standards for Private Access
- Policy 49 – Sport, Recreation and Community Facilities

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(L) Has the application been the subject of statutory pre-application consultation (PAC): No

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

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

(O) Requirement for a hearing:

Yes. The application is being presented to PPSL as a result of negative representation above the threshold for a delegated decision. Guidance states that where applications give rise to a significant body of community interest raising issues or concerns that are material planning then members should consider the requirement for a discretionary local hearing in advance of determining the application.

In this instance the application has given rise to 37 letters of objection, the majority of which cite matters relevant to planning and the use of land. Accordingly members are advised that the level of public interest would merit consideration on the requirement for a pre-determination hearing.

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

The proposal seeks detailed planning permission for the erection of a new community hub building as a replacement for a former pavilion, the improvement of existing playfield facilities and associated access/parking arrangements, the change of use of land to create an extension to an existing motorhome site, and the temporary siting of a takeaway food van.

The application site relates to community owned land and playing fields at the Ramsay Hall, Port Ellen. The proposal is located within the Key Rural Settlement of Port Ellen wherein policy LDP DM 1 sets out general support for appropriately located development of up to 'medium' scale. The provision of new and enhance of existing community/playing field facilities is supported in principle by policies LDP 8 and SG LDP REC/COM 1. The site lies within the Islay Tourism Development Area and the extension of an existing motorhome site by provision of 8 additional berths would cumulatively fall within the definition of 'medium' scale development.

The development is however located within an Open Space Protection Area (OSPA) wherein the provisions of policies LDP 8 and SG LDP REC/COM 2 would seek to protect playing fields and other valued recreational areas. In this instance the creation of the motorhome site will result in the loss of an existing equipped play area within the OSPA; whilst the applicant has proposed that this be relocated elsewhere there will be a net loss of land available for use as public open space within the OSPA as a result of the development. The developer has however also clarified that the motorhome site expansion will be retained in community ownership and that revenue

from this development will help to sustain and provide a viable future for the community owned facilities and playing fields. In this instance it is considered that the wider community benefit that would be provided are sufficient to justify a minor departure to LDP 8 and SG LDP REC/COM 2 subject to appropriate safeguards being secured on the replacement of the equipped play area and long-term inter-relation of the motorhome site and other community owned elements.

The proposal does not give rise to any concern in respect of access, parking or infrastructure requirements and is well served by existing public transport links. Whilst the Council's Environmental Health Officers have not raised any objection to the proposal in relation to its potential impact upon the amenity of the locale the current application has however attracted significant third party representation raising issue, amongst other things, with the suitability of this location for use as a motorhome site, loss of equipped play areas, concern about the scale of new buildings/facilities and their potential impact upon the amenity of the locale.

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

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:

The proposal represents a significant investment in the improvement of existing community and playfield facilities. Whilst the net loss of public open space is identified to be a justified minor departure to the provisions of policies LDP 8 and SG LDP REC/COM2 the proposal is otherwise considered to be consistent with all other relevant aspects of the Local Development Plan.

(S) Reasoned justification for a departure to the provisions of the Development Plan

The proposed development of a short stay motorhome site will result in the loss of an existing equipped play area within a designated OSPA to a commercial tourism use. Whilst the applicant does propose to relocate the equipped play area within the OSPA there would still be a resultant net loss of public open space within the OSPA designation and the proposal is consequently considered to be contrary to the requirements of policies LDP 8 and SG LDP REC/COM 2 which would only support such a loss where alternative provision of equal benefit and accessibility has been made. In this instance however it is acknowledged that the site is intended to remain within the same ownership as the community facilities and playing fields, and that the income from the motorhome site will resultantly support the longer term viability of those elements and as such provide sufficient justification to support this element of the proposal as a minor departure to policies LDP 8 and SG LDP REC/COM 2.

(T) Need for notification to Scottish Ministers or Historic Environment Scotland: No

Author of Report: Derek Wilson

Date: 15th February 2022

Reviewing Officer: Peter Bain

Date: 15th February 2022

Fergus Murray
Head of Development and Economic Growth

**CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO.
21/01679/PP**

1. The development shall be implemented in accordance with the details specified on the application form dated 13.08.2021, supporting information and, the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location plan	A1205-BDC-ST-ZZ-DR-A-20001		16.08.2021
Existing site plan	A1205-BDC-ST-ZZ-DR-A-20005		16.08.2021
Site plan proposal	A1205-BDC-ST-ZZ-DR-A-20010 Rev G		18.10.2021
Pavilion floor plan	A1205-BDC-PV-ZZ-DR-A-20020 Rev A		23.09.2021
Pavilion elevations	A1205-BDC-PV-ZZ-DR-A-20030		23.09.2021
Toilet Block/Laundry	A1205-BDC-WC-ZZ-DR-A-20050		16.08.2021
Toilet/Shower/Laundry Floor Plan/Roof Plan	A1205-BDC-WC-ZZ-DR-A-20040		16.08.2021
Pavilion 3D	A1205-BDC-PV-ZZ-DR-A-20021		16.08.2021
Container A	A1205-BDC-CT-ZZ-DR-A-20075		16.08.2021
Container B	A1205-BDC-CT-ZZ-DR-A-20076		16.08.2021
Container C	A1205-BDC-CT-ZZ-DR-A-20077		16.08.2021
Container D	A1205-BDC-CT-ZZ-DR-A-20078		16.08.2021
Container E	A1205-BDC-CT-ZZ-DR-A-20079		16.08.2021
Cycle Stands/Spectator Shelters/Vehicle Charging Points/Mobile Homes hook Ups/Takeaway Van	90900		21.09.2021
Landscaping Layout	A1205-BDC-ST-ZZ-DR-A-90950 Rev A		18.10.2021
Shelter details		1 of 3	18.10.2021
Sheffield cycle stand		2 of 3	18.10.2021
EV Charger details		3 of 3	18.10.2021

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. Foul drainage for the development hereby approved shall be by connection to the public sewerage system. No development shall commence until such time as developer has demonstrated to the Planning Authority that they have obtained agreement from Scottish Water to connect and discharge foul drainage from the development to the public sewer. Thereafter the development shall be implemented in accordance with the approved details.

Reason: For the purpose of clarification in order to confirm the means of foul drainage specified in the application form, and to ensure that the development is served by foul drainage arrangements that accord with the requirements of policies LDP 10 and SG LDP SERV 1.

3. Notwithstanding the provisions of Condition 1, the proposed access shall be formed in accordance with the Council's Roads Standard Detail Drawing SD 08/01 Rev a and visibility splays of 42.0 metres to point Y by 2.40 metres to point X from the centre line of the proposed access. The access shall be formed with a dropped kerb pedestrian crossing and will be surfaced with a bound material in accordance with the stated Standard Detail Drawing and be a width of 5.50m minimum. Prior to work starting on site the access hereby approved shall be formed to at least base course standard and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the access at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to either the motorhome site or Community Hub building first being brought into use and the visibility splays shall be maintained clear of all obstructions thereafter.

Reason: In the interests of road safety.

4. Notwithstanding the provisions of Condition 1, no development shall commence until details for the permanent closure of the existing vehicular access to the existing motorhome service site by physical means have been submitted to and approved in writing by the Planning Authority in consultation with the Council's Roads Engineers. The duly approved scheme shall be implemented concurrently with the extended motorhome site first being brought into use and the original means of access shall remain closed to vehicular traffic thereafter.

Reason: In the interest of road safety.

5. The parking and turning areas shall be laid out and surfaced in accordance with the details shown on the approved plans prior to either the Community Hub or extended motorhome site first being brought into use and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.

Reason: In the interest of road safety.

6. Notwithstanding the provisions of Condition 1, no development shall commence until details of the intended means of surface water drainage to serve the development have been submitted to and approved in writing by the Planning Authority. The submitted scheme shall include sufficient detail to also demonstrate that the surface water shall not be discharged onto the public road.

The duly approved scheme shall be implemented in full concurrently with the development that it is intended to serve and shall be operational prior to the occupation of the development and maintained as such thereafter.

Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding.

7. The development hereby approved shall not be brought into use until a Waste Management Plan for the development has been submitted to and approved in writing by the Planning Authority. This shall provide details of the proposed arrangements for the storage, segregation, collection and recycling of waste arising within the site, including the location, access and maintenance for on-site storage facilities. The requirements of the plan shall be implemented during the life of the development other than in the event of any revision thereof being approved in writing by the Planning Authority.

Reason: In order to accord with the principles of sustainable waste management.

8. No development shall commence until a scheme of boundary treatment, surface treatment and landscaping has been submitted to and approved in writing by the Planning Authority. The scheme shall comprise a planting plan and schedule which shall include details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum;
- ii) Existing landscaping features and vegetation to be retained;
- iii) Location design and materials of proposed walls, fences and gates;
- iv) Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted;
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the Planning Authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the Planning Authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

9. Notwithstanding the effect of Condition 1, no development shall commence until written details of the type and colour of materials to be used in the construction of walls, roofs, windows and doors of the Community Hub, toilet/shower block, and external cladding of storage containers 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.

10. No development or ground breaking works shall commence until a method statement for an archaeological watching brief has been submitted to and approved in writing by the Planning Authority in consultation with the West of Scotland Archaeology Service.

The method statement shall be prepared by a suitably qualified person and shall provide for the recording, recovery and reporting of items of interest or finds within the application site.

Thereafter the development shall be implemented in accordance with the duly approved details with the suitably qualified person being afforded access at all reasonable times during ground disturbance works.

Reason: In order to protect archaeological resources.

11. No development shall commence until a plan showing layout and detail of the replacement equipped play area has been submitted to and approved in writing by the Planning Authority. Thereafter the replacement play area shall be fully installed in accordance with the duly approved details and made available for use prior to any works commencing on the construction of the extended motorhome site unless an alternative time period for completion of the replacement play area is agreed in writing with the Planning Authority in advance of such works commencing.

Reason: To ensure the timely provision of a replacement equipped play park and to underpin the justification for granting planning permission as a minor departure to policies SG LDP 8 and SG LDP REC/COM 2.

12. Given the proximity of the neighbouring residential properties to the site address, construction works shall be restricted to 0800-1800 hours Mondays to Fridays, 0800-1300 hours on Saturdays and not at all on Sundays. Bank or Scottish Public Holidays.

Reason: To minimise the impact of noise generated by construction activities on occupiers of residential properties.

13. Notwithstanding the provisions of condition 1, the permission for the siting of one take away food van within the application site boundary is granted on a temporary basis and shall cease no later than three years from the date of this permission being issued, or upon the approved Community Hub building first being brought into use, whichever is the earliest. Following the expiry of the permission the use of land for siting of a takeaway food van shall cease other than in the event of a further permission for continued use having been granted upon application to the Planning Authority.

Reason: To define the permission and in order to protect the amenity of the locale.

14. Notwithstanding the provisions of Condition 1, no development shall commence until a scheme for the control of odour arising from the operation of cooking facilities within the approved Community Hub has been submitted to and approved in writing by the Planning Authority. The scheme shall comprise a fume extraction system with an external extraction duct incorporating an odour control unit.

The permitted use shall not be commenced until the duly approved ventilation, extraction and odour control system is operational and thereafter it shall be maintained in accordance with the manufacturers instruction unless it is replaced by an alternative system with the prior written consent of the Planning Authority.

Reason: In order to avoid odour nuisance in the interest of amenity.

15. There shall be no more than twelve campervans and/or touring caravans present on the site at any one time. No static caravans shall be permitted within the site at any time. Any individual touring caravan or campervan shall not occupy the site overnight more than once within any period of seven consecutive days. A register of touring caravans and campervans using the site for overnight occupation, showing dates of arrivals and departures shall be maintained by the Site Operator and shall be available at all reasonable times for inspection by the Planning Authority.

Reason: In order to define the limits of the permission.

16. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Planning Authority, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination to the satisfaction of the Planning Authority, and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, and d of this condition.

Should the desk study show the need for further assessment this will be undertaken in the following sequence:

- b) A detailed investigation of the nature and extent of contamination on site, and assessment of the risks such contamination presents.
- c) Development and agreement of a remedial strategy (if required) to treat/remove contamination ensuring the site is made suitable for its proposed use (this shall include a method statement, programme of works, and proposed verification plan).
- d) Submission of a verification report for any agreed remedial actions detailing and evidencing the completion of these works.

Written confirmation from the Planning Authority, that the scheme has been implemented and completed shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Planning Authority.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

17. Notwithstanding the provisions of Condition 1, no development on the motorhome site shall commence until such time as the developer has demonstrated to the planning authority that an appropriate mechanism is in place to ensure that the approved motorhome site is retained as part of the wider community ownership and management of playing field and community facilities.

Reason: In order to underpin the justification for a minor departure to policies LDP 8 and SG LDP REC/COM 2.

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
- A Road Opening Permit under the Roads (Scotland) Act 1984 must be obtained from the Council's Roads Engineers prior to the formation/alteration of a junction with the public road.
- The access shall be constructed and drained to ensure that no surface water is discharged onto the public road. The EV bay should be appropriately marked and signed in accordance with The Traffic Signs Regulations and General Directions 2016.
- Community Hub Café: The business will be required to register the establishment with the Environmental Health service as a food business and will be liable to routine food hygiene inspections according to regulations. This registration can be completed through the Argyll and Bute website. Site specific advice may be obtained by contacting the Council's Environmental Health Officers.
- Take Away Food Van: To qualify for a Certificate of Compliance, the mobile premises must meet the Mobile Traders Food Hygiene National Standards and will be assessed by Environmental Health. The potential for odour complaints will be assessed and if applicable, addressed during this inspection. The vendor is required to apply for a Street Traders Licence and as the activity involves a food business and the use of a vehicle, kiosk or moveable stall, the applicant will have to submit a Certificate of Compliance with their application, certifying that the vehicle, kiosk or moveable stall complies with any relevant regulations under Food Safety legislation.
- Motorhome Site: The operation of a caravan/campervan site shall require the benefit of a separate Site Licence under the Caravan Sites and Control of Development Act 1960 as amended. Site Licence requirements should be discussed with the Council's Environmental Health Officers in the first instance.
- This relevant buildings of the proposed development will be fed from TORRA Water Treatment Works. Unfortunately, Scottish Water is unable to confirm capacity currently so to allow us to fully appraise the proposals we suggest that the applicant completes a Pre-Development Enquiry (PDE) Form and submits it directly to Scottish Water via our Customer Portal or contact Development Services.
- There is currently sufficient capacity for a foul only connection in the PORT ELLEN Waste Water Treatment works to service the development. However, please note that further investigations may be required to be carried out once a formal application has

been submitted. Regard should be had to the consultation response from Scottish Water in relation to applying for connections.

- Regard should be had to the West of Scotland Archaeology Service's consultation comments in respect of the proposed development.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/01679/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The diverse aspects of the proposal will be considered under policies regarding community and open space LDP 8, SG LDP REC/COM 1 and SG LDP REC/COM 2; and the tourism offers LDP 5, SG LDP TOUR 1 and SG LDP TOUR 3.

The application relates to the enhancement and extension of an existing community owned and operated sports and recreational facility, and associated short-stay campervan site located within the 'settlement area' of the Key Rural Settlement of Port Ellen.

The provisions of LDP DM 1 set out a general presumption in support of up to and including 'medium' scale development on appropriate sites within the Key Rural Settlements. The proposal is also located within the Area For Action designation AFA 10/4 which seeks village centre and waterfront environmental enhancement. The site is also identified as an Open Space Protection Area wherein the provisions of policy SG LDP REC/COM 2 seeks to safeguard playing fields, and sports pitches.

The proposal incorporates three distinctly separate but related elements. The first and primary element is the intention to replace a recently demolished sports pavilion with a new community hub facility alongside improvement to existing playing fields and associated parking, storage, and spectator facilities along with the relocation of a play area. The provisions of policy SG LDP REC/COM 1 sets out broad support for new or improved sport, recreation and other community facilities where:

- i) the development is of a form, location and scale broadly consistent with policy LDP DM 1 with suitability of scale being defined by the size of the settlement, nature of the facility, and the community which it serves;
- ii) that the development respects the landscape/townscape character and amenity of the surrounding area;
- iii) that the development is readily accessible by public transport where available, cycling and on foot; and
- iv) the development is located close to where people who will use the facility live and reduce the need to travel.

It is considered that this element of the proposal represents an enhancement of existing sports and community facilities of similar existing scale located around the Ramsay Memorial Hall; the development is located within the settlement of Port Ellen and is readily accessible from existing public transport and pedestrian links. The proposal is considered to be aligned in principle with the requirements of SG LDP REC/COM 1. The proposal has also been assessed against and considered to be consistent with the provisions of LDP2 draft policies 26 and 49 which are unopposed and a material consideration at this time.

The second distinct and significant element of the proposed development is the proposal to create an extension to the existing community owned five berth motorhome short-stay facility located to the south of the application site. Currently only four of the berths have been formed. This proposal is a trebling of capacity to meet perceived demand. A condition will be added to any approval limiting stays in line with that for the existing motorhomes. The provision requires alternative access arrangements, toilet/shower/laundry facilities, and the creation of 8no. new motorhome stances. On their own the proposals would be considered to be 'small' scale development although when the existing campervan facilities are taken into account this would

cumulatively be a 'medium' scale development, both of which are supported in principle by the provisions of policies LDP 5 and SG LDP TOUR 1 where:

- i) the development respects landscape/townscape character and amenity of the surrounding area;
- ii) the development is reasonably accessible by public transport, cycling and on foot;
- iii) the development is well related to existing built form of settlements;
- iv) the proposal is consistent with other applicable policies of the LDP.

It is considered that, in principle at least, this element of the proposal would offer an appropriately scaled extension to an existing short-stay motor home facility; the development is located within the settlement of Port Ellen and is readily accessible from existing public transport and pedestrian links. The proposal is considered to be aligned in principle with the requirements of SG LDP TOUR 1. The proposal has also been assessed against and considered to be consistent with the provisions of LDP2 draft policies 23 and 24 which are unopposed and a material consideration at this time.

The third element of the application seeks planning permission for the siting of a hot food takeaway van. The demolished pavilion building housed a café which closed in 2019, after becoming run down and unsustainable. In response to this closure a mobile catering facility has been open on the site over the last two years. Once the new building is complete the catering on site will move into the café space and a condition will be attached to any approval for removal of the existing van with a three year timescale or when the new community facility is completed if before three years.

There is no express provision within the LDP that relates to this function however it is noted that the provisions of SG LDP RET 3 do provide general support for 'small' scale food and drink establishments on appropriate and accessible locations within the 'settlement area' of Key Rural Settlements. It is noted that the use of land for a hot food takeaway is primarily expected to be a complimentary function to the community sports and recreation and tourism uses elsewhere within the site, however it is recognised that this element would a *sui-generis* use that has potential to give rise to impact upon the amenity of its surrounds and is accordingly assessed in relation to the requirements of policy SG LDP BAD 1 below.

B. Location, Nature and Design of Proposed Development

The application relates to land surrounding the Ramsay Hall in Port Ellen which currently forms part of a planning unit comprising sports/recreational and community facilities. The proposal seeks detailed planning permission that includes the following elements:

- i) Erection of a new 'Community Hub / Pavillion' building;
- ii) The relocation of existing children's playparks to an alternative location within the application site boundary and provision of 1.1m high fence;
- iii) The installation of 3no. spectator shelters along the southern boundary of the existing football pitch;
- iv) The installation of 5.0m high metal fencing to the western boundary of the existing football pitch;
- v) The installation of 4no. storage containers to provide ancillary storage for sports equipment;
- vi) The installation of 1no. storage container to provide storage for rental e-bikes;
- vii) The alteration of the existing vehicular access and formalisation of parking to provide a 15no. space car park with 2no. EV charging points, 5no additional spaces, 2no. accessible spaces, and 10no. cycle stands;

- viii) The change of use of land to form an extension to an existing short-stay motorhome comprising the formation of 8no. new hard-standings each with a motorhome hookup and alteration of existing access to the motorhome site;
- ix) The erection of a toilet/shower/laundry block building; and
- x) The temporary change of use of land (sui generis) for the siting of a hot food takeaway van.
- xi) Landscaping and formation of external seating areas.

The proposed community hub/pavilion is to be located by the north-western boundary of the application site between the existing football pitch and bowling green, upon the site of a former 100sqm single storey pavilion building that has already been demolished. The proposed new community hub / pavilion will comprise a function hall, kitchen/bakery/cafe, a club room, toilets, storage and meeting room facilities. The building has a 300sqm rectangular footprint with symmetrically pitched roof and gable ends; whilst the building form is relatively plain in its form the public facing elevations incorporate significant elements of glazing and a covered open terrace that break up the overall mass. The roof covering shall be of red concrete tiles. The external walls shall be finished in an off-white render with dark-grey windows and doors. The design and colouring of external finishes are a nod to the pavilion that previous stood at this location. Whilst the new building will have considerably greater scale/massing than the previous structure it will still appear as subordinate to the Ramsay Hall and will sit comfortably within the context of existing built development to the north and south with a backdrop of rising open land to the North East. The new building is located some 20m from the hedgerow boundary between the recreational land and existing housing development to the North West and will not give rise to any concern in relation to impacts upon privacy or overshadowing of existing development. The applicant has indicated in discussions with officers that the facilities are expected to operate within the hours of 8am – 10pm subject to demand, with occasional requirements for late opening in relation to functions. It is noted that that operation outwith normal daytime business hours and smells from commercial cooking facilities do have potential to impact upon the amenity of nearby residential property and accordingly consideration of these elements in relation to SG LDP BAD 1 are undertaken elsewhere below in the assessment of the proposal.

The existing play equipment is currently sited at two locations where land required for the new community hub / pavilion building, and also for the motorhome site. It is proposed that this will be consolidated and relocated onto an existing area of open flat land sitting between the bowling green and the Ramsay Hall. The play area shall be enclosed by a new 1.1m high boundary fence.

The proposals seek to augment the existing football pitch facilities with the installation of 3 dug out type shelters with a clear glazed finish. It is also proposed to install a 5.m high metal ball fence between the South Eastern end of the pitch and the proposed car parking area. It is also proposed to install 5no. new storage containers at the South East end of the football pitch, four of these will provide storage for sports equipment, the remainder will be utilised to store e-bikes. The containers will all be clad in walnut coloured boards to soften their appearance. The presence of such structures are quite commonly associated with sports fields and their addition is not considered to be give rise to any significant visual impact upon the character of the locale in this instance.

Existing parking arrangements within the application site comprise a rough gravelled area sitting above the existing southern play area; it is proposed to formalise the parking area with a layout of 15no. car parking spaces, a further 5no. spaces will be provided behind the Ramsay Hall and 2no. accessible parking spaces beside the relocated play area. Metal cycle stands will be provided beside the new Community Hub building and beside the Ramsay Hall.

It is proposed that the existing vehicular access at the southern end of the site onto the A846 will be relocated slightly to the north and widened. The relocation of the access and southern play area will allow for 8no. motorhome stances to be created on the lower lying section of the site. An opening will be created in the stone boundary wall provide vehicular access to the existing short stay motorhome site; a new boundary fence will be erected to close off the existing vehicular access through the petrol station and to make the existing facilities integral to the operation of the new site. A utility block comprising of 3 toilet/shower units and laundry facilities is to be sited adjacent to the new motorhome stances. This modest building will be 25sqm finished in larch timber cladding and a metal profile roof coloured dark grey to match the nearby filling station. The existing motorhome site was provided as a short stay facility that supports the viability of existing community owned facilities and seeks to operate as a stopping off point for tourists arriving/departing Islay rather than being a destination in its own right. The proposed new motorhome stances will sit on open land between the existing filling station building and the revised access serving the wider development. The proposal will also formalise and improve the layout and boundary treatment of the existing motorhome site. Whilst the new motorhome stances will be prominent from the A846 there will be an obvious visual separation from the Port Ellen Conservation Area that lies beyond the filling station to the south of the site. The proposed use of the site to provide short stay motorhome servicing facilities is considered to be compatible with adjacent land uses which include business and industry, community petrol station, sport/recreation and a hotel and will not give rise to any significant adverse impact upon the amenity of the locale. The use of the site as a short stay motorhome facility means that the development will in effect create a touring caravan site, this will require to be the subject of a separate site licence having regards to the Caravans & Control of Development Act 1960, and should be subject to conditional restrictions limiting use solely to campervans and touring caravans and ensuring that any overnight stay is restricted to a single night.

The application also identifies a location within the development for the temporary siting of a hot food takeaway van until café facilities within the new community hub building become operational. In order to define the temporary nature of this element of the permission it is identified that a planning condition defining the time period of the permission would require to be imposed – this should be for a maximum period of three years or the opening of the facilities in the new building, whichever is earlier. It is recognised that hot food take away uses may give rise to adverse impacts on the amenity of the locale and accordingly consideration against policies LDP 8 and SG LDP BAD 1 is set out elsewhere in this assessment.

The plans also indicate landscaping to the areas around the spine road and its offshoots. Further landscaping to the south of the new community hall including a seating area has been indicated on the plans. Full details of these aspects could readily be secured by planning condition.

The design, scale and siting of the new development is deemed to respect the townscape character and appearance of the surrounding area in accordance with LDP 9 and SG LDP Sustainable.

C. Natural and Built Environment

The provisions of policy LDP 3 and SG LDP ENV 14 requires the impact of new development upon the landscape to be considered. In this instance the development is situated within the existing built up area of Port Ellen; the development will be well framed by a substantial landscape backdrop and it is not considered likely to give rise to any significant adverse impact upon the landscape character or quality of the receiving environment. The proposal is considered to be consistent with the relevant provisions of LDP 3 and SG LDP ENV 14.

The development is located outwith but adjoins the northern boundary of the Port Ellen Conservation Area. The provisions of policies LDP 3 and SG LDP ENV 17 would seek to resist development that has an adverse impact upon the character or appearance of a Conservation Area or its setting. In this instance it is considered that the proposed development will sit visually separate to the adjacent conservation area with the presence of an intervening petrol filling station; it is also noted that the development within the southern portion of the site will primarily relate to the formation of motorhome stances that in themselves will not be readily visible behind boundary walls and whilst motorhomes parked on the site will be visible these will be transitory in nature of impact. It is considered that the proposal is consistent with the requirements of LDP 3 and SG LDP ENV 17.

The application site lies within a designated Open Space Protection Area where the provisions of policies LDP 8 and SG LDP REC/COM2 seek to safeguard existing playing fields, sports pitches, and recreational areas. It is considered that the proposed new Community Hub / pavilion building is ancillary to the principle use of the site as a community sports and recreational facility. The loss of the existing equipped play areas would be contrary to SG LDP REC/COM 2 but is considered to be acceptable as a minor departure in this instance in light of the stated intent to relocate this elsewhere within the development site and confirmation that revenue generated from the motorhome expansion will help to sustain and maintain the overall Playing Fields site. The revenue will help to ensure that Port Ellen Playing Fields remain an asset for the entire community, with community benefit the overarching aim of the project. In order to underpin the justification for a minor departure to SG LDP REC/COM 2 it would be appropriate to impose a planning condition requiring the timely installation of replacement play equipment, and to ensure that there is an appropriate mechanism that retains the motorhome site within the same ownership as the wider community facilities which it will support.

The applicant has provided evidence from an extract of the funders of the land buy out (Scottish Land Fund) who require that any disposal of any portion of the land requires their agreement. A repayment of a portion of the funding from the Scottish Land Fund would be required at the land values current at the time. Whilst this may provide an appropriate mechanism to underpin the grounds for departure from SG LDP REC/COM2 it is noted that officers have not as yet had sight of the full terms and conditions and would propose that a suspensive planning condition be imposed requiring the applicant to demonstrate that the motorhome site cannot be readily separated from the community facilities/playing fields.

The loss of equipped play space and reduction of casual open space within an OSPA is considered to be contrary to the relevant provisions of policies LDP 8 and SG LDP REC/COM 2 but is in this particular case capable of being overcome as a minor departure through timely installation of a replacement play area within the development, and on the basis that the motorhome site which gives rise to the reduction of play/open space will directly contribute toward the future maintenance of the community/play field facilities within the wider application site.

D. Infrastructure and Servicing

The proposed development will be provided with mains water and foul drainage connections. Scottish Water have not raised issue in this respect and the proposal is considered to be consistent with the relevant provisions of policies LDP 10, SG LDP SERV 1 and SG LDP 6.

It is noted that the applicant submitted amended plans on 1st February 2022 seeking to amend the proposal to make provision for the installation of a private foul drainage system. It is the consideration of officers that this would give rise to a material amendment of the application and as such it would not be competent to accept the proposed revision. For the purpose of clarity it is noted that the current application has been considered on the basis that foul

drainage shall be to the public sewer, and it is proposed that a condition to this effect be attached to any consent granted to properly define the permission.

The site is already satisfactorily drained and it is understood that surface water drainage discharges to coastal waters; it has however been highlighted that the re-engineered access requires further work to avoid water draining to the main road. Under policies LDP 10 and SG LDP SERV 2 a condition will be attached to any approval and with the agreement of the Roads Department.

The provisions of policies LDP 10 and SG LDP SERV 5(b) requires new 'medium' or 'large' scale development to include details for the storage, separation and collection of waste from within the development site, or to make appropriate alternative provision. Overall it is considered that the combine scale of the development triggers this requirement. Whilst no such detail has been provided in relation to the operation of the site the submitted site plans do show a waste storage area located to the rear of the proposed Community Hub building, no details are shown in relation to the motorhome site. It is considered that the submission and approval of additional detail in respect if these matters to comply with SG LDP SERV 5(b) can reasonably be addressed by planning condition.

E. Archaeological Matters

The application lies in a landscape populated with recorded archaeological sites of prehistoric and later periods. The large area of ground that will be disturbed by this development stands a good chance of unearthing visible or buried unrecorded remains which could be of any period and which may survive below ground level. As such, a potential archaeological issue is raised by the proposals. The West of Scotland Archaeological Service have indicated that any recovered artefacts resulting from the proposal should be catalogued and a condition to that effect will be attached to any approval. The proposal is consistent with the provisions of LDP 3 and SG LDP ENV 20.

F. Road Network, Parking and Associated Transport Matters.

The proposal includes for the realignment of the existing vehicular access to the Ramsay Hall / playfields to ensure that it is of a suitable standard to meet the increased traffic generation from the development. The Council's Roads Officers have not raised any objection to this element of the development subject to the imposition of planning conditions that will secure minimum standards in respect of the layout/construction and timely provision of the upgraded access arrangements.

The proposal will also see the access for the existing motorhome service facility to be revised so this becomes integral with the new facilities. The existing vehicular access via the petrol filling station will be closed off. It would be appropriate to impose a planning condition requiring further detail of these works to be submitted for approval and to be completed prior to the new motorhome site first being brought into use to prevent through traffic and increased use of substandard access arrangements.

The development includes for formalisation of existing car parking arrangements to provide a main carpark with 15no. spaces, with an additional 5no. spaces to be created adjacent to the Ramsay Hall, and 2no. accessible spaces beside the relocated play area. The developer also intends to install additional cycle parking onsite.

The proposal is considered to be consistent with the requirements of policies LDP 11, SG LDP TRAN 4 and SG LDP TRAN 6. The proposal has also been assessed against and considered to be consistent with the provisions of LDP2 draft policies 35, 37, and 39 which are unopposed and a material consideration at this time.

G. Contaminated Land

It has been identified that some of the land within the proposal boundary may be contaminated. Environmental Health officers have requested a condition to any approval requiring the areas to be developed to be examined and plans of mitigation where required be lodged with the council prior to any development under the terms of policies LDP 10 and SG LDP SERV 4.

H. Other Key Policy Matters

The proposed siting of a hot food takeaway van, and cooking smells and late opening associated with the proposed Community Hub are recognised to have potential to give rise to adverse impacts upon the amenity of residential property in the locale, and indeed this concern has been raised in third party representations. Policies LDP 8 and SG LDP BAD 1 would seek to ensure that new development does not give rise to unacceptable effects on the amenity of neighbouring residents, and that where such potential would arise that appropriate mitigation measures can be identified to address those concerns.

The proposed temporary hot food takeaway van will be located centrally within the southern portion of the development site, adjacent to the playing fields, formalised carpark and motorhome site. This element of the development is already operational having been introduced following the demolition of the former pavilion and its café facilities. The van is intended to be removed upon completion of the community hub building and opening of new café facilities but until then would generally operate between the hours of 10am – 4pm with occasional exceptions. The hot food van is well removed from existing residential properties and operating during normal business hours is unlikely to give rise to nuisance in respect of noise/disturbance or cooking smells. It is advised that Environmental Health Officers have not raised objection to this element of the proposal and have noted that operational aspects of this element of the development would also be controlled by the Council through mandatory street-food licence. It is accordingly considered that the takeaway food van does not constitute 'bad neighbour' development.

The proposed new community hub building will include café and function facilities; the applicant has advised that this building is likely to operate between the hours of 8am and 10pm to accommodate breakfasts, lunches and dinners, with flexibility for booked events and activities. The new building will be located some 20m from the hedgerow that forms the boundary with residential development at North Bay, and access will also be from the opposite (South-Eastern) side of the building to that of the nearest residential property. The Council's Environmental Health officers have not raised any objection to the proposal but have highlighted that conditions be imposed to ensure that appropriate mechanical ventilation is utilised to address potential nuisance from cooking smells. Officers would also highlight that any extended or late night use of the premises would likely relate to activity that is also subject to control of the Council under licencing for sale and consumption of alcohol on the premises. It is accordingly considered that the Community Hub does not constitute 'bad neighbour' development.

The proposal includes for a site for eight additional motorhome berths which will be provided with individual hook up points. This element of the development will be an extension to an existing 5 berth motorhome facility located at the Southern end of the application site which adjoins a petrol filling station which is also in community ownership, a business and industry allocation, and a hotel. The Council's Environmental Health Officers have not raised objection to this element of the proposal and have observed that the day to day operation and technical standards for management of the site would be addressed by the Council through licence requirements under the Caravans Sites and Control of Development Act 1960. It is accordingly considered that the Community Hub does not constitute 'bad neighbour' development.

Subject to appropriate mitigation measures, it is considered that the proposal will not give rise to any significant impact upon the amenity of the locale and is therefore consistent with the provisions of LDP 8 and SG LDP BAD 1.

Appendix B

Objections

Alan J Guy 17 Campbell Street Renfrew 19.11.2021
Kevin Campbell 23 Corrsgeir Place Port Ellen PA42 7EJ 10.11.2021
Allison MacAffer 1 Charlotte Street Port Ellen 01.11.2021
Rhona Scott Caladh Sona 53, Frederick Cresc Port Ellen 17.11.2021
Miss Rachael Morrison 18 Cnoc-na-faire Port Ellen 19.11.2021

Mrs Elaine Morrison 18 Cnoc-Na-Faire Port Ellen 19.11.2021
Margaret Cameron 80A Frederick Crescent Port Ellen PA42 7BG 19.11.2021
E Morrison 18 Cnoc-na-faire Port Ellen 19.11.2021
Miss Mary Milton Flat 2/2 7 Stewartville Street, Partick Glasgow G11 5PE 19.11.2021
Christine Brown 53 Frederick Crescent Port Ellen 19.11.2021

Michael Barford 11 Benview Gardens Oldmeldrum Aberdeenshire AB51 0FY 19.11.2021
Fiona Middleton Ardimersay House Kildalton Port Ellen 19.11.2021
Sarah Clark Ballownie Lodge Stracathro Brechin DD9 7QE 19.11.2021
Naomi Guy 17 Campbell St Renfrew PA48TG 19.11.2021
John Barford 9 Antrim View Port Ellen PA42 7BZ 19.11.2021

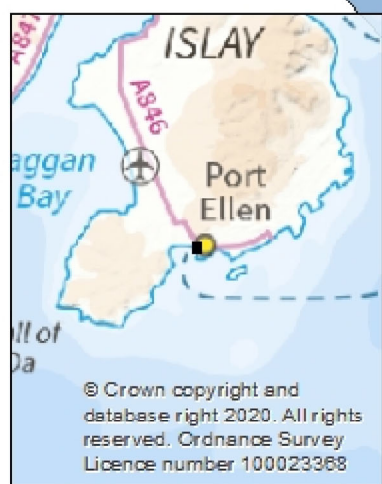
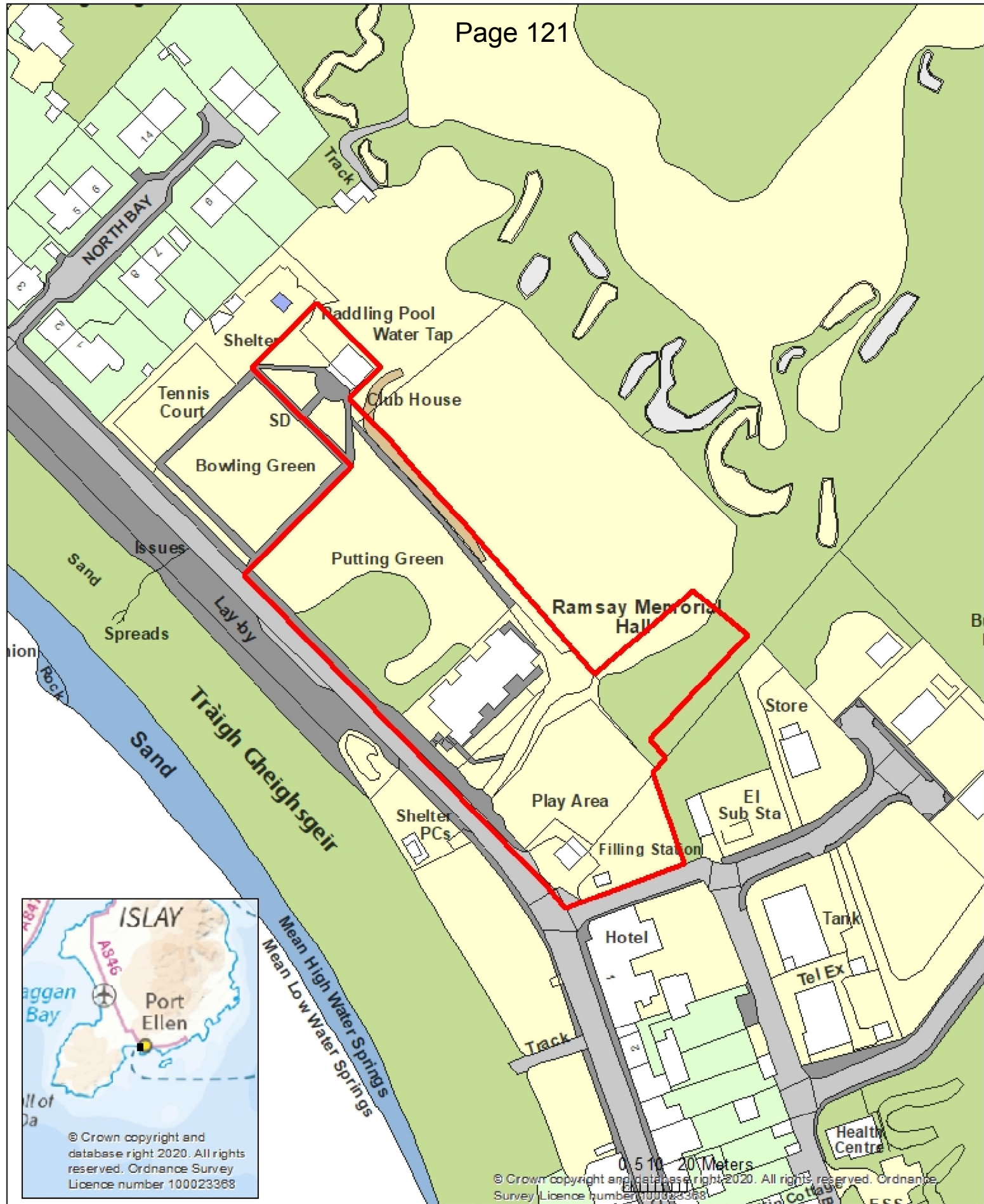
Janette Stevenson 108 Frederick Crescent Port Ellen 19.11.2021
Elaine Morrison 18 Cnoc-Na-Faire Port Ellen PA42 7BU 19.11.2021
Alfred J Bell 34 School Street Port Ellen PA42 7DP 19.11.2021
Susan Smith 53 Frederick Crescent Port Ellen 22.11.2021
George Middleton Ardimersay House Kildalton Port Ellen 22.11.2021

Aileen MacKenzie 47 Springwood Ave Stirling FK8 2PE 22.11.2021
Mrs Siobhan Maclean 11 Daal Terrace Port Charlotte 18.11.2021
Mrs Lorna Bartlet Crackan View Auchleuchries Ellon AB41 8HS 19.11.2021
Mrs Rhona Shaw 4 Livingstone Way Port Ellen 19.11.2021
Sam Graham Claverhouse Glenegeedale Port Ellen 18.11.2021

Mr Gavin Campbell 16 Ardview Port Ellen 19.11.2021
Mr Thomas Peebles 21, Craig Hill Place Fairlie Largs KA29 0AY 19.11.2021

David Graham No Address Given 04.11.2021
Jonathan Farrell No Address Given 17.11.2021
N Morris No Address Given 19.11.2021
Roland Worthington-Eyre No Address Given 17.11.2021
Alison J C Mackay No Address Given 19.11.2021

Andrea Hannah No Address Given 19.11.2021
Scott Taylor No Address Given 19.11.2021
Gavin Campbell No Address Given 19.11.2021
Clare Bowness No Address Given 22.11.2021
Fiona Middleton No Address Given 22.11.2021



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Location Plan Relative to Planning Application: 21/01679/PP



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Argyll and Bute Council
Development & 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

Reference No: 21/01912/PP

Planning Hierarchy: Local

Applicant: Mr Jon Sear – Port Bannatyne Development Trust

Proposal: Replacement of Roof Covering; Installation of Solar PV Panels and Formation of New Door with Flat Roof on Single Storey Part of Public House; and Change of Use of Land to Rear to Form Outdoor Seating Area with Associated Gabion Basket Retaining Wall and Fence

Site Address: 33 – 34 Marine Road, Port Bannatyne, Isle of Bute

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Replacement of roof covering
- Installation of solar PV panels
- Formation of new door with flat roof on single storey part of Public House
- Change of use of land to rear to form outdoor seating area
- Formation of gabion basket retaining wall
- Erection of fencing

(ii) Other specified operations

- Internal alterations
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that Planning Permission be granted subject to the conditions, reasons and informative notes set out in this report.

(C) HISTORY:

Planning Permission (ref: 06/01819/DET) granted on 21st February 2007 for the installation of replacement windows on the front elevation of the ground floor of the Anchor Tavern Public House.

Planning Permission (ref: 14/00961/PP) granted on 27th June 2014 for the installation of replacement windows on the front and rear elevations of the upper floor flat above the Anchor Tavern Public House.

(D) CONSULTATIONS:

Environmental Health Officer (memoranda dated 7th January and 1st February 2022)

It was requested that a suitable Noise Management Plan (NMP) be formulated for the proposed use of the beer garden and that a copy be submitted to the Environmental Health Service as soon as possible. It was recommended that the NMP also include noise management procedures for dealing with noise likely to arise from other activities related to the use of the public house such as deliveries, bottling up, use of amplified/recorded music, external compressors, etc.

The applicant subsequently submitted a NMP for the proposed use of the outdoor seating, which detailed the mitigation procedures that would be implemented should the proposals for use of the garden go ahead. Based on the document provided, and the intention of the applicant to ensure its implementation, the Environmental Health Service has offered no objection to the application.

Argyll and Bute Council's Biodiversity Officer (e-mail dated 11th January 2022)

It is recommended that the bat surveyor checks for bird species and nests (the latter as old and as currently out with the bird nesting season) under eaves/around the building along with hedgehogs in the garden contained within the property and provides suitable mitigation in order to ensure that no species are compromised.

The making of space for wildlife and enhancing the experience of outdoor dining could be in the form of sensitive landscaping, including shrub and small tree planting. As such, it is recommended that a condition is attached requiring that Landscape Planting Plan be submitted to and approved in writing by the Planning Authority.

(E) PUBLICITY:

Neighbour Notification (closing date: 9th December 2021) and advertised as development in a Conservation Area (closing date: 24th December 2021).

(F) REPRESENTATIONS:

Representations have been received from Joe McGoldrick, 18 Castle Street, Port Bannatyne Isle of Bute (letters dated 7th December 2021 and 14th January 2022)

Objections have been received from the following 17 sources:

Joe McGoldrick, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Isabella McGoldrick, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Ian McGoldrick, Flat 1/2, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Cameron McGoldrick, 24 Baybridge Road, Havant, Hampshire (received 24th December 2021)

Jane Hare, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

James Hare, 5 Woodholm Avenue, Glasgow (received 24th December 2021)

Jamie Hare, Flat 4/2, 372 Pollokshaws Road, Glasgow (received 24th December 2021)

Ewan Hare, 42 Tantallon Tower, 5 Dirleton Drive, Glasgow (received 24th December 2021)

Susan Mahoney, 25 Marine Road, Port Bannatyne, Isle of Bute (received 24th December 2021)

Daniel MacKinnon, 3 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

June Rutherford, 29A Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Ronald McAlister Flat 1/1, 28 Marine Road Port Bannatyne Isle of Bute (received 24th December 2021)

James Cummings, 9 Kilburn Place, Glasgow (received 24th December 2021)

David Paterson, 34 Gordon Drive, Netherlee, Glasgow (received 24th December 2021)

Gillian Molloy, 76 Cleland Place, East Kilbride (received 24th December 2021)

Jim McNair, 24 Benbecula Road, Aberdeen (received 24th December 2021)

Richard Snape, Battery Cottage, Pier Road, Tarbert (received 24th December 2021)

A summary of the key issues raised by the objectors is provided below and individual comments are available in full for review on the Planning file available to view in Public Access.

- i. It is pointed out that the application site relates to two separate titles, with two distinct postal addresses, ownerships and established uses, namely: The Anchor Tavern, 33 Marine Road, (Public House) and Garden Land, 1 Quay Street.

It is contended that the address provided by the applicant (33 Marine Road) and the address on the Public Access System (33-34 Marine Road) fail to accurately describe the site and the reference to '*land to the rear*' in the application description could arguably be misunderstood to include the established

residential garden ground at the rear of 1 Quay Street, 18 Castle Street and 32 Marine Road.

It is contended that many long term and new residents of Port Bannatyne have expressed their disappointment at the details of the site address.

Comment: It is considered that the site address; the application description; and the red line around the application site accurately identify the location and nature of the proposed development. It is further understood that all of those parties with an ownership interest in the application site have been properly notified.

- ii. According to the '*Existing Floor Plan*' drawing, the site area is 192.75 square metres, which is significantly larger than the figure of 165 square metres stated in the application form.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has accepted that the site area is approximately 190 square metres. He states that the discrepancy appears to have arisen as a result of the application form quoting from the building survey figures, which related only to the internal area.

This clarification on the site area does not affect the amount of fee to be paid and the discrepancy is not considered to be of sufficient significance that it renders the application procedurally invalid or open to challenge.

- iii. In the addendum dated 18 November 2021, the description states '*...change of use of land to rear to form outdoor seating area with associated gabion basket retaining wall and fence*'. It is contended that the applicant has critically failed to state the use class or classes in the terms used in the Town and Country Planning (Use Classes) (Scotland) Order 1997. However, it is pointed out that, in a social media post on 19th August 2021, the applicant referred to the use of "*a small bit of land for a beer garden.*" Based on this information, and the statements in the Design and Access statement, Argyll and Bute Council could reasonably assume that the intended use class of the residential garden land is '*beer garden*'. As such, the proposed use could be described as being: Public House (*sui generis*).

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has advised in writing that the garden area that is the subject of this application is to be tidied up in conjunction with the community hub and that further consultation on the desirability of extending the alcohol licence to include the garden will be carried out prior to any application being made to vary the alcohol licence.

He has further stated that this would also allow the need/demand for outdoor drinking to be further assessed and, if it was decided not to apply to vary the alcohol licence, the garden area would be used as a community garden with the principal access via the existing access from Quay Street.

An assessment of the use of the outdoor area in relation to the privacy and amenity of adjoining residential properties is included in Appendix A of this report.

- iv. It is contended that the '*Elevation to South as Existing*' drawing is misleading, as it depicts an inaccurate and continuous ground level extending across the full length of the rear of 33 Marine Road and garden of 18 Castle Street/ 32 Marine Road.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Elevation to South as Existing*' drawing has been submitted.

- v. It is contended that the '*Section as Proposed*' drawing is unreliable as it depicts inaccurate ground levels at the south-most boundary of 1 Quay Street, sloping towards the rear of 33 Marine Road.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Section as Proposed*' drawing has been submitted.

- vi. It is contended that the applicant's proposal to excavate 1200 mm below the depth of the existing established dry stone boundary wall in order to install a foundation for the gabion basket wall will most likely result in a catastrophic collapse of this existing wall. It is considered reprehensible that the applicant has failed to produce any structural engineering specifications detailing the significant excavation works required to stabilise the existing established dry stone boundary wall. It is anticipated that the applicant's reasoning behind the inaccurate existing ground levels and omission of the existing established dry stone boundary wall is to conceal the considerable excavation works and associated costs required to stabilise the east most boundary of 1 Quay Street.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has commented that, based on a visual inspection of the site, he considers that substantial excavation is not required.

He has explained that the dieback of vegetation for the winter has allowed more accurate measurements to be taken and he confirms that the actual levels are somewhere between those on the initial drawings and those suggested by the objector. Revised '*Elevation to South as Proposed*' and '*Section A-A as Proposed*' drawings have been submitted.

- vii. The applicant's omission of two of the five asbestos ventilation cowls, combined with the inaccurate depiction of the location of three asbestos ventilation cowls in the '*Elevation to South as Existing*' drawing is material to the integrity of the application.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Elevation to South as Existing*' drawing has been submitted.

- viii. The application form dated 8th September 2021 failed to indicate that there are '*trees on or adjacent to the application site*' and there was also a failure to indicate their '*canopy spread*' and if any are to be '*cut back or felled*'. Evidence has been submitted that clearly demonstrates there are three Holly trees approximately 30 feet in height with a crown of approximately 14 feet in diameter.

Established trees on established residential property within Conservation Areas are afforded special consideration, not dissimilar to protected tree status. Similarly, the presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he contends that he was advised that the Holly tree and a pear tree on adjoining land were not significant enough to refer

to on the application. He is not disputing the existence of the trees and the 'Existing' and 'Proposed' Ground Floor plans have been revised to show the Holly tree closest to the building.

The lack of detail on existing trees in the initially-submitted documentation is not considered to be of sufficient significance that it renders the application procedurally invalid or open to challenge.

- ix. Concern is expressed that the “*overly stylised handwriting*” used on the drawings results in text that is unclear and difficult to decipher.

Comment: This issue is not considered to have a material bearing upon the Planning aspects of the case.

- x. Concern is expressed that the applicant has provided inaccurate information on the flooding risk associated with the application having regard to flood maps produced by SEPA. It is contended that 33 Marine Road is at ‘*high risk*’ of flooding caused by coastal water and surface water. Given that the proposal includes the introduction of a paved area of approximately 30-40 square metres and an increase of approximately 10 square metres of the roof area, it is put forward that there will be a significant concentration of surface water and run-off, which would result in surface water flooding in the proposed terrace/beer garden. As such, the applicant should produce a Surface Water Drainage Strategy with detailed evidence including all assessments and investigations undertaken to justify the applicant’s chosen option to manage surface water and such a document should be available in association with the current application.

Comment: SEPA’s Flood Maps are designed to show areas that are likely to flood from rivers, the sea and surface water. Their website explains that one of the uses of the Flood Maps is “*to support decision making in land use planning to avoid development in flood risk areas as a first principle and identify where further assessment of risk may be required*”.

A minor section of the application site is shown on the SEPA Flood Maps as currently being within an area identified as at ‘*low risk*’ from coastal flooding and this is part of the Anchor Tavern Public House. This ‘*low*’ likelihood refers to areas with at least 0.1% chance of flooding each year. As there is no built development proposed within the ‘*low risk*’ area, this is not considered to be an issue.

The provision of suitable surface water drainage in relation to the creation of the outdoor seating area would have regard to the Building (Scotland) Regulations 2004 and the relevant Technical Handbooks.

- xi. Concern is expressed that the proposed development and change of use would have a detrimental impact upon the established residential amenity of neighbouring and surrounding properties and land, and would constitute a bad neighbour development by virtue of loss of privacy, noise and disturbance. It is stated that twenty three residential properties adjoining and neighbouring the proposed development have bedroom windows within 20 metres of the site.

It is alleged that, despite reassurances being given in August 2021, the applicant failed to conduct any substantive consultation with neighbours, in particular those with properties adjoining the proposed development. It is also stated that the applicant failed to produce an Operating Schedule and Noise Assessment Report. An account is given of noise breaking out from the Anchor Tavern public house day and night (from patrons, staff, amplified music, hand dryers, coolers,

disposal of bottles, deliveries and the opening, closing and slamming of doors), which could be heard from the bedrooms and living areas of an adjacent home.

It is contended that the significant number of valid objections that have been submitted serves to highlight the applicant's failure to undertake any meaningful and substantive consultation with the community, and in particular with neighbours, regarding the '*adverse effects on neighbours such as noise, smoke, loss of privacy etc.*' and other material concerns.

Comment: The issue of the impact of the proposal on the privacy and amenity of neighbouring residential properties will be assessed in Appendix A of this report. The matter of consultation outwith the Planning Application process does not have a material bearing upon the Planning aspects of the case.

- xii. It is contended that the proposed 1.8 m fencing would be totally inadequate in terms of '*protecting privacy*', as it would fall short of the cope stone of the existing established dry stone boundary wall at 18 Castle Street/ 32 Marine Road, by a depth of approximately 400 mm. Furthermore, the applicant has overlooked the fact the proposed ground level at the boundary of 18 Castle Street/ 32 Marine Road, after excavation will be approximately 2400 mm below the height of the cope stones of the existing established dry stone boundary wall.

Comment: This issue will be assessed in Appendix A of this report.

- xiii. Concern is expressed that the applicant has failed to demonstrate that the proposed development and material considerations are based on a carefully considered design process. The nearby gable dormer at the rear entrance of 32 Marine Road is dysfunctional in terms of access, construction and maintenance. Holistically, it is contended that the proposed development is not in keeping with the traditional construction methods and characteristics of the adjoining and adjacent structures and their designs. The proposed fencing and gabion basket retaining wall are inconsistent and alien to the existing design, character and materials of the established traditional dry stone wall construction with cope stones, which forms the west-most boundary of the proposed development.

Comment: These issues will be assessed in Appendix A of this report.

- xiv. It is contended that the positioning of the proposed entrance approximately 1 metre from the gardens of 18 Castle Street and 32 Marine Road is unacceptable, as the residents of these properties use the back garden on a daily basis. Concern is expressed that the owners would be subjected to a constant flow of patrons and staff using the proposed entrance, day and night. The proposed entrance would also be highly visible from road level and could be viewed from all the adjoining and neighbouring residential properties opposite.

Comment: These issues will be assessed in Appendix A of this report.

- xv. Given the overall surface area of the ten photovoltaic panels that are proposed on the rear roof slope, the majority of the proposed '*natural slate*' roof will be obscured. It is contended that the design and materials used in the proposed photovoltaic solar panels are inconsistent and alien to the existing design, character and materials used in the construction of the roofs adjoining and neighbouring the proposed development. The roof slope on the single storey south elevation is highly visible from road level and can be viewed from all the adjoining and neighbouring residential properties opposite. The south-facing roof slope is visible from longer distances to the west and north. The impact of the

proposal will conflict with the character of the building itself and surrounding buildings.

Comment: This issue will be assessed in Appendix A of this report.

- xvi. It is stressed that certain key aspects of the proposed development, such as the 'access ramp', are entirely dependent on the inclusion of *the former shop* (35 & 36 Marine Road) in 'phase two' where it is stated that *'it will be possible to provide ramped access to the rear via the former shop, which benefits from step-free access from Marine Road.'* Since 'phase two' is not included within the scope of the present application, these references should be disregarded when consideration is given to access arrangements 'to and into' the proposed development.

Concern is expressed that the applicant has failed to provide detail of the location of the 'step-free access' to the garden from Quay Street in the Design and Access Statement or submitted drawings. The residential garden land (*land at rear*) does not have an exclusive right of access from Quay Street and this may explain why no details are shown.

Four steps are shown in a narrow access corridor leading from the main bar and toilets up to the proposed terrace/beer garden so it would not have 'step-free access' from within the Public House. Furthermore, the proposed development does not provide any suitable access facilities to and into the proposed development for disabled people.

Comment: Jon Sear of the Port Bannatyne Development Trust has advised that there is a shared access path from Quay Street to the proposed garden and the surface of this path may be improved, subject to agreement with the other owners in the tenement. He has pointed that no development is proposed in this area.

Mr Sear has confirmed that whether step-free access can also be provided through the vacant shop depends on whether or not phase two goes ahead and that this cannot be guaranteed. He has expressed a commitment to making the best arrangements for access by disabled people within the existing constraints.

- xvii. Concern is expressed that, prior to the submission of the application, the applicant was made aware that a protected species is present on site and steps have not been taken by the applicant to establish the presence of the Pipistrelle bats. It is considered that a simple visual audit would have been sufficient to identify the presence and habitats of this protected species and other species that would be adversely impacted by the proposed development, including: tawny owls; collared doves; blackbirds; swifts; starlings; sparrows; crows; seagulls; and hedgehogs. In addition, there has been a failure to conduct or produce an Impact Survey on the surrounding established structures and flora and fauna that provide habitat and sustenance for the aforementioned species and an array of insects and invertebrates.

Comment: Jon Sear of the Port Bannatyne Development Trust has advised that the local bat recorder examined the site on 8th January 2022 and the conclusion was reached that the building is of low bat potential with no evidence of bats being found. A biodiversity statement has been prepared in response to the other substantive biodiversity issues and this was submitted on 1st February 2022.

- xviii. According to information held by the local licensing board, there are five licensed premises in Port Bannatyne and the village has a large capacity hall and Scout

Hall which cater for large indoor events. The owners of the Port Inn and Post Office made the difficult decision to combine both businesses under one roof, in order to make the business economically viable.

Since the closure of the Anchor Tavern in March 2021, a community survey conducted by the applicant demonstrated that 72% of the local residents that were surveyed expressed their needs for a café. 262 surveys were completed with 35% being completed by residents. It is contended that the applicant's own survey results show that there is no requirement or need for a public house with an outdoor seating area in the village.

Comment: Jon Sear of the Port Bannatyne Development Trust contends that, whilst it is correct that 72% of Port Bannatyne residents wanted a cafe, 71% of Port Bannatyne residents wanted a bar. He considers that a cafe would significantly duplicate the services offered (albeit with limited opening hours) by The Port Post Office and CaleDonia, whilst no-one is currently operating or planning to operate a pub in the village. He also contends that there is an increase in demand for outdoor seating following the Covid pandemic.

Neither the lack of need for a particular type of development nor the results of the community survey are considered to have a material bearing upon the Planning aspects of the case.

(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 |
| (iv) A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
| (v) Supporting Information | Yes |

The applicant, Jon Sear of Port Bannatyne Development Trust, has produced a number of documents, including a Design and Access Statement; Noise Management Plan; Negative Bat Survey Statement; Biodiversity Statement; Landscape Planting Plan; and responses to the letters from objectors.

These documents can be viewed on the Council's website at <https://www.argyll-bute.gov.uk/planning-and-environment/find-and-comment-planning-applications>

(H) PLANNING OBLIGATIONS

Is a Section 75 obligation required: No

- (I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No
-

- (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' (2015)

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones
LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
LDP 5 – Supporting the Sustainable Growth of Our Economy
LDP 8 – Supporting the Strength of Our Communities
LDP 9 – Development Setting, Layout and Design
LDP 11—Improving our Connectivity and Infrastructure

'Argyll and Bute Local Development Plan – Supplementary Guidance' (2016)

SG LDP ENV 1 – Development Impact on Habitats, Species and our Biodiversity
SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs)
SG LDP ENV 17 – Development in Conservation Areas and Special Built Environment Areas
SG LDP ENV 21 – Protection and Enhancement of Buildings
SG LDP REC/COM 1 – Sport, Recreation and Community Facilities
SG LDP BAD 1 – Bad Neighbour Development
SG LDP Sustainable Siting and Design Principles
SG LDP SERV 7 – Flooding and Land Erosion – The Risk Framework for Development
SG LDP TRAN 3 – Special Needs Access Provision

- (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 3/2013.**

Scottish Planning Policy (2014)
Consultee Responses
Third Party Comments

Argyll and Bute Proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within PLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the PLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of PLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 14 – Bad Neighbour Development

Policy 26 – Informal Public Outdoor Recreation and Leisure Related Development

Policy 49 – Sport, Recreation and Community Facilities

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(L) Has the application been the subject of statutory pre-application consultation (PAC): No

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

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

(O) Requirement for a hearing: No

There is a total of 17 no. objections to the proposed development. However, the land-use planning related issues raised are not considered to be unduly complex, and as such it is considered that a fully informed assessment and determination can be made with reference to this report.

It is also considered that the proposed development is consistent with the relevant provisions of the Local Development Plan. It is considered that there is no policy conflict with the recommendation.

The recommendation is also consistent with the consultation response from the Environmental Health Officer.

On the basis of the above, and having regard to the approved guidelines for hearings, it is considered that a hearing would not add value to this assessment.

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

The principle of the re-use of a property that has lain vacant in Port Bannatyne for approximately 11 months is to be welcomed and would increase the range of facilities in the village.

The Anchor Tavern is located on Marine Road, which is visually prominent in the Port Bannatyne townscape and the current application does not propose any alterations to the front elevation of the building.

The most significant changes are proposed to the rear of the building and, although this can be seen from Quay Street, the significance of this aspect is relatively minimal. It is considered that the various elements of the proposal that would alter the exterior of the building and adjoining land would have a '*neutral*' effect thereby preserving the character and appearance of this part of the Conservation Area.

The proposed provision of the outdoor seating area presents the potential for noise disturbance to neighbouring properties. There is a relatively large number of residents

living in close proximity to the public house including those on Quay Street, Marine Road and Castle Street and objections have been received from eight persons who have listed their address as Port Bannatyne.

A Noise Management Plan (NMP) has been submitted by the applicant and, having considered the details contained in this document, the Environmental Health Officer is satisfied and is recommending no objections to the proposal. A condition is specified that requires adherence to the terms of the NMP.

At present, the land on which the seating area is proposed does not appear to be in active use by people, given its overgrown appearance. There is a stone boundary wall separating this land from the private amenity space to the east and, based upon the information contained in the submitted drawings, there would be the potential for persons congregating in the seating area and at the door into the rear of the public house to be able to look over into the neighbouring ground. A condition is recommended that requires details of an appropriate boundary treatment to be approved by the Planning Authority and thereafter installed prior to the use of the outdoor seating area taking place.

Other issues such as external lighting, landscaping and biodiversity can be addressed through the imposition of suitably-worded conditions.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

The development is considered to be acceptable in regard to all relevant material considerations including national and local planning policy and supplementary guidance. There are no other material considerations which would warrant anything other than the application being determined in accordance with the provisions of the development plan.

(S) Reasoned justification for a departure to the provisions of the Development Plan

Not applicable.

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Steven Gove

Date: 15th February 2022

Reviewing Officer: Howard Young

Date: 15th February 2022

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO: 21/01912/PP

1. Unless otherwise required by any of the conditions below, the development shall be implemented in accordance with the details specified on the application form dated 8th September 2021; the addendum dated 18th November 2021; the supporting information; and the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location Plan	Drawing No. 2107 – 001	-	09/09/2021
Site Plan	Drawing No. 2107 – 002	A	09/09/2021
Plan as Existing	Drawing No. 2107 – 010	A	01/02/2022
Plan of Roof as Existing	Drawing No. 2107 – 011	B	01/02/2022
Section A-A as Existing	Drawing No. 2107 – 012	B	01/02/2022
Elevation to South as Existing	Drawing No. 2107 – 013	B	01/02/2022
Plan of Ground Floor as Proposed	Drawing No. 2107 – 014	F	01/02/2022
Plan of Roof as Proposed	Drawing No. 2107 – 015	C	01/02/2022
Section A-A as Proposed	Drawing No. 2107 – 016	G	01/02/2022
Sections B-B and X-X as Proposed	Drawing No. 2107 – 017	C	01/02/2022
Elevation to South as Proposed	Drawing No. 2107 – 018	E	01/02/2022
External Door	Drawing No. 2107 – 020	-	21/10/2021
Boundary Fence Typical Detail	Drawing No. 2107 – 024	-	01/02/2022

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. Unless otherwise agreed in writing, and with the exception of the mitigation measure identified in Point No. 5, the management of the area referred to as 'Terrace' in Drawing No. 2107 – 014 Rev F ('Plan of Ground Floor as Proposed') shall be carried out in accordance with the document titled 'Noise Management Plan – The Anchor Garden, Port Bannatyne' that accompanied the e-mail from Mr Jon Sear dated 31st January 2022. The easternmost boundary treatment stated in Point No. 5 of the document shall be installed in accordance with the details approved under Condition 3 of this permission.

Reason: In the interests of protecting the privacy and amenity of the residents of neighbouring properties.

3. Prior to the first use for the congregation of people of the area referred to as 'Terrace' in Drawing No. 2107 – 014 Rev F ('Plan of Ground Floor as Proposed'), full details of the

fencing (or similar) that is to be erected along the easternmost boundary of the site shall be submitted to and approved in writing by the Planning Authority. The approved boundary treatment shall be fully installed prior to the first use of this area for the congregation of people unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of protecting the privacy and amenity of the residents that use the private amenity space to the immediate east of the application site.

4. Prior to the commencement of any works in relation to the replacement of the roof hereby approved (or such other timescale as may be agreed in writing with the Planning Authority), details of the new roof covering that is to be installed shall be submitted to and approved in writing by the Planning Authority. The new roof shall be installed in accordance with the agreed details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity and for the avoidance of doubt.

5. Prior to the commencement of the development (or such other timescale as may be agreed in writing with the Planning Authority), full details of any external lighting to be used within the site shall be submitted to and approved in writing by the Planning Authority. Such details shall include the location, type, angle of direction and wattage of each light which shall be so positioned and angled to prevent any glare or light spillage outwith the site boundary.

No external lighting shall be installed except in accordance with the duly approved scheme.

Reason: In order to avoid light pollution in the interest of amenity.

6. Prior to the commencement of the development, a survey shall be undertaken within the application site in relation to the presence of bats, birds and other wildlife species and the results of this, together with details of a watching brief to be carried out during development works, shall be submitted to and approved in writing by the Planning Authority. The watching brief shall be undertaken in accordance with the agreed details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In order to protect natural heritage assets in the interest of nature conservation.

7. Prior to the commencement of the development (or such other timescale as may be agreed in writing with the Planning Authority), a scheme of surface treatment and landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall incorporate the following details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum
- ii) Any works to trees in or adjacent to the application site
- iii) Surface treatment for the area referred to as 'Terrace' in Drawing No. 2107 – 014 Rev F ('*Plan of Ground Floor as Proposed*')
- iv) Proposed landscaping works including the location, species and size of every tree/shrub to be planted
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the Planning Authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the Planning Authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

NOTES TO APPLICANT

- **Length of 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 of Development' to the Planning Authority specifying the date upon which the development was completed.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/01912/PP

A. SETTLEMENT STRATEGY

Port Bannatyne (in association with Ardbeg) is a “*village and minor settlement*” as identified in the Local Development Plan 2015. Under Policy LDP DM 1, developments up to small scale in nature will be encouraged in this type of settlement. Given that the site area is under 200 square metres, it is considered that the current application relates to a small-scale development.

In view of the foregoing, it is considered that the principle of the proposal is consistent with the provisions of Policies LDP STRAT 1 and LDP DM 1 of the Argyll and Bute Local Development Plan 2015.

B. LOCATION, NATURE AND DESIGN OF PROPOSED DEVELOPMENT

The Anchor Tavern is a Public House located on Marine Road, which is the main waterfront thoroughfare at the western end of Port Bannatyne. The property, which is understood to have been vacant since March 2021, occupies the ground floor of a two-storey terrace of buildings opposite the quay. Internally, to the front of the premises there is a bar area and a room that is accessed from the rear of the lounge bar, which has been used for playing pool, watching television and general assembly. Both the bar and the room have separate pedestrian accesses onto Marine Road.

In the rear part of the premises are located the male and female toilets together with a cellar and store area. There is a door on the west-facing elevation that allows separate access into this part of the building. On the exterior of the rear property, there is a sloping roof made of corrugated metal that has been placed over asbestos cement roof panels.

To the immediate rear of the building, there is an area of ground that is presently overgrown on which there is a variety of fishing equipment (e.g. baskets; pallets; plastic containers; etc.) and circular buoys. This land is within the application site although is not currently in the ownership of the applicant.

Further to the south and away from the Anchor Tavern is a grassed area of land that has Heras fencing along its western boundary with the footway on Quay Street. Various items have been placed on this ground, including a mobile van/container and sections of Heras fencing.

The upper floor of the terrace in which the Public House is situated contains residential flats whilst on the ground floor to the east is CaleDonia (a coffeehouse and bistro) and to the west is a retail unit, which is understood to have been vacant since the mid-2000s.

To the east and south-east of the land to the rear of the Public House is the private amenity space serving the flats in the tenement at 18 Castle Street and the flat at 32 Marine Road. There is a stone wall running along the boundary and two/three trees in this location.

The application proposes the following:

- The re-opening of the ground floor as a public bar and community hub
- The removal of the existing metal roof on the rear elevation and its replacement with a new roof
- The incorporation into the new roof of a door with a flat roof
- The installation of photovoltaic solar panels on the new rear roof slope

- The change of use of the land to the rear of the building to create an outdoor seating area
- The erection of new fencing on the easternmost boundary of the outdoor seating area
- The formation of a gabion basket retaining wall along part of the easternmost boundary and the entire length of the southernmost boundary of the outdoor seating area

The following is a summary of the information contained in the '*Design and Access Statement*' that accompanied the application and in an e-mail dated 14th February 2022 from Jon Sear of the Port Bannatyne Development Trust:

- Following the closure of all the pubs in Port Bannatyne, the Port Bannatyne Development Trust (PBDT) has identified that the Anchor Tavern offers the most suitable premises in the village for providing a pub and community hub that is viable to open all year round. It is currently liaising with the Licensing Officer of Argyll and Bute Council and its application for the transfer of the premises licence is with the Local Authority
- In the first instance, the intention is to operate within the terms of the existing licence but it is anticipated that an application for a major variation to the premises licence would be submitted in the second half of 2022 once the PBDT is clear what changes will best enable it to meet the needs of the community
- The current planning application includes a package of work that will be implemented in stages as funding and organisational capacity allows
- It is hoped that, following the successful reopening of the Anchor Tavern, the flexible space within the pub can be extended into the vacant shop at 35 and 36 Marine Road as phase two of the project, although this will be subject to organisational capacity, demand, viability and funding
- Following Covid, there is increased demand for outdoor space at hospitality venues and it is proposed to develop the overgrown land immediately to the rear of the building as a small and manageable sun-trap garden seating. The exact details of the management of this space will be determined after consultation with the community and with licencing, but it will close by 10pm and fencing to 1.8m will be provided to offer privacy to the adjacent drying green/garden serving the tenement at 18 Castle Street and 32 Marine Road
- The rear of the building faces almost due south so provision is being made for solar photovoltaic panels to be installed when funding permits. These will contribute to reducing the running costs and environmental impact of the building
- In Phase Two, it will be possible to provide ramped access to the rear via the former shop, which benefits from step-free access from Marine Road. In the meantime, step-free access to the garden will be from Quay Street

The principle of bringing a vacant unit back into use as a community-type facility is to be welcomed. There are issues associated with the proposal, however, and these are examined in the following sections.

On the basis of the foregoing, the proposal is considered to accord in principle with Policies LDP 5 and LDP 8 and Supplementary Guidance policy SG LDP REC/COM 1 of the Argyll and Bute Local Development Plan 2015.

C. IMPACT UPON BUILT ENVIRONMENT

The application site is located within the Bute Area of Panoramic Quality (APQ) and the Rothesay Conservation Area. Given the nature of the works and their location to the rear of the building in question, it is considered that they would have no effect upon the key characteristics of the APQ.

In terms of the built environment, Port Bannatyne originated as a fishing village with a linear settlement form that was characterised with a regular street pattern of two parallel streets running east-west along the shore (Marine Road and Castle Street) and short streets running between them. This street layout has remained largely unchanged over the years and, on the whole, its character as a small fishing village has been retained notwithstanding that there was some fairly extensive development as part of the overall tourist expansion of the Bute urban area in the late-19th and 20th centuries.

The Anchor Tavern is located on Marine Road, which is visually prominent in the Port Bannatyne townscape and the current application does not propose any alterations to the front elevation of the building.

The most significant changes are proposed to the rear of the building and it is acknowledged that it can be seen from Quay Street (which is one of the shorter streets connecting Marine Road and Castle Street). However, the significance of this aspect is considered to be minimal with neither the finish nor condition of the existing roof on the single-storey rear projection making any contribution to the character of the building itself or the wider Conservation Area.

The initial proposal identified the installation of a natural slate roof although the most recent drawings contain reference to a further two options – corrugated steel sheeting or simulated lead. Whilst natural slate would be the preference, it is considered that the principle of any of the three is acceptable with a condition ensuring that details are submitted for the Council's approval.

The proposal also involves the installation of ten photovoltaic solar panels on the rear roof slope and the general principle for this type of micro-renewable energy system is to avoid the principal elevation of a historic building. In this particular case, it is considered that the rear roof in question is very much a secondary slope with the proposed panels not affecting any significant architectural features.

A new door is also to be incorporated into the rear roof slope and the initial proposal identified the creation of a pitched roof over the door. The most recent drawings show a flat roof and, in the context of the position to the rear ground floor of the building, this is considered to be appropriate from a visual perspective.

The visual impact of the formation of the outdoor seating area on the land to the rear of the building also requires assessment. At present, this area is overgrown and also contains a variety of fishing equipment (e.g. baskets; pallets; plastic containers; etc.) and circular buoys.

The removal of the vegetation and assorted items would improve the appearance of this piece of land and such clearance works would be a stage in the creation of the seating area. However, this in itself would not be sufficient to justify the proposal as there are new elements to consider i.e. the gabion basket retaining wall and the new timber fencing. In respect of the former, this is shown as being under one metre in height and it could be filled with reclaimed local stone as suggested by Jon Sear of the Port Bannatyne Development Trust.

The fencing is to be erected principally as a means of assisting in reducing the level of overlooking between the proposed new doorway and seating area and the private amenity space of the residential properties to the east. As currently depicted, it would involve the installation of individual fence posts that would be inserted into the ground adjacent to the

easternmost boundary wall. For a distance of 6.3 metres, close-boarded timber fencing would be fixed to these posts such that it would project 400 mm above the top of the wall. As discussed in the next section, the height of part of this fencing will have to be increased in order to address the overlooking issue effectively. Subject to a condition requiring full details of the fencing to be agreed with the Council prior to its installation, it is considered that such a boundary treatment would not detract from visual amenity.

In conclusion, it is considered that the various elements of the proposal that would alter the exterior of the building and adjoining land would have a '*neutral*' effect thereby preserving the character and appearance of this part of the Conservation Area. **On this basis, and subject to suitably-worded conditions, the proposal is considered to accord with Policies LDP 3 and LDP 9 and Supplementary Guidance policies SG LDP ENV 13, SG LDP ENV 17, SG LDP ENV 21 and SG LDP Sustainable Siting and Design Principles of the Argyll and Bute Local Development Plan 2015.**

D. IMPACT UPON RESIDENTIAL PRIVACY AND AMENITY

The Environmental Health Officer (EHO) has commented that the proposed provision of the outdoor seating area presents the potential for noise disturbance to neighbouring properties from customers, which may include raised voices; talking; shouting; laughing; the use of mobile phones, etc. In addition, smoke from customers may also cause disturbance to those living nearby.

There is a relatively large number of residents living in close proximity to the public house including those on Quay Street, Marine Road and Castle Street and objections have been received from eight persons who have listed their address as Port Bannatyne. The concerns that have been expressed relate to the noise and smoke issues that would arise from the proposed use of the outdoor seating area as mentioned in the preceding paragraph.

Mr Jon Sear of the Port Bannatyne Development Trust contends that the majority of the twenty three homes that are referred to in the objections are long term empty dwellings and he points out that the owners of the two nearest residential properties (32 Marine Road and 1 Quay Street) have not objected to the proposals.

Noise Management Plan (NMP)

In his initial response to the application, the EHO recommended that a Noise Management Plan (NMP) be drawn up with reference to the Institute of Acoustics & Institute of Licensing Guidance entitled '*Good Practice Guide on the Control of Noise from Places of Entertainment*' (Dec 2016). The purpose of the NMP is to provide information on the noise issues likely to arise from the use of an outdoor seating; the proposed methods of managing these issues by the operator; and the formulation of an appropriate response should noise problems arise.

The applicant submitted a NMP to the EHO on 28th January 2022 and the document details the mitigation procedures that will be implemented should the proposals for the use of the outdoor seating area be carried out. These include the following:

- A finish time of 22:00
- The provision of close boarded fencing along the eastern boundary
- The rear entrance door being kept closed to prevent the '*break-out*' of entertainment noise from the public house
- Regular checks by staff to monitor customer behaviour and deal quickly with noisy or rowdy behaviour

- No amplified, acoustic or recorded music being played or other noisy equipment being used
- The siting of cigarette butt disposal facilities as far as possible from the façade of the building
- The provision of signage

In addition to the above, the document explains that the Port Bannatyne Development Trust (PBDT) has not yet taken a decision as to whether to apply to extend the Anchor premises licence to cover the outdoor seating area. Jon Sear of the PBDT (e-mail dated 14th February 2022) has advised that the intention is for the NMP to apply to the outdoor area being used in conjunction with the public house, regardless of whether this area becomes licenced. He has also confirmed that, should Planning Permission be granted, the NMP will be implemented and in operation immediately after the formation of the new door access from the public house.

Having considered the details contained in the NMP, the EHO is satisfied and, on this basis, is recommending no objections to the proposal. A condition should be attached that requires adherence to the terms of the NMP.

Use of Outdoor Seating Area Separate from Public House

The above assessment principally relates to the use of the outdoor seating area in association with the public house. However, Jon Sear of the PBDT (e-mail dated 14th February 2022) has advised that the acquisition of the outdoor area has been funded by the Scottish Land Fund and PBDT's objectives include providing facilities for the whole community. It is, therefore, hoped that the outdoor area can be available for use by members of the community at other times – for example, in the mornings when the public house is not open and he points out that its location means that it will be much more sheltered than other options in the village.

His view is that, when there is no staffing needed in association with the use of the outdoor area, the management provisions of the NMP should not be applicable and he considers that, at these times, the intensity of the use will not be such that these provisions would be necessary.

It is acknowledged that the use of the outdoor area in conjunction with the public house increases the possibility of noise disturbance. The NMP lists thirteen mitigation measures and not all of these involve active staffing, including:

- The provision of signage in the garden asking patrons to avoid shouting and to respect neighbours
- A suggestions/complaints process will be put in place and local residents will be encouraged to use it. Sensitivities to noise disturbance may depend on the timing and location of specific activities (such as children's bedtimes) and these will vary with time. Additional measures will be put in place to control noise at specific times when required
- As a community venue, the aim is to create a culture of awareness around potential disturbance to neighbours and community members using the premises regularly will be encouraged to be proactive in responding to situations which could lead to neighbours being disturbed
- No forms of entertainment (e.g. amplified, acoustic or recorded music), other performances or equipment (e.g. bouncy castle etc.) using noisy equipment such as generators, pumps etc will be permitted to be used in the outdoor seating area

Condition 2 in this report requires that the management of the outdoor area be carried out in accordance with the NMP and no distinction is made in the wording of this condition between usage in conjunction with the public house and usage separate from it.

Given the overall ethos in the NMP of seeking to reduce as far as is possible the impact of the use of the outdoor area on neighbours, it is not considered necessary to introduce a distinction in Condition 2 as to how the NMP is applied in different situations. Notwithstanding this, it is anticipated that common sense would be exercised in the monitoring and enforcement of the condition should issues be raised once the use of the outdoor area commences.

Potential Overlooking Issues

In addition to the issues of potential noise and disturbance, there is a need to assess the impact from an overlooking perspective of introducing an outdoor seating area for up to 20 persons adjacent to the private amenity space of neighbouring residential properties. At present, the land on which the seating area is proposed does not appear to be in active use by people, given its overgrown appearance. There is a stone boundary wall separating this land from the private amenity space to the east and, based upon the information contained in the submitted drawings, there would be the potential for persons congregating in the seating area and at the door into the rear of the public house to be able to look over into the neighbouring ground.

A fence is shown as being erected along the mutual boundary that would project 400 mm above the top of the wall but this height may need to be increased in the area closer to the rear of the public house and this can be addressed with a condition requiring further details to be approved by the Council.

Finally, it is considered both necessary and reasonable to attach a condition that requires details of any external lighting (either on the building or free-standing) to be submitted in advance of the outdoor seating area being formed to ensure that there is no excessive light being created that would be to the detriment of residential amenity.

On the basis of the foregoing, and subject to suitably-worded conditions, the proposal is considered to accord with Supplementary Guidance policy SG LDP BAD 1 of the Argyll and Bute Local Development Plan 2015.

E. BIODIVERSITY

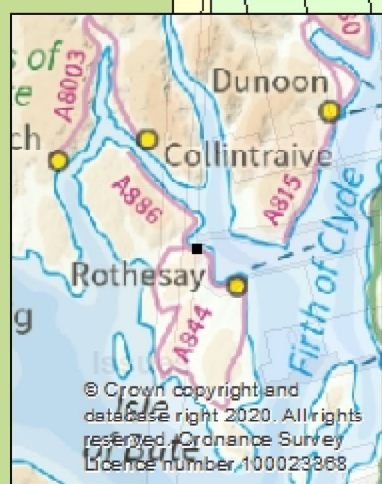
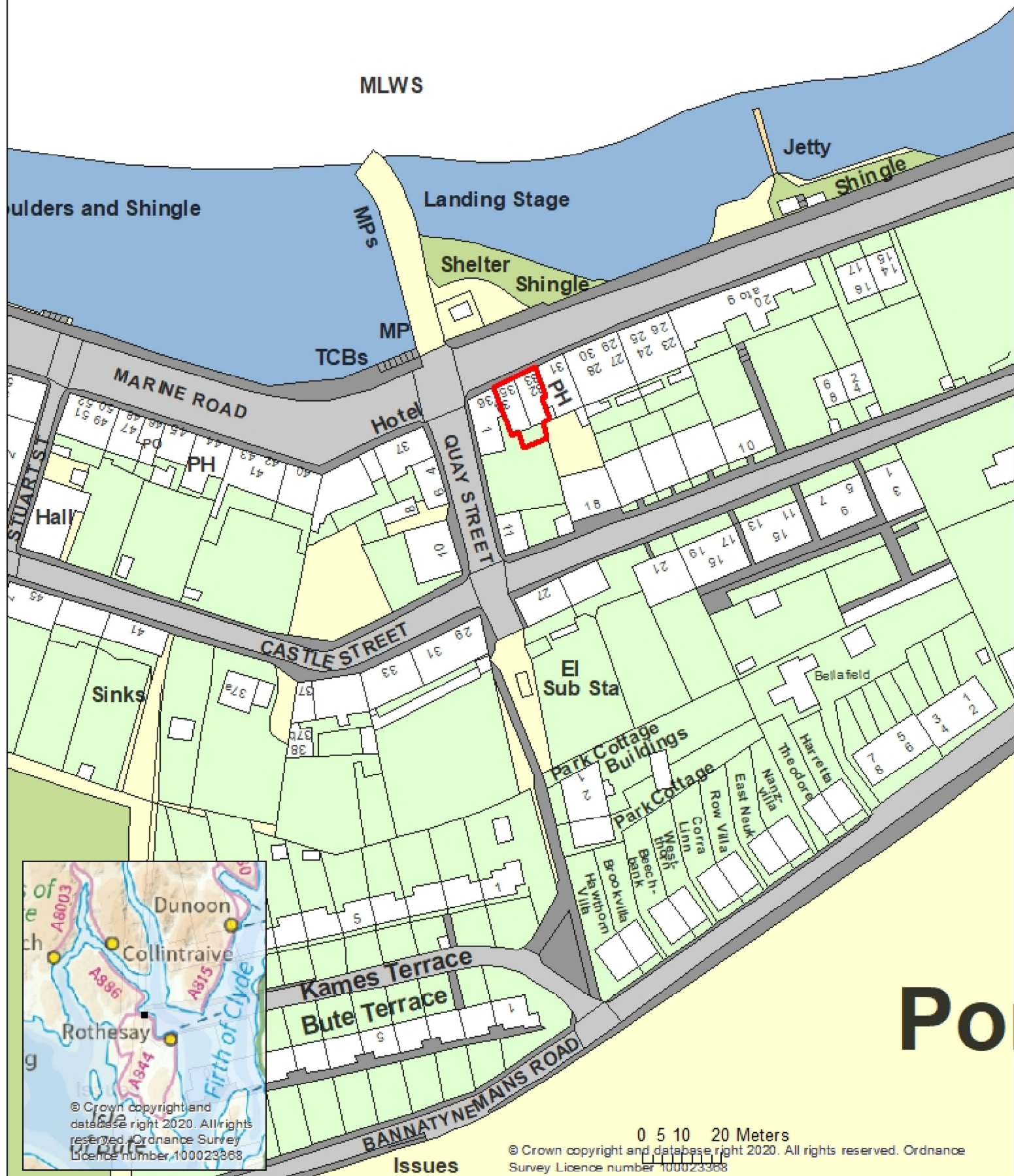
Mr Jon Sear of the Port Bannatyne Development Trust has submitted a '*Negative Bat Statement*' from Mr Billy Shields in which the latter considers the building to be of '*low*' bat potential and that the development can proceed with a '*watching brief*'.

Mr Sear has also submitted a '*Biodiversity Statement*' that identifies two possible risks to biodiversity. He states that there is a small probability of hibernating hedgehogs on site and proposes that initial site clearance is to be undertaken using hand tools only and, in the event of a hedgehog being discovered, it is to be gently covered up again as quickly as possible, and a suitably experienced person contacted for further advice.

He mentions that birds may nest in different locations from year to year so this would need to be checked prior to commencement of development. However, for commercial reasons relating to the seasonality of the pub, he states that the development requires to be commenced during the autumn or winter months (September to February). He considers that this in itself will be sufficient mitigation to ensure there is no disturbance. He notes that the "*black bird*" nest referred to in an objection is outwith the application site and he feels that it is highly unlikely that swifts would nest in such a low building, surrounded by much higher buildings.

The above information has been passed to the Council's Biodiversity Officer and her comments are awaited. In the meantime, conditions have been formulated on the basis of the documents submitted by Mr Jon Sear.

On the basis of the foregoing, and subject to suitably-worded conditions, the proposal is considered to accord with Supplementary Guidance policy SG LDP ENV 1 of the Argyll and Bute Local Development Plan 2015.



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Location Plan Relative to Planning Application: 21/01912/PP



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**Argyll and Bute Council
Development & 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

Reference No: 21/02190/PP

Planning Hierarchy: Local

Applicant: Mr David Blair

Proposal: Change of Use of Land for Siting of Timber Ark Sculpture (Retrospective)

Site Address: Land to the North West of Coill Beag Woodland, Tighnabruaich, Argyll

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Change of Use of Land for Siting of Timber Ark Sculpture (Retrospective)

(ii) Other specified operations

- N/A
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that Planning Permission be **granted** subject to the condition and reason set out in this report.

(C) CONSULTATIONS:

NatureScot Operations Officer (e-mails dated 8th December 2021 and 31st January 2022)

As the type of application did not meet the criteria for consulting with NatureScot, they initially had no comments to make. Subsequent correspondence took place and the development has now been examined.

Their detailed comments advise that the ark structure has been viewed from key viewpoints within the Kyles of Bute National Scenic Area (NSA) including from along the A8003, B866 and A886 roads. However, views from Bute (e.g. the West Island Way) are not included in the assessment of impacts as the officer did not visit the island.

It was found that the structure was only visible on the immediate approach to and from Tighnabruaich on the A8003 road. Crucially, it is not visible at all from the National Trust for Scotland viewpoint at Creagan Dubh. Given this, combined with the nature of the building materials used (open trusses made from non-reflective larch wood that will dull with time) and design features (open and curved), it is not considered that visual impacts will be significant.

In terms of landscape impacts, given the nature of the structure and its relatively small scale (compared to the adjacent telecommunications mast at Creag Rubha Bhain, for instance), it is not considered that it adversely affects the landscape character of the area.

In summary, NatureScot do not consider that the existing structure will have an adverse effect on the special qualities nor integrity of the NSA.

Area Roads Engineer

Written comments awaited but verbal advice is no objections.

(D) HISTORY:

There is none pertaining to the application site.

(E) PUBLICITY: Regulation 20 Advert (closing date: 7th January 2021)

(F) REPRESENTATIONS:

An objection has been received from Mr Paul Paterson, 2 Manor Way, Tighnabruaich (received 10th December 2021)

The points raised can be summarised as follows:

- i. The objector considers the structure to be a political statement; it attacks various forms of political thoughts; and the applicant/builder (Mr David Blair) is known for his political views on the environment as well as setting up the local Extinction Rebellion group. It is contended that Extinction Rebellion is greeted as an extremist fringe group that has courted many recent legal and court rulings, especially vandalism; breaching court orders; and creating frustration within local and central government. It is mentioned that the same applicant/builder was ordered by the Planning Authority to remove a political symbol which he placed on top of a hill cairn within Tighnabruaich.

The objector considers that there is a huge element of civil disobedience from the applicant/builder, which the latter seems to relish. COP26 has ended and the applicant/builder states that the wooden structure is temporary until 2045 but, in truth, whilst the structure is a political statement, it also blights the skyline and does not fit within the local area and local buildings let alone meet with the local authority and Scottish definitions of a building.

Comment: The visual and landscape impact of the development will be assessed in Appendix A of this report. The other issues set out above do not have a material bearing upon the Planning aspects of the case.

- ii. Some types of building work and development don't need Planning Permission as long as they are within defined thresholds and this is called '*permitted development*'. The wooden structure does not fall within the scope of the Town and Country Planning (General Permitted Development) (Scotland) Order in relation to agricultural development or temporary structures and, therefore, needs Planning Permission.

Comment: The department considered that the use of the land for the siting of the timber framework benefitted from '*permitted development*' rights for the period of 28 days between 25th August 2021 and 22nd September 2021 but that its continued use after the latter date without the benefit of Planning Permission constituted a breach of Planning control.

The current application has been submitted with a view to regularising this breach of Planning control.

- iii. The wooden structure plans lack Environmental Impact Assessment (Scotland) Regulations 1999 (Scottish Statutory Instrument 1999 No. 1), as amended (the EIA Regulations).

Comment: The development does not constitute either Schedule 1 or Schedule 2 development as defined in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. As such, it does not require being the subject of Environmental Impact Assessment.

- iv. The objector, although not referring to the source material, appears to include a number of comments from '*Planning Advice Note 39: Farm and Forestry Buildings*' (April 2008). These relate to assessing the visual impact of a new building, including considering the impact of the development from a number of viewpoints both in the immediate surroundings and in the wider countryside; seeking to locate the development near to existing buildings; seeking to avoid a hilltop position but, if this is unavoidable, siting the development close to woodland and carefully choosing the external colour; aligning a building parallel with the contours on sloping sites; and choosing an appropriately-scaled development.

Comment: The visual and landscape impact of the development will be assessed in Appendix A of this report.

- v. The objector provides links to media reports and includes quotes attributed to the applicant/builder in relation to the relationship of the development and the issue of climate change.

Comment: The information contained in the media reports is noted.

- vi. The objector expresses concerns that, despite having no risk assessments, no COVID-19 assessments, no health and safety audits, no disabled access or conformance to the Equality Act and a failure to abide by the regulations on COVID-19, the applicant/builder had primary school pupils and delegates from the COP26 attend the development. The objector contends that it was noted by the community council, local residents and tourists that no-one knew of this and a deep seat of anger then built up whereby answers were not given by the applicant/builder.

Comment: The above issues do not have a material bearing upon the Planning aspects of the case.

- vii. The objector contends that it had also been noted that Dunoon Grammar School were invited but that, due to no Planning Permission; a lack of risk and Health and Safety at Work (HASAW) assessments; and COVID-19, the Grammar School declined. Overall, the objector contends that there is a deep feeling of the applicant/builder doing as he so pleases while others have to abide by the rules.

Comment: The above issues do not have a material bearing upon the Planning aspects of the case.

- viii. The objector states that Scottish Ministers deal with a variety of casework in relation to the planning system and have a role in confirming various legislative orders and directions. Applications for Planning Permission, Listed Building Consent and Conservation Area Consent are dealt with firstly by the Local Planning Authority but Scottish Ministers can intervene in the determination of a planning application where a matter of genuine national interest may be at stake. The objector requests that this application is put before Ministers.

Comment: There can be circumstances where a development raises issues of such national importance that it is reasonable for Scottish Ministers to call-in a planning application from the local authority but it is at Ministers' discretion whether to do so. This could be where a Government agency has expressed strong concerns about the impact of development on their national interests or where the possible impacts or benefits of a proposed development extend well beyond the area of the local authority to the extent that they become of national importance.

It is not considered that the particular circumstances of this application qualify for a call-in by Scottish Ministers.

- ix. The objector contends that the wooden structure is intended to have the public walk on, sit and climb within it and is querying whether a variety of assessments have been carried out in relation to the minimum and maximum weight and load bearing capacities of each beam, wooden part, bolt, screw and pillar.

Comment: The above issues do not have a material bearing upon the Planning aspects of the case.

- x. The applicant/builder has stated that he will undertake to give an annual inspection of the structure to ensure it remains structurally sound for the duration and, if it is found to be weakened or failing in any way that is beyond repair, he will close off the site and take it down. The objector considers this to be unacceptable and that it requires an independent and suitably qualified structural engineer to make such a qualifying recommendation.

Comment: The issue of the structural stability of the ark sculpture does not have a material bearing upon the Planning aspects of the case. Its potential visual deterioration is assessed in Appendix A of this report.

- xi. The wooden structure sits on top of a steep hill on the road entering and leaving Tighnabruaich and sits next to the parking area on the A8003. However, the objector points out that this is directly opposite a new access road that has been created in relation to timber extraction, which will be in place for the foreseeable future whilst the timber is removed and replanted. The objector expresses concern that this will create substantial safety risks to any person parking their vehicle and walking to the wooden structure.

Comment: The access referred to by the objector is located on the opposite side of the A8003 across from the north-eastern end of the layby. Planning Permission (ref: 21/01578/PP) was granted on 9th November 2021 as it was considered, in consultation with the Area Roads Engineer, that the access was acceptable subject to conditions regarding the standard and design of the bellmouth as it meets the public road and the clearance of appropriate visibility splays.

Vehicles entering and exiting this access in a safe and proper manner will not create a hazard to the users of the layby across the public road.

(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 supporting statement:**

Yes

The applicant/builder has submitted the following statement in support of the application:

“The Ark was built to raise awareness of the scale and urgency of the climate and ecological emergency, it was designed to start conversations and inspire action. I propose it stands until 2045 when the Scottish Government have committed to Scotland achieving net zero carbon emissions. Built at a scale that reflects the purpose of an Ark, it is 22m long 8m wide including the supporting structure and 6m high. The Ark is built from locally milled European Larch which is a naturally durable timber that should remain structurally sound for over 20 years. It will change colour with exposure to UV light from honey/orange to a silver/grey.”

The Ark is designed to be viewed from the parking area on the A8003 to the North of Tighnabruaich though some people may choose to walk up to it from there or from the Tighnabruaich back road.

I am an engineer (and the Arkitect) and undertake to give an annual inspection of the structure to ensure it remains structurally sound for the duration. If it is found to be weakened or failing in any way that is beyond repair I will close off the site and take it down."

- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:**

No

(H) PLANNING OBLIGATIONS

Is a Section 75 obligation required:

No

- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:**

No

- (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 2015

LDP STRAT 1 – Sustainable Development
LDP DM1 – Development within Development Management Zones
LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
LDP 9 – Development Setting, Layout and Design
LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance (March 2016)

SG LDP ENV 12 – Development Impact on National Scenic Areas (NSAs)
SG LDP ACE 1 – Area Capacity Evaluation
SG LDP Sustainable Siting and Design Principles
SG LDP TRAN 6 – Vehicle Parking Provision

- (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 3/2013.**

Consultee Responses

Third Party Representations
Scottish Planning Policy 2014

Argyll and Bute proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 26 – Informal Public Outdoor Recreation and Leisure Related Development

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:

No

(L) Has the application been the subject of statutory pre-application consultation (PAC):

No

(M) Has a sustainability check list been submitted:

No

(N) Does the Council have an interest in the site:

No

(O) Requirement for a hearing (PAN41 or other):

Having regard to the approved guidelines for hearings, it is considered that a hearing would not add value to this assessment for the following reasons:

- The application has attracted an objection from only one person
- The land-use planning related issues raised are not considered to be unduly complex and a fully informed assessment and determination can be made with reference to this report
- The development is consistent with the relevant provisions of the Local Development Plan and there is no policy conflict with the recommendation
- The recommendation is consistent with the consultation responses from NatureScot's Operations Officer and the Area Roads Engineer

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

Planning Permission has been sought in retrospect for the siting of an ark sculpture on an elevated area of ground approximately 135 metres to the east of a car parking layby adjacent to the A8003 road and to the north west of Coill Beag woodland in Tighnabruaich.

The site is located in '*Countryside*' for the purposes of the Argyll and Bute Local Development Plan 2015, in which only certain scales and types of development gain immediate support. In this case, an '*exceptional case*' requires to be demonstrated but it is not considered that the undertaking of a full Area Capacity Evaluation would '*add value*' to the assessment of the application.

The applicant, Mr David Blair, has stated that the sculpture was created to raise awareness of the scale and urgency of the climate and ecological emergency; that it was designed to start conversations and inspire action; and was located so that it could be viewed from the car parking layby (which is on the same side of the public road as the development) with the possibility of people choosing to walk up to it.

It is considered that the above points (and other factors), when taken cumulatively, represent a form of '*exceptional case*'. This in itself, however, is not of such overriding significance that it would justify support for any form and scale of development in any location.

The visual impact of the development is relatively confined given that it can be seen only over a relatively short stretch of the A8003 road leaving Tighnabruaich in a north-easterly direction. In addition, the nature of the building materials that have been used (open trusses made from non-reflective larch wood that will dull with time) and its design features (open and curved) further mitigate its presence.

Although located within the Kyles of Bute National Scenic Area and in the '*Craggy Upland – Argyll*' Landscape Character Type, it does not impinge to a significant degree on either the special qualities of the NSA or the key features of the Landscape Character Type that have been identified by NatureScot and its predecessor, Scottish Natural Heritage.

The principal road safety issue relates to the extent to which the development would lead to vehicles parking on the public road network where they may impede traffic flow or cause a hazard. It is considered that there is sufficient vehicle parking in the existing layby to accommodate those persons wishing to either view or visit the ark sculpture and that the type of development is unlikely to be as intensively used as a leisure facility, which is the closest equivalent in the list of Parking Standards. These conclusions allow the development to be viewed favourably in relation to the relevant Supplementary Guidance in the LDP.

An objection has been received from one source but many of the points that have been raised do not have a material bearing upon the Planning aspects of the case. All of the issues that are material in nature have been fully examined.

(Q) Is the proposal consistent with the Development Plan:

Yes

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:

The development is considered to be acceptable in regard to all relevant material considerations including national and local planning policy and supplementary guidance. There are no other material considerations which would warrant anything other than the application being determined in accordance with the provisions of the development plan.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Scotland:

No

Author of Report: Steven Gove

Date: 2nd February 2022

Reviewing Officer: Howard Young

Date: 3rd February 2022

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 21/02190/PP

1. This permission shall cease on or before 1st March 2027 other than in the event of a further Planning Permission for continued use having been granted upon application to the Planning Authority. Within one month of the cessation of the use, the ark sculpture shall be removed from the site and the land shall be restored in accordance with a reinstatement scheme to be submitted to and approved in writing in advance by the Planning Authority.

Reason: In order that the Planning Authority may review the circumstances pertaining to the development within a reasonable period of time and in the interests of visual amenity.

2. Notwithstanding the requirements of condition 1, in the event that the condition of the structure falls into serious disrepair, the ark sculpture shall be removed from the site and the land shall be restored in accordance with a reinstatement scheme to be submitted to and approved in writing by the Planning Authority.

Reason: in the interests of amenity and public safety.

NOTES TO APPLICANT

The applicant / landowner should make appropriate arrangements to ensure that the structure is maintained in a safe condition and may wish to ensure that they have appropriate public liability insurance.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/02190/PP

A. Background to Current Application

A written enquiry was received by the Planning Department on 26th August 2021 as to whether any permission had been sought or obtained for an ark structure that was being assembled on an elevated area of ground approximately 135 metres to the east of a car parking layby adjacent to the A8003 road and to the north west of Coill Beag woodland in Tighnabruaich.

It was confirmed that the Planning Department had not been approached regarding this installation and an investigation commenced. It was subsequently established that the structure had been assembled by Mr David Blair for the purpose of raising “*awareness of climate change and the extinction crisis*” in advance of the COP26 summit that was being held in Glasgow in November 2021.

The department considered that the use of the land for the siting of the timber framework benefitted from ‘*permitted development*’ rights for the period of 28 days between 25th August 2021 and 22nd September 2021 but that its continued use after the latter date without the benefit of Planning Permission constituted a breach of Planning control.

Mr Blair elected to submit an application for the continued use of the land for the siting of the structure and this report relates to the assessment of this retrospective application.

B. Settlement Strategy

The development is located within ‘*Countryside*’ wherein the provisions of Policy LDP DM 1 of the Argyll and Bute Local Development Plan (LDP) 2015 would ordinarily only encourage ‘*small scale*’ development on appropriate infill, rounding off, redevelopment and change of use of existing buildings. However, in exceptional cases, development in the open countryside may be supported on appropriate sites if this accords with an Area Capacity Evaluation (ACE).

In this particular case, the development relates to the change of use of land for the siting of a timber ark sculpture. As such, it doesn’t necessarily fall neatly within the more typical forms of built development whose scale is quantified by the number of units; floorspace; etc. However, its location clearly does not represent any of the recommended types of site that would elicit support in principle from Policy LDP DM 1 i.e. it is not ‘*infill*’, ‘*rounding off*’, ‘*redevelopment*’ or ‘*change of use of an existing building*’.

On this basis, it is reasonable to expect that an “*exceptional case*” needs to be demonstrated and this is explored in detail later in this report with the conclusion that such a case has been justified. Consideration then should be given as to the requirement for an ACE to be carried out.

Requirement for an ACE

In terms of the ACE process, Supplementary Guidance policy SG LDP ACE 1 mentions that this is “*a tool to assess planning applications in the relevant development control zones, in order to establish the capacity of the wider countryside containing the application site to successfully absorb that particular development*”.

It goes on to state that “*the aim should not be to identify a definitive quantity or how much development can be accommodated in a landscape but to explore landscape ‘sensitivity’ to the particular development ... under consideration.*”

In terms of type of development, the Supplementary Guidance explains that “*an ACE should never be carried out for renewable energy related developments which are the subject of environmental impact assessment or temporary buildings or proposals*”.

Whilst the applicant seeks permission for a period of approximately 23 years, it is considered that such a length of time could not reasonably be regarded as “*temporary*” in the context of the use of that term in the preceding paragraph.

However, it is equally clear that the application relates to a type of development that is relatively unusual in terms of its form and purpose. In these circumstances, it is justifiable to consider whether the carrying out of an ACE would ‘*add value*’ to the process of determining the application, particularly where the visual and landscape impacts of the development are being assessed in detail.

In taking all of the above factors into account, it is not considered necessary to undertake an ACE in relation to this application.

In summary, this application constitutes an ‘*exceptional case*’ for a particular type of development whose landscape and visual impact is considered to be acceptable. **As such, it is consistent with the Settlement Strategy set out in Policies LDP STRAT 1 and LDP DM 1 and Supplementary Guidance policy SG LDP ACE 1 of the Argyll and Bute Local Development Plan 2015.**

C. Location, Nature and Design of Development

The application site is in a relatively elevated and exposed field located approximately 70 metres to the south-east of the A8003 public road on the approach to the village of Tighnabruaich from the north-east. Upon this area of ground, a timber framework has been assembled in the shape of an ark, which has a length of 22 metres; a width of 8 metres; and a height of 6 metres. Two lengths of curved benching have been incorporated into the sides of the framework that allow persons to sit within its interior.

There is a layby for the parking of cars directly adjacent to the A8003 road and this is approximately 135 metres due east of the ark sculpture and at a lower level. A one metre high gate has been installed in the fence adjacent to the layby from which people can walk up to the ark sculpture although no footpath has been physically created to specifically facilitate such access.

D. Exceptional Case

In order for a development to qualify as an “*exceptional case*”, there are certain principles that can reasonably be applied, including the following:

- Exceptional cases should be fairly rare occurrences and should not become a matter of routine
- Specific locational requirement - i.e. the proposed development has a clearly demonstrable need to be located upon a specific site or within a specific area rather than elsewhere and within a more appropriate development management zone

- Exceptional cases could represent a significant economic or community benefit that outweighs other Policies of the Local Development Plan and is agreed with and acceptable to the Planning Authority

As stated elsewhere in this report, the ark sculpture presents issues that are relatively unusual in the assessment of an application and the 'exceptional case' scenario is no different. The more typical situations might involve a dwellinghouse on an agricultural unit or tourism-related development to support or diversify an existing business.

In this case, the applicant has stated that the "*Ark was built to raise awareness of the scale and urgency of the climate and ecological emergency, it was designed to start conversations and inspire action*" and "*is designed to be viewed from the parking area on the A8003 to the north of Tighnabruaich though some people may choose to walk up to it from there or from the Tighnabruaich back road*".

These statements serve to partly explain the reasoning behind the location of the sculpture in the sense that it is visible to a certain extent (thereby attracting attention) and is within walking distance of a safe parking area.

The timing of the assembling of the timber framework in August 2021 was also influenced by the approaching COP26 climate change summit that was to be held in Glasgow during November last year and Mr Blair was quoted in an article in '*The Guardian*' at the time that the ark design related to "*the story of Noah and the great flood from nursery school, and I wanted to make that deep connection with people*". Finally, it is understood that the ground in question is leased out to the applicant on an annual basis so there is also an element of land availability in relation to the choice of the site.

The preceding paragraph sets out the context for the development and it is considered that the various elements, when taken cumulatively, represent a form of 'exceptional case'. This in itself, however, is not of such overriding significance that it would justify support for any form and scale of development in any location. The visual and landscape impact of the ark sculpture is of equal importance and is addressed in the next section.

E. Landscape and Visual Impact

In assessing the landscape effects of the development, it is important to establish the landscape character of the area. In this case, the application site is located within the Kyles of Bute National Scenic Area (NSA).

Having regard to Scottish Natural Heritage's '*Landscape Assessment of Argyll and the Firth of Clyde*' (1996) and the more recent review of Landscape Character Types (LCTs) carried out in 2019, the development is located within the '*Craggy Upland – Argyll*' LCT.

This LCT extends northerly to the junction with the road to Tighnabruaich from the A886 road and incorporates the land to the north of Colintraive; the north part of the Isle of Bute; and the land to the north and north-west of Tighnabruaich. Although not having exactly the same boundaries as the LCT, the Kyles of Bute NSA occupies the majority of the same area.

The key features set out in the '*Craggy Upland – Argyll*' Landscape Character Type insofar as they relate to this particular area are as follows:

- Upland moor with irregular, rather amorphous landform

- Rounded knolls, rock outcrops and numerous lochs in low-lying hollows and glens
- Open moorland predominates, but extensive conifer plantations camouflage the landscape pattern in some areas
- Oak-birch woodland on lower slopes

The special qualities of the Kyles of Bute NSA are highlighted by NatureScot's predecessor, Scottish Natural Heritage, in a report from 2010 and these are as follows:

- **The drama of the Kyles** – the narrow Kyles dominate this landscape of wooded slopes and rough hills.
- **Verdant woodland on the enclosing hills** – the enclosing hillsides coming down to the sea are clothed in extensive areas of mature, mixed woodland.
- **Rocky outcrops punctuating the wooded slopes** – rocky hill tops, numerous rock outcrops and rocky shores punctuate the tree cover and hill slopes to give contrast in colour, texture and form
- **Small fields between the water and the woods**
- **The juxtaposition of human settlement and a wider undeveloped landscape of sea and hills** – human habitation, where present, is confined to a narrow coastal strip, comprising in most part domestic-scale housing and well-maintained gardens.
- **A peaceful landscape of constant movement** – the surrounding landscape of woodland, hills and promontories provides a peaceful setting but the waters are also a centre of movement. In spite of this activity, the area remains a tranquil place which is evidently enjoyed by many
- **The ever-changing vistas** – the views over the Kyles continually change travelling through the NSA. Some roads follow the shore, providing close-up views of the sea, while others are well above the coastline, affording distant panoramas. Hence intimate views of small bays and local settlements vie with large scale, distant views south to Arran or east to the hilly moorland and coastal settlements of North Ayrshire. The road north from Tighnabruaich provides particularly spectacular panoramic views over the Kyles to the undeveloped moorland of northern Bute and beyond
- **The gradual transition from land to sea in Loch Ruel** – the head of Loch Ruel shows one of the best transitions in the west of Scotland from woodland, through extensive shingle, sand and mud to open water

It is considered that the development in question has minimal or no effect upon the majority of the above special qualities. However, there is further detail in the report from 2010 in terms of '*ever-changing vistas*':

- The continuous changes in the morphology and topography of the coastline give a constantly changing visual impression of the landscape. The roads through the NSA - mainly the A886 and especially the A8003 – frequently change direction and altitude, to give a wide range of vistas in terms of scale

- Views reach as far afield as Arran and the North Ayrshire coast. The large scale views provide a sense of orientation in the complex interweaving of land and water in the Argyll and Firth of Clyde landscape
- There are several viewpoints along the A8003. The National Trust for Scotland's panoramic viewpoint at Creagan Dubh overlooks the three arms of water. Further south, another good viewpoint is at Creag Rubha Bhàin. This hill is a key landscape feature in the vicinity of Tighnabruaich. It encloses the settlement and marks a clear transition between the Rocky Mosaic landscape in the south and the start of the Craggy Upland landscape to the north.

It can be argued that, to a certain degree, the application site illustrates the “*constantly changing visual impression of the landscape*” referred to above. When travelling in a vehicle (particularly in a north-easterly direction away from the village of Tighnabruaich), the skyline position of the ark sculpture and its proximity to the A8003 road mean that it is visible but only over a relatively short stretch of the public road. This, combined with the nature of the building materials that have been used (open trusses made from non-reflective larch wood that will dull with time) and its design features (open and curved), result in a development whose current visual impact is not significant.

If one is stationary and parked in the layby close to the site, the principal view is in a south-easterly direction looking over the West Kyle and taking in the coastal strip of development that characterises the southern part of Kames; the eastern Ardlamont peninsula; the north-western end of the Isle of Bute; and beyond to Arran. By virtue of its location further eastwards, the ark sculpture does not interrupt views over this vista.

In terms of key viewpoints within the road network of the wider Kyles of Bute NSA (including the A8003 and also the B866 and A886 roads to the east), the sculpture is essentially only visible on the immediate approach to and from Tighnabruaich as described above. Importantly, the development is not visible at all from the National Trust for Scotland's panoramic viewpoint at Creagan Dubh.

Whilst potential viewpoints within the NSA on the Isle of Bute have not been visited (e.g. the West Island Way), it is considered to be highly unlikely that the ark sculpture would be readily visible having regard to the distance involved (approximately 3 km) and the intervening topography.

The ark sculpture is in a location that can be viewed from parts of Tighnabruaich and Kames but these viewpoints are not within the NSA and, given the distances involved (between 1.9 km and 3.7 km); the relatively small scale of the ark; and its open and curved design, it represents a very small element within a wider panorama.

Summary

It is recognised that, given the purpose of the ark sculpture as a means of raising awareness of the issues of climate change and ecological emergency, it is in a location that is visible to members of the public. However, its visual impact is relatively confined given that it can be seen only over a relatively short stretch of the A8003 road leaving Tighnabruaich in a north-easterly direction. In addition, the nature of the building materials that have been used (open trusses made from non-reflective larch wood that will dull with time) and its design features (open and curved) further mitigate its presence.

Although located within the Kyles of Bute NSA and in the ‘*Craggy Upland – Argyll*’ Landscape Character Type, it does not impinge to a significant degree on either the

special qualities of the NSA or the key features of the Landscape Character Type that have been identified by NatureScot and its predecessor, Scottish Natural Heritage.

As mentioned in Section (G) (iii) above, the applicant is seeking Planning Permission for the ark sculpture to remain in place “*until 2045 when the Scottish Government have committed to Scotland achieving net zero carbon emissions*”.

He has also undertaken “*to give an annual inspection of the structure to ensure it remains structurally sound for the duration. If it is found to be weakened or failing in any way that is beyond repair I will close off the site and take it down.*”

Whilst the appearance of the ark sculpture is presently considered to be acceptable, if it were to deteriorate through its exposure to the elements (or other reasons), it could begin to visually detract from the landscape. In order to address this potential scenario, it is proposed that a condition be attached that Planning Permission be granted for an initial period of five years thereby ensuring that the appearance and condition of the sculpture can be reviewed within a reasonable timescale.

On the basis of the foregoing, and subject to suitably-worded conditions, **the development is considered to accord with Policies LDP 3 and LDP 9 and Supplementary Guidance policies SG LDP ENV 12 and SG LDP Sustainable Siting and Design Principles of the Argyll and Bute Local Development Plan 2015.**

F. Road Network, Parking and Associated Transport Matters

The application does not involve the formation or alteration of any vehicular accesses onto the public road network so this is not a matter requiring assessment. One issue meriting some attention is the presence of the sculpture and the extent to which it might act as a distraction to drivers.

Given that West Cowal attracts a considerable number of visitors, there will be road users who are not familiar with routes such as the A8003 and/or who are unaware of the ark sculpture. One could argue that its presence might arouse curiosity if it happened to be seen unexpectedly with the possibility of vehicles slowing down or carrying out quick manoeuvres.

Having assessed this possibility, it is considered that the ark sculpture would not represent a hazardous distraction given its open (rather than solid) appearance; its distance from the road; and its non-illuminated and non-reflective timber finish.

The principal issue in relation to transport matters is the extent to which the development would lead to vehicles parking on the public road network to the detriment of road safety. As with other issues pertinent to this application, assessing the potential demand for parking in association with the development is not straightforward. Supplementary Guidance policy SG LDP TRAN 6 of the Argyll and Bute Local Development Plan (LDP) 2015 states that, “*in normal circumstances, adequate off-street parking or communal parking should be provided adjacent to all new development to ensure that vehicles are not parked on the road where they may impede traffic flow or cause a hazard.*”

In terms of the number of spaces that should be provided, the LDP advocates the use of ‘*Parking Standards*’ and it explains that, “*where a proposed development is not specified on the Council’s Parking Standards list, the council will use the nearest type of land use on the list as a basis for assessing the parking requirements.*”

The list of Parking Standards does not include '*public art installations*' or '*visitor attractions*' but it might be reasonable to use '*leisure*' as the closest type of use. The standard for this is one parking space per 22 square metres and, with the footprint of the actual ark sculpture being 80.6 square metres, this would equate to four parking spaces.

There is no on-site parking area; however, there is an existing car parking layby approximately 135 metres to the west of the ark sculpture and on the same side of the A8003 public road as the development. The applicant mentions that the location of the sculpture was partly chosen to be viewed from this layby and that there is the potential for people to walk up to the site from the parking area.

This layby measures approximately 65 metres in length and, by using a figure of 5 metres as the typical length of a parking space, up to 13 cars could potentially utilise this area.

Supplementary Guidance policy SG LDP TRAN 6 explains that a degree of flexibility on the lack of on-site parking will be available in certain situations, including where: -

- It can be shown by the applicant that the parking requirement can be met by existing car parks and that the demand for parking in connection with the development will not coincide with the peak demand from the other land uses in the area
- The development, due to special characteristics, is likely to generate a significantly lower demand for parking than the standards would imply

It is considered that there is sufficient vehicle parking in the existing layby to accommodate those persons wishing to either view or visit the ark sculpture (thus meeting the first point above) and that the type of development is unlikely to be as intensively used as a leisure facility, which is the closest equivalent in the list of Parking Standards (thereby meeting the second point above).

On the basis of the foregoing, **and by exercising an appropriate degree of flexibility, the development is considered to accord with Policy LDP 11 and Supplementary Guidance policy SP LDP TRAN 6 of the Argyll and Bute Local Development Plan 2015.**

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Location Plan Relative to Planning Application: 21/02190/PP



1:5,000

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ARGYLL AND BUTE COUNCIL

**PLANNING, PROTECTIVE SERVICES
AND LICENSING COMMITTEE**

CUSTOMER SUPPORT SERVICE

23 FEBRUARY 2022

**KEY PERFORMANCE INDICATORS FQ3 2021/22 –
DEVELOPMENT AND ECONOMIC GROWTH SERVICE**

1.0 EXECUTIVE SUMMARY

- 1.1 The Council's Performance and Improvement Framework (PIF) sets out the presentation process for regular performance reporting. As a consequence of Covid-19 alternative options for each PIF activity have been agreed by the Executive Leadership Team (ELT).
- 1.2 This paper presents the Planning, Protective Services and Licensing (PPSL) Committee with the FQ3 2021/22 Key Performance Indicators (KPIs) for the Development and Economic Growth Service.
- 1.3 It is recommended that the PPSL Committee reviews and scrutinises the FQ3 2021/22 KPI Report as presented.

ARGYLL AND BUTE COUNCIL

**PLANNING, PROTECTIVE SERVICES
AND LICENSING COMMITTEE**

CUSTOMER SUPPORT SERVICES

23 FEBRUARY 2022

KEY PERFORMANCE INDICATORS FQ3 2021/22 –

DEVELOPMENT AND ECONOMIC GROWTH SERVICE

2.0 INTRODUCTION

2.1. The Council's Performance and Improvement Framework (PIF) sets out the presentation process for regular performance reporting. As a consequence of Covid-19 alternative options for each PIF activity have been agreed by the Executive Leadership Team (ELT).

2.2 This paper presents the Planning, Protective Services and Licensing (PPSL) Committee with the FQ3 2021/22 Key Performance Indicators (KPIs) for Development and Economic Growth Service as agreed by Council.

3.0 RECOMMENDATIONS

3.1 That members review and scrutinise the FQ3 2021/22 KPI Report as presented.

4.0 DETAIL

4.1 To ensure appropriate monitoring and scrutiny of performance management during the Council's Covid-19 response and recovery the ELT have identified a Council-wide suite of 85 Success Measures detailed within the Service Plans.

From within the Service Plans some measures have been identified as Key Performance Indicators (KPIs) for 2021/22, which will be reported quarterly to the appropriate Strategic Committees.

Pyramid remains 'live' with all Success Measures aligned to Service Plans and updated as agreed.

4.2 Attached are the KPIs FQ3 2021/22 that are relevant to the PPSL Committee (Appendix 1).

5.0 CONCLUSION

- 5.1 Simplifying and focusing the performance reports in this manner is a proactive approach to help minimise back office function/non-essential activities whilst maintaining a level of service that supports scrutiny, performance monitoring and out statutory duties.

6.0 IMPLICATIONS

- 6.1 Policy: None
- 6.2 Financial: None
- 6.3 Legal: The Council has a duty to deliver best value under the Local Government in Scotland Act 2003
- 6.4 HR: None
- 6.5 Fairer Scotland Duty: None
- 6.5.1 Equalities - protected characteristics: None
- 6.5.2 Socio-economic Duty: None
- 6.5.3 Islands: None
- 6.6 Climate Change: None
- 6.7 Risk: Ensures that all our performance information is reported in a balanced manner
- 6.8 Customer Service: None

Kirsty Flanagan

Executive Director with responsibility for Development and Economic Growth

Policy Lead: Councillor David Kinniburgh

24 January 2022

For further information contact:

Jane Fowler, Head of Customer Support Services

Tel: 01546 604466

APPENDICES

Appendix 1 – Key Performance Indicators for -

- Development and Economic Growth Service FQ3 2021/22

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Delivering Our Outcomes – This highlights past performance as illustrated through our Key Performance Indicators (KPIs)

KEY TO SYMBOLS

R Indicates the performance has not met the expected Target

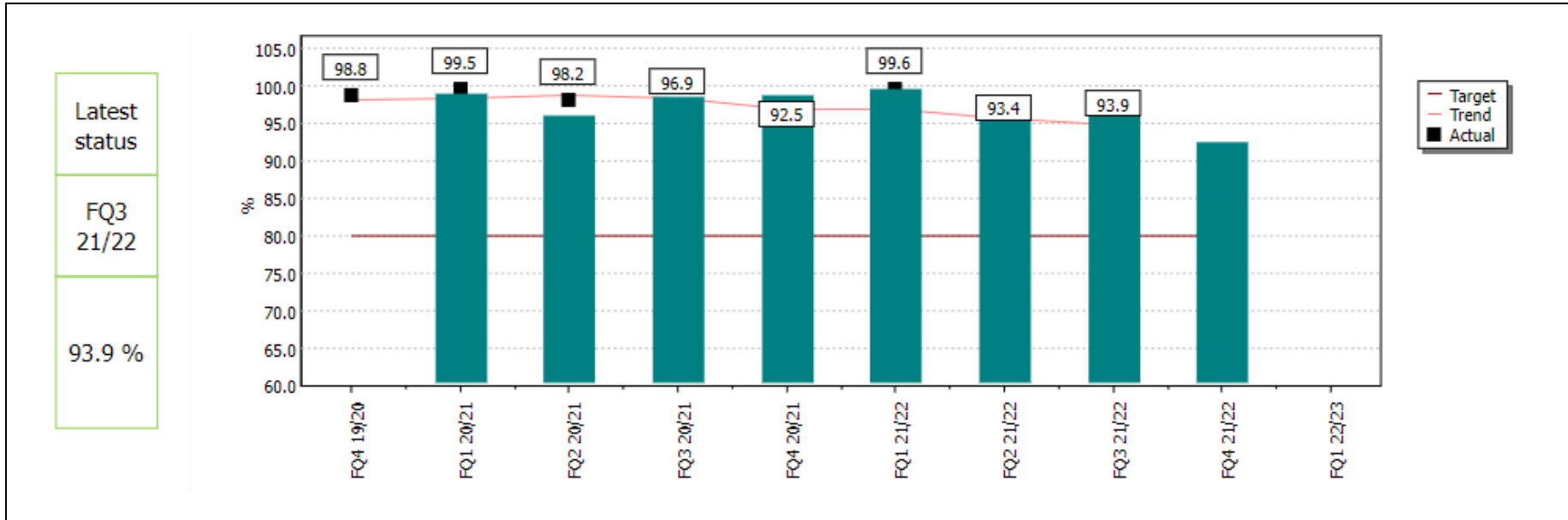
G Indicates the performance has met or exceeded the expected Target

↓ ↑ → The Performance Trend Arrow indicates the direction of travel compared to the last performance reporting period

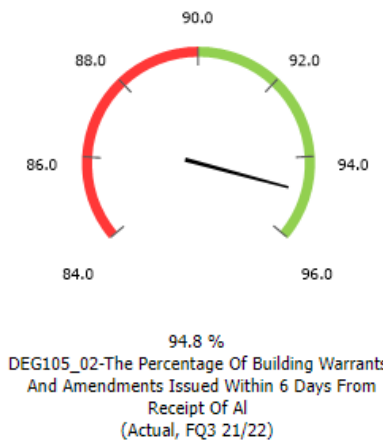
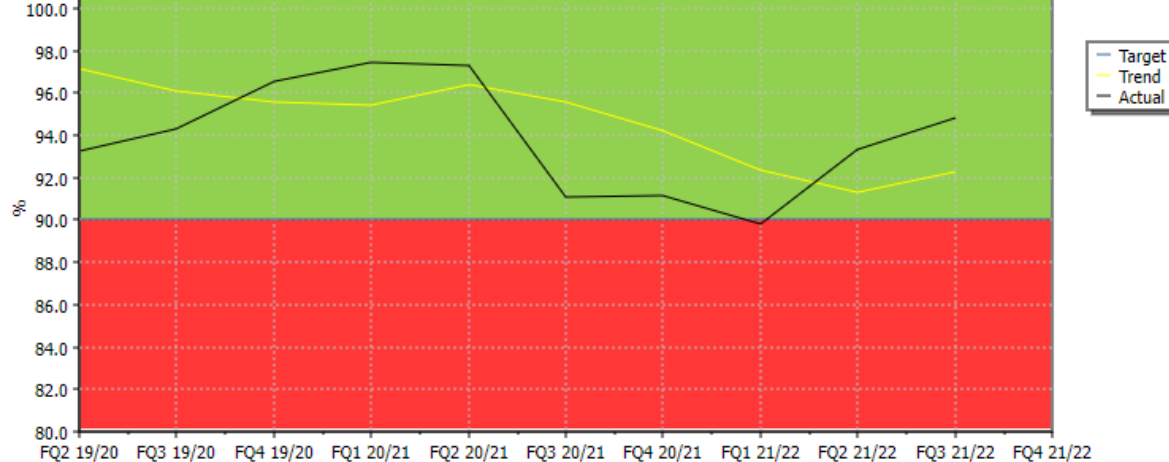
FQ3 2021/22 Key Performance Indicators for Development and Economic Growth

DELIVERING OUR OUTCOMES – OUR KEY PERFORMANCE INDICATORS			
<p>Indicator: DEG105_01 Respond to Building Warrant applications within 20 days.</p> <p>Why measure this? Providing a prompt service helps support the local economy. This national target allows us to benchmark our performance.</p>			
<p>Commentary: This is one of the national performance measures for building standards in Scotland. In quarter 3, there has been an increase in performance of 0.5% to 93.9% which is well above the 80% target. This is excellent performance and has been achieved in a period where:</p> <ol style="list-style-type: none"> 1. In quarter 3 we had annual leave entitlement being used by the majority of staff 2. Dangerous building work continued across the area in Campbeltown, Oban (Taynuilt Hotel), Dunoon (Argyll Street) and 5-7 East Clyde Street, Helensburgh. 3. Building warrant numbers are higher than 20/21 but lower than 19/20 as a result of Covid and also increase in price/available of building materials. To offset this, we undertook commercial work on behalf of Scottish Borders Council in quarter 3. 4. The team have prioritised work well, are predominately working from home and are using a variety of different means to undertake work (e.g. remote verification inspections etc.) Corrective actions We will continue to monitor the situation proactively as there is 2.5FTE vacancies for building surveyors which may impact on FQ4 performance. 			
<p>This indicator is above target and performance has improved since the last reporting period</p>			
TARGET FQ3 80%	ACTUAL FQ3 93.9% G	BENCHMARK FQ2 2020/21: 96.9% Previous quarter performance	PERFORMANCE ↑

FQ3 2021/22 Key Performance Indicators for Development and Economic Growth



FQ3 2021/22 Key Performance Indicators for Development and Economic Growth

DELIVERING OUR OUTCOMES – OUR KEY PERFORMANCE INDICATORS																																																			
<p>Indicator: DEG105_02 The percentage of building warrants and amendments issued within 6 days from receipt of all satisfactory information.</p> <p>Why measure this? Providing a prompt service helps support the local economy. This national target allows us to benchmark our performance.</p> <p>Commentary: This is a local performance measure as the national measure is 10 days, as opposed to 6 days. It is proposed that we now report on 10 days, so we can benchmark with our peers. Performance for 10 days (and indeed 6 days) is above target and in quarter 3, there is 94.8% of all applications were issued within target. This is excellent performance of the team and the use of remote verification inspections support this work. Corrective actions We will continue to monitor the situation proactively as there is 2.5FTE vacancies for building surveyors which may impact on FQ4 performance.</p>																																																			
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<p>TARGET FQ3 90%</p>	<p>ACTUAL FQ3 94.8%</p> <p style="color: green; font-size: 1.2em; font-weight: bold;">G</p>	<p>BENCHMARK No benchmark</p>	<p>PERFORMANCE</p> <p style="font-size: 1.5em; font-weight: bold;">↑</p>																																																
 <p style="text-align: center;">94.8 % DEG105_02-The Percentage Of Building Warrants And Amendments Issued Within 6 Days From Receipt Of All (Actual, FQ3 21/22)</p>		 <table border="1" style="margin: 0 auto; border-collapse: collapse; font-size: 0.8em;"> <caption>Performance Trend Data (Estimated from Chart)</caption> <thead> <tr> <th>Quarter</th> <th>Actual (%)</th> <th>Trend (%)</th> <th>Target (%)</th> </tr> </thead> <tbody> <tr><td>FQ2 19/20</td><td>93.0</td><td>97.0</td><td>90.0</td></tr> <tr><td>FQ3 19/20</td><td>94.5</td><td>96.0</td><td>90.0</td></tr> <tr><td>FQ4 19/20</td><td>96.5</td><td>95.5</td><td>90.0</td></tr> <tr><td>FQ1 20/21</td><td>97.5</td><td>95.5</td><td>90.0</td></tr> <tr><td>FQ2 20/21</td><td>97.0</td><td>96.5</td><td>90.0</td></tr> <tr><td>FQ3 20/21</td><td>91.5</td><td>95.5</td><td>90.0</td></tr> <tr><td>FQ4 20/21</td><td>91.5</td><td>94.5</td><td>90.0</td></tr> <tr><td>FQ1 21/22</td><td>90.0</td><td>92.5</td><td>90.0</td></tr> <tr><td>FQ2 21/22</td><td>93.5</td><td>91.5</td><td>90.0</td></tr> <tr><td>FQ3 21/22</td><td>94.8</td><td>92.5</td><td>90.0</td></tr> <tr><td>FQ4 21/22</td><td>95.5</td><td>92.5</td><td>90.0</td></tr> </tbody> </table>		Quarter	Actual (%)	Trend (%)	Target (%)	FQ2 19/20	93.0	97.0	90.0	FQ3 19/20	94.5	96.0	90.0	FQ4 19/20	96.5	95.5	90.0	FQ1 20/21	97.5	95.5	90.0	FQ2 20/21	97.0	96.5	90.0	FQ3 20/21	91.5	95.5	90.0	FQ4 20/21	91.5	94.5	90.0	FQ1 21/22	90.0	92.5	90.0	FQ2 21/22	93.5	91.5	90.0	FQ3 21/22	94.8	92.5	90.0	FQ4 21/22	95.5	92.5	90.0
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FQ3 2021/22 Key Performance Indicators for Development and Economic Growth

DELIVERING OUR OUTCOMES – OUR KEY PERFORMANCE INDICATORS			
<p>Indicator: DEG110_03 The time it takes to determine 'local' planning applications is no longer than 10% above the National Average.</p> <p>Why measure this? This indicates the efficiency of the Council's planning process. Prompt planning application decisions is a driver to support and help grow the local economy.</p> <p>Commentary: The Development Management Team continues to operate with reduced resource. Although the situation improved slightly in FQ3 following some success in recruitment, it will naturally take time for those taking up vacant posts to get up to speed. During FQ3, several legacy applications were finalised and determined, the majority of which were in the OLI team, a team which has carried vacancies and experienced staff turnover in posts over a prolonged period. The headline performance figure of an average of 15.8 weeks to determine these applications, is badly skewed by 7 applications which took between 1 and 4 years to determine. Those taking in excess of a year can be broken down into areas, as follows:- OLI: 5 applications, varying between 1 year and 4 years MAKI: 1 application, which took 2 years H&L: 1 application, which took 2 years Without these 7 excessive applications, the average time to determine would have been 12.2 weeks.</p>			
<p>This indicator is below target and performance has decreased since the last reporting period</p>			
TARGET FQ3 10 Weeks	ACTUAL FQ3 15.8 Weeks R	BENCHMARK Scottish National Average: 2019/20: TBC	PERFORMANCE
<div style="border: 1px solid red; padding: 5px; margin-bottom: 5px;">Latest status</div> <div style="border: 1px solid red; padding: 5px; margin-bottom: 5px;">FQ3 21/22</div> <div style="border: 1px solid red; padding: 5px;">15.8 Wks</div>			

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ARGYLL AND BUTE COUNCIL**PPSL****Development and Economic Growth****23rd February 2022**

Planning Performance Framework 2020/21

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 2020/21 PPF was submitted in July 2021 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 22nd September 2021.
- 1.3 Overall the feedback report is considered overall to be positive registering eight 'green', two 'amber' outcomes, and three 'red' outcomes across the thirteen performance indicators assessed. Whilst it is disappointing to have any 'red' markers it is noted that these relate to performance measures which have been directly impacted by the pandemic and its impact upon working arrangements, our ability to engage with the public, staff availability (absence and vacancies), and workflow. It is further noted that even where performance markers have fallen below the National average the deviation is marginal, and/or there is valid justification for that position.
- 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 2021/22 is due to be submitted in July 2022.
- 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.

ARGYLL AND BUTE COUNCIL

PPSL

Development and Economic Growth

23rd February 2022

Planning Performance Framework 2020/21

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 10th 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 Public Finance, Planning and Community Wealth, Tom Arthur 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 Tom Arthur MSP is contained in full at **Appendix A**, however some pertinent points are highlighted below:-
- **PM 1 Decision Making (Red):** This marker was previously identified as Green in 2019/20. Performance in the determination of planning applications has been significantly affected by the Coronavirus pandemic during a reporting period where the effects of the initial March 2020 lockdown and subsequent service disruption/recovery have significantly impacted the time taken to determine applications. During the 2020/21 reporting period the time taken to determine all categories of application increased. This position was not unexpected and is reflective of a position where Scottish averages have also increased across the board. On a more positive note it is highlighted that Major applications were determined faster than the Scottish average (-0.9 weeks); and Local (non-householder) applications were only marginally (+0.1 weeks) slower than the Scottish average. The determination of householder applications was significantly slower (+1 week) slower than the Scottish average however this is indicative of the cautious approach taken to the resumption of site visit activity to domestic premises, and prioritisation of resources toward determination of applications that were required to respond to the pandemic, would deliver inward investment/employment, or were time critical in relation to grant funding or public health issues. It is further noted that whilst the effects of the pandemic have been less severe during 2021/22 there has been continued effects on from the pandemic that will be evident in performance for the next reporting period.
 - **PM 5 Enforcement Charter (Green):** This marker has been green for the previous three reporting periods and recognises that the Council's Planning Enforcement Charter has been subject to its statutory bi-annual review. It is noted that the Charter is due to be reviewed again by March 2022.
 - **PM 6 Continuous Improvement (Amber):** This marker was previously identified as Amber in the previous four reporting periods. The Planning Service received positive feedback for continuing to progress service improvements during 2020/21 despite the impact of the pandemic, these are detailed in Part 3 of the PPF and include retention of Customer Service Excellence status. The feedback acknowledges that a number of service improvements have been put on hold as a result of Covid-19. It was however highlighted that the current LDP is now more than 5 years old and that whilst there are clear timescales for adoption of the next LDP this will not be within the required 5 year period. It was also noted that decision making timescales for local and householder applications were slower than the Scottish average and the previous reporting period, and that the number of legacy cases increased.
 - **PM 7 Local Development Plan (Red):** This marker was previously identified as green but has moved to Red as the Argyll and Bute Local Development Plan 2015 has not been replaced within the required 5 year period. Despite the current

adopted LDP being more than 5 years old, this policy framework is still considered up to date and relevant, and a more than adequate housing land supply still exists as demonstrated in our annual Housing Land Audit (which has recently been cited by Scottish Government as an example of good practice).

- **PM 8 Development Plan Scheme (Amber):** This marker was previously identified as Amber in the previous two reporting periods. 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. Members will be aware that the PLDP2 process has taken longer than planned, partly due to Covid pressures, staff resourcing demands, the complexity of dealing with over 1000 representations, and extended periods taken for public and stakeholder consultation at various points during the Plan production. A revised Development Plan Scheme will be put to PPSL in March 2022. LDP2 is currently submitted to the DPEA for Examination. The timetable of the Examination is in the control of the DPEA not the Local Authority but we would estimate 9 months, and then a further 3 months is required to assess the Reporters Report and prepare any recommended modification to the PLD2 before adoption, currently anticipated early 2023. An identified risk in this process is the National Planning Framework 4, which is due to be approved by Scottish Government in summer 2022 and may cause delay in our PLDP2 Examination process.
- **PM 14 Stalled Sites / Legacy Cases (Red):** This marker was previously identified as Amber in the previous two reporting periods. The feedback commentary identifies that whilst 17 legacy cases were cleared during the reporting period 40 new cases reached legacy status during the same time period with a total of 57 undetermined applications as of 31st March 2021. The degradation in this measure is directly attributable to the matters identified in PM 1 above in relation to determination timescales, but also a reduction in availability of management resource available to actively progress determination of legacy cases whilst addressing the other significant challenges facing the DM Service during this period.

Focus on Performance / Resources / Impact of Covid-19

- 4.6 The cover letter from the Minister for Public Finance, Planning and Community wealth, Tom Arthur MSP recognises that this has been a challenging period “for people working in planning, in the development sector and across Scotland’s communities” and expresses that “we should all be very proud of how planning has responded to the coronavirus pandemic, adjusting as necessary to keep going and supporting recovery.”
- 4.7 It is highlighted that whilst the 2020-21 PPF reporting period has expectedly seen small changes overall in the markings and that the general stability is “testament to the hard work and flexibility of authorities during these very difficult times”.
- 4.8 The Minister also advises that whilst the Scottish Government’s own work programme was impacted by the pandemic they have recommenced their own planning performance and fee review and are in the process of finalising proposals with intent to lay regulations during 2021/22 for increased fees. It is also intended to commence the recruitment of a National Planning Improvement Co-ordinator early in 2022.

5.0 CONCLUSION

- 5.1 The 2020/21 PPF demonstrates comparable performance to National statistics and agreed PPF Performance Markers and showcases a number of our high quality projects and outcomes, and the manner in which we have responded to the challenges of operating within a pandemic.
- 5.2 Feedback from the Scottish Government is overall considered to be 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.
- 6.8 **Climate Change:** None

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

Policy Lead:- David Kinniburgh
4th February 2022

For further information contact: Peter Bain – 01546 604204

APPENDICES

Appendix A – Planning Performance Framework 2020/21 Feedback

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Minister for Public Finance, Planning and Community
Wealth
Tom Arthur MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

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

Pippa Milne
Argyll & Bute Council

29 November 2021

Dear Pippa Milne

I am pleased to enclose feedback on your authority's tenth Planning Performance Framework (PPF) Report, for the period April 2020 to March 2021.

This is the first time I have written to you individually in my capacity as Planning Minister since my appointment earlier this year. I am very grateful for the support and welcome I have received and look forward to working with you.

This year has continued to present challenges for people working within planning, in the development sector and across Scotland's communities. We know people are doing the best they can to engage and operate, sometimes in ways and circumstances that may not be ideal, and with many still predominantly working from home. I appreciate that many of you will have had to make difficult choices in what work is prioritised, in much the same way the Government and Planning and Architecture Division has had to. However, we should all be very proud of how planning has responded to the coronavirus pandemic, adjusting as necessary to keep going and supporting recovery. I want to take this opportunity to thank you and your staff for all the work that has been done during the pandemic and to support our ongoing recovery.

When my predecessor wrote to you last year he indicated that the pandemic had required a rethink about the timing and prioritisation of our planning work programme. A number of our workstreams were paused or delayed as a result, including the review of the planning performance and fee regimes, which had been the subject of a detailed consultation that concluded in early 2020. However, in October 2021 we published a revised planning implementation programme (<https://www.gov.scot/publications/transforming-planning-practice-updated-planning->

[reform-implementation-programme/](#)). You will note that we have now recommenced our planning performance and fees review, which reflects the importance Scottish Government attaches to this work. We are currently finalising proposals and intend to lay regulations before the end of the year to introduce increased fees, providing a boost to planning authorities' resources. We also intend to commence the recruitment of the National Planning Improvement Coordinator early in 2022.

Turning to the 2020-21 PPF reporting year, although, as expected, there have been some small changes overall in the markings awarded, the figures indicate that performance has remained relatively stable. This is a testament to the hard work and flexibility of authorities during these very difficult times and I believe that overall good progress continues to be made by Scotland's planning authorities.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tom Arthur', written in a cursive style.

Tom Arthur

Minister for Public Finance, Planning and Community Wealth

**CC: Peter Bain
Fergus Murray**

PERFORMANCE MARKERS REPORT 2020-21

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	Decision-making: continuous reduction of average timescales for all development categories [Q1 - Q4]	Red	<p>Major Applications Your timescales of 40.4 weeks are slower than the previous year but faster than the Scottish average of 41.3 weeks. RAG = Amber</p> <p>Local (Non-Householder) Applications Your timescales of 12.5 weeks are slower than the previous year, the statutory timescale and the Scottish average of 12.4 weeks. RAG = Red</p> <p>Householder Applications Your timescales of 9.1 weeks are slower than the previous year, the Scottish average of 8.1 weeks and the statutory timescale. RAG = Red</p> <p>Overall RAG = Red</p>
2	<p>Processing agreements:</p> <ul style="list-style-type: none"> offer to all prospective applicants for major development planning applications; and availability publicised on website 	Green	<p>You encourage processing agreements to applicants for all major and locally significant developments through pre-application discussions, user forums and online. RAG = Green</p> <p>Processing agreement information is available through your website. RAG = Green</p> <p>Overall RAG = Green</p>
3	<p>Early collaboration with applicants and consultees</p> <ul style="list-style-type: none"> availability and promotion of pre-application discussions for all prospective applications; and clear and proportionate requests for supporting information 	Green	<p>You provide a pre-application advice service which is promoted through the website, user forums and by staff engaging with prospective applicants. RAG = Green</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. Evidenced through a number of case studies. RAG = Green</p> <p>Overall RAG = Green</p>

4	Legal agreements: conclude (or reconsider) applications after resolving to grant permission reducing number of live applications more than 6 months after resolution to grant (from last reporting period)	Green	Applications subject to a legal agreement were determined slower than last year but faster than the Scottish average. You state that applications which are subject to a legal agreement are regularly reviewed to ensure progress and completion within 6 months.
5	Enforcement charter updated / re-published within last 2 years	Green	Your enforcement charter was reviewed within the last two years, and has been updated with an addendum in light of the relaxed approach being taken in response to pandemic.
6	Continuous improvement: <ul style="list-style-type: none"> • progress/improvement in relation to PPF National Headline Indicators; and • progress ambitious and relevant service improvement commitments identified through PPF report 	Amber	Your LDP more than five years old; while clear timescales exist for adopting the next LDP this will not be within the required 5 year timescale. Your decision making timescales for local and householder applications are slower than the Scottish average and the previous year. Your enforcement charter is up-to-date. The number of legacy cases has increased. RAG = Red Despite the impact of the pandemic, progress has been made against a number of last years' service improvement commitments. You have identified a good range of further commitments for the coming year. RAG = Amber Overall RAG = Amber
7	Local development plan less than 5 years since adoption	Red	Your development plan was more than 5 years old at the time of reporting.
8	Development plan scheme – next LDP: <ul style="list-style-type: none"> • on course for adoption within 5 years of current plan(s) adoption; and • project planned and expected to be delivered to planned timescale 	Amber	Your LDP will not be replaced within the 5 year cycle, however, you still consider that it is fit for purpose and will be so until it is replaced with LDP2. RAG = Amber LDP2 is project planned with management and reporting processes in place to ensure adoption in 2022. RAG = Green Overall RAG = Amber
9	Elected members engaged early (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i>	N/A	
10	Cross sector stakeholders* engaged early (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	Regular and proportionate policy advice produced on information required to support applications.	Green	Your website which contains information for applicants to consider before making an application. Relevant supplementary guidance is reviewed and updated regularly. Use is made of the National Validation Standard published by HoPS, which council officers informed.
12	Corporate working across services to improve outputs and services for customer benefit (for example: protocols; joined-up	Green	A number of your case studies demonstrate your approach to corporate working such as the Shopfront Improvement Scheme, Dunbeg Masterplan and Covid-19 response work.

	services; single contact arrangements; joint pre-application advice)		
13	Sharing good practice, skills and knowledge between authorities	Green	Your PPF report, including the case studies, set out a number of examples of benchmarking and knowledge sharing. Planning officers attend a number of forums, such as HopS, the LA Aquaculture Forum, and Clyde Marine Planning Partnership. Officers have engaged with other rural authorities to review and update procedures for handling prior notification/approval submissions.
14	Stalled sites / legacy cases: conclusion or withdrawal of old planning applications and reducing number of live applications more than one year old	Red	You have cleared 17 cases during the reporting year, with 57 cases still awaiting conclusion. This is an increase on the number which remained at the end of last year.
15	Developer contributions: clear and proportionate expectations <ul style="list-style-type: none"> • set out in development plan (and/or emerging plan); and • in pre-application discussions 	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. RAG = Green Expectations for developer contributions are established in pre-application discussions. RAG = Green Overall RAG = Green

ARGYLL AND BUTE COUNCIL
Performance against Key Markers

Marker		13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
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
2013-14	0	5	8
2014-15	0	2	11
2015-16	0	3	10
2016-17	1	3	11
2017-18	1	3	11
2018-19	0	3	10
2019-20	0	3	10
2020-21	3	2	8

Decision Making Timescales (weeks)

	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	2020-21 Scottish Average
Major Development	59.1	14.1	23.3	22.1	37.9	28.3	33.9	40.4	41.3
Local (Non-Householder) Development	13.1	10.8	10.3	12.4	12.6	10.8	10.2	12.5	12.4
Householder Development	7.2	6.9	7.0	7.5	7.9	7.1	7.2	9.1	8.1

ARGYLL AND BUTE COUNCIL**PPSL COMMITTEE****DEVELOPMENT & ECONOMIC GROWTH****23rd February 2022**

Update on Planning Appeal Reference: PPA-130-2080 – Land south-east of Castle Toward, Toward, PA23 7UG, Argyll and Bute

1. INTRODUCTION

This report provides an update on the recent decision by the Planning and Environmental Appeals Division in relation to Planning Appeal Reference PPA-130-2080, whereby the appeal was allowed (subject to the re-wording of original planning conditions) and the decision to refuse planning permission from the PPSL was overturned. There is a right of appeal to the Court of Session only in regard to a point of law and an appeal must be made within six weeks from the date of the appeal decision.

2. RECOMMENDATION

Members are asked to note the content of this report.

3. DETAILS OF APPEAL DECISION

Decision by: Mr Martin H Seddon, a Reporter appointed by the Scottish Ministers;
Planning Appeal Ref.: PPA-130-2080;
Site Address: Land south-east of Castle Toward, Toward, PA23 7UG;
Appeal by: Keith and Denice Punler against the decision by Argyll and Bute Council;
Application for Planning Permission Ref.: 19/00447/PP dated 1st March 2019 and refused by notice dated 20th January 2021;
The Development Proposed: Erection of 1800mm high deer fence;
Date of Site Visit by Reporter: 29th June 2021;
Date of Appeal Decision: 23rd December 2021.

The appeal was upheld and the decision to refuse planning permission by PPSL was overturned and planning permission granted subject to conditions on appeal; a copy of the appeal decision is appended at Appendix 1 hereof.

Whilst the Reporter upheld the appeal, he was in agreement with the Council's view that the public access requirements should be safeguarded and improved in line with Argyll and Bute Local Development Plan policies LDP 11 and SG LDP TRAN1. The Reporter concluded that conditions 2d and 4 of permission ref: 17/02052/PP were reasonable and necessary and met the tests in Circular 4/1998, having regard to policy LDP 11 of the Argyll and Bute Local Development Plan (LDP) and supplementary guidance SG LDP TRAN 1 and allowed the appeal and grant planning permission for the erection of 1800 mm high deer fence in accordance with the application ref: 17/02052/PP subject to the conditions included in the schedule at the end of the decision (refer to APPENDIX 1 below).

The appeal was accompanied by a claim for expenses on the grounds that the Council had acted unreasonably by imposing conditions which in the applicants' view clearly failed to meet the criteria set out in Circular 4/1998: The use of conditions in planning permissions.

The Reporter found that the relevant planning conditions met the six tests in Circular 4/1998 and relevant development plan policies and declined to make any award of costs. The Reporter concluded that he did not consider that the Council had acted in an unreasonable manner in refusing planning permission or that any unnecessary costs were incurred by the appellant. The decision in respect of this matter is attached as Appendix 2 below.

There is a right of appeal to the Court of Session only in regard to a point of law and an appeal must be made within six weeks of the date of the appeal decision.

4. IMPLICATIONS

- 4.1 Policy – None – the Reporter concluded that the appeal proposal was consistent with the relevant provisions of the development plan.
- 4.2 Financial – None – the Reporter declined to award cost against the Council.
- 4.3 Legal – None
- 4.4 HR – None
- 4.5 Fairer Scotland Duty:
 - 4.5.1 Equalities – protected characteristics – None
 - 4.5.2 Socio-economic duty – None
 - 4.5.3 Islands - None
- 4.6 Climate change - None
- 4.7 Risk – None
- 4.8 Customer Service – None

Kirsty Flanagan – Executive Director with Responsibility for Development and Economic Growth

Councillor David Kinniburgh – Policy Lead for Planning and Regulatory Services

Fergus Murray – Head of Development and Economic Growth

For Further Information Contact: Peter Bain – Development Manager – 01546 604204

Appendices:

Appendix 1 – Appeal Decision Notice

Appendix 2 – Appeal Expenses Decision Notice

APPENDIX 1: APPEAL DECISION NOTICE

Planning and Environmental Appeals Division

Appeal Decision Notice

T: 0300 244 6668

E: dpea@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by Martin H Seddon, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-130-2080
- Site address: Land south-east of Castle Toward, Argyll PA23 7UG
- Appeal by Keith and Denise Punler against the decision by Argyll and Bute Council
- Application for planning permission reference 19/00447/PP dated 1 March 2019 and refused on 20 January 2021 to carry out the development without compliance with conditions 2d and 4 imposed in the grant of planning permission ref: 17/02052/PP dated 26 January 2018.
- The development proposed: erection of 1800 mm high deer fence
- The conditions appealed against are:
 - Condition 2d: 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. Reason: *To ensure continued public access around Castle Toward Estate and to ensure consistency with policy SG LDP TRAN 1.*
 - Condition 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, 1.8 m width and 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 of 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.*
- Date of site visit by Reporter: 29 June 2021

Date of appeal decision: 23 December 2021

Decision

I allow the appeal and grant planning permission for the erection of 1800 mm high deer fence in accordance with the application ref: 17/02052/PP subject to the conditions included in the schedule at the end of this decision.

Reasoning

1. The appeal relates to the refusal of an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 which sought to remove two conditions from a permission for the erection of a deer fence. The determining issues in this appeal are

Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR
www.gov.scot/policies/planning-environmental-appeals/



PPA-130-2080

2

whether the disputed conditions 2d and 4 of permission ref: 17/02052/PP are reasonable and necessary and meet the tests in Circular 4/1998: The use of conditions in planning permissions, having regard to policy LDP 11 of the Argyll and Bute Local Development Plan (LDP) and supplementary guidance SG LDP TRAN 1.

2. The appellants have submitted a claim for the award of expenses against the council. That is the subject of a separate decision.

3. LDP policy LDP 11 indicates that the council will support all development proposals that seek to maintain and improve internal and external connectivity and make best use of existing infrastructure. Several relevant criteria are listed including that public access is safeguarded. Supplementary guidance SG LDP TRAN 1 provides additional detail to LDP policy LDP 11 and sets out measures where development would have a significant effect upon public access interests.

4. Public access to the immediate grounds of Castle Toward was physically restricted by the erection of an enclosing deer fence. The appellants inform me that the new fence was erected on the line of a previous traditional 1 m high estate fence. Around 80% of the new deer fence had been erected prior to the submission of planning application ref: 17/02052/PP which sought approval of the development.

5. The only formal right of way which crosses the Castle Toward estate is Core Path C208 which leads up the western side of the property and heads north towards the Chinese Lakes. The appellants have applied for a Path Diversion Order under Section 208 of the Town and Country Planning (Scotland) Act 1997 to divert a small section of the core path which is affected by the new deer fence. Although there is a 'claimed' right of way affecting the estate it has no statutory status. The Land Reform (Scotland) Act 2003 (the Act) established statutory public rights of access to land for recreational and other purposes. The appellants accept the principle of the Right to Roam on their land outwith the area enclosed by the new deer fence.

6. Section 6 of the Act concerns land over which rights are not exercisable. Section 6 (b) includes land which consists of land contiguous to and used for the purposes of a school. "School" is defined as not only a school within the meaning of section 135(1) of the Education (Scotland) Act 1980, but also any other institution which provides education for children below school age within the meaning of that provision.

7. Prior to the acquisition of the estate by the appellants it was owned by Argyll and Bute council. The council submits that Section 6 (1) (b) (iii) of the Act considers the use of the land and not the planning use class. In the council's view as soon as the school closed, and the main building was unoccupied, the public would have had a legal right of access right up to the building until permission to allow redevelopment of the building as a dwellinghouse was granted and work commenced. This appears to be a reasonable view because Section 6 (1) (b) (iii) of the Act refers to 'used for the purposes of a school'. The actual date when the land ceased to be used for the purposes of a school is quoted by the council as November 2009, whereas the appellant cites its later use for a residential primary school visit and a residential orienteering event in 2012. Despite this, and based upon the actual use of the land, rather than its planning status, there would have been public access to the estate under the right to roam up until permissions refs: 16/00996/PP for a change of use from Class 8 (residential institution) to Class 9 (dwellinghouse) and

16/02356/MPLAN for a masterplan, including areas of private grounds, had been implemented. On that basis the provision of the deer fence would have excluded access to land, which for a short period at least was available to the public under the right to roam. However, even if the appellant's submissions on this matter were to be accepted, regard still has to be had to development plan policies relevant to the erection of the deer fence.

Whether the disputed conditions 2d and 4 of permission ref: 17/02052/PP are reasonable and necessary and meet the tests in Circular 4/1998

8. Circular 4/1998 sets out six tests with which to assess the validity of planning conditions:

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

9. At my site inspection I walked along the informal footpath which links the east and west estate driveways at the southern side of the estate. Much of the route runs parallel to the coast road, and it forms a means of access from the west to the ruins of the original Castle Toward. The path winds its way through woodland, grassland and areas dominated by bracken. It was dry sunny weather at the time of my site inspection, but it was apparent that poor drainage would result in muddy conditions during and after rain, and as demonstrated in submissions from interested members of the public. The general area had been used in the past for military purposes, evidenced by occasional concrete footings. Although the path is passable for the able-bodied, in certain places access for anyone with ambulant disabilities would be difficult.

10. The appellants consider condition 2d to be unreasonable because they contend that no rights of access previously existed to land within the area enclosed by the deer fence and the public have access to various informal routes within the rest of the estate through the right to roam principle. Reference is made to the improvements that they have carried out to the estate and that 'continued public access around Castle Toward estate', as stated in the reasons for the condition, is already established. The appellants consider that condition 2d imposes an unreasonable and unjustified financial burden and maintenance responsibility which, in their view on balance, outweighs the nature of the consent for the deer fence that benefits from planning history and precedent. The appellants also assert that condition 2d lacks precision by referring to 'path/s to the south of the enclosed area' without providing details of which paths are concerned.

11. Condition 2d is one of the requirements of criteria a-f set out in condition 2. Condition 2 commences with a requirement for the appellant to submit a detailed access plan including mitigation measures for the written approval of the planning authority within 3 months of the date of permission ref: 17/02052/PP (26 January 2018).

12. In determining the application, the council had regard to relevant development plan policies. The reason for condition 2d was: "*To ensure continued public access around Castle Toward Estate and ensure consistency with policy SG LDP TRAN 1*". Access

through the woodland to the south of the area now enclosed by the deer fence would be open to the public through the right to roam. However, I consider a signed and maintained footpath is likely to provide a much better recreational facility for people rather than just an area of accessible woodland. It would also allow the appellants to manage access more readily. Policy SG LDP TRAN 1 (A) requires development proposals to, amongst other things, enhance public rights of access to the outdoors in a manner that is appropriate and proportionate to the specific characteristics and the scale and impact of the proposed development on access issues. The footnotes to the policy explain that this includes walking paths and significant areas, including woodland, where there are wider rights of access under the Land Reform Act 2003. Condition 2d therefore secures compliance with policy SG LDP TRAN 1 and LDP policy LDP 11.

13. The appellants consider that the reference in condition 2d to required improvements to the path/s to the south of the enclosed area, without providing detail of the exact path or path lacks precision. However, it also provided flexibility for the appellants to submit a scheme of their choice as part of the required access plan and to their benefit in terms of the chosen footpath routeing following determination of the application. I do not find a clear failure to meet the test of precision in this respect. Now that a route is discernible with the passage of time, and as followed at the site inspection, the matter is able to be further clarified.

14. Condition 2d includes a requirement for standard cross section construction details for the southern footpath, including width. I consider that this would not be particularly onerous or unreasonable in all other respects. Therefore, I find that the condition is reasonable and necessary and meets the six tests in Circular 4/1998.

15. Condition 4 requires further detail of the southern footpath, prior to commencement of works. The appellants have referred to the other work carried out to the route of the path linking the Chinese Lakes with the eastern driveway. I walked the route at my site inspection and acknowledge the improvements undertaken, including the provision of a new footbridge. Nevertheless, details of the construction and mitigation measures for that route were required under condition 2 a-c of permission ref: 17/020052/PP.

16. The appellants also state that they have carried out other improvements across the estate, and outwith the deer fence at significant expense which they consider provide sufficient and ample access opportunities. Reference is made to council officers being satisfied with the path network and in particular the written comment dated 12 July 2019 in relation to condition 2d and the southern path that *"This is the area we walked as an 'informal route' but required various improvements to make this route available as an east-west link. No details submitted although we have discussed what minor improvements may make this route acceptable"*. Also, in relation to condition 4: *"This is the key condition which requires to be satisfied but the time limits specified make it difficult to vary. We have walked a potential informal route linking Toward Castle with the western entrance. Subject to some minor improvements, this informal path route could be provided as an east-west link"*. The comments were made in respect of a breach of condition notice ref: 18/00197/ENBOC3, following an unsuccessful Local Review Body appeal against conditions 2, 3 and 4 of permission ref: 17/02052/PP (erection of the deer fence) and the submission of application ref: 19/00447/PP to remove conditions 2d and 4 from permission ref: 17/02052/PP.

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17. I note that further correspondence in October 2019 resulted in the council requesting the submission of details pursuant to conditions 2,3 and 4 of permission ref: 17/02052/PP. It seems to me that the appellants were given the opportunity by the council to reach agreement over the route and specification for the southern path, but the appellants eventually sought to remove the requirement for the path altogether.

18. The reason given for condition 4 was: *"To improve access around the estate and address any loss of access resulting from the development hereby approved"*. I consider that the establishment of the southern footpath would improve access around the estate by establishing a defined route in an area of woodland otherwise having more general public access through the right to roam. I therefore consider that the condition is reasonable and necessary and complies with policy SG LDP TRAN 1 and LDP policy LDP 11. It is relevant to planning and relevant to the development which has been permitted. The appellants' concerns relate to the expense involved in upgrading the path. As mentioned above, the council had made reference to 'minor improvements' to the path. Given that this would be a rural pathway passing mainly through woodland there is the possibility that an over-engineered solution could affect its character and enjoyment by users. It would be important that the footpath was unobstructed for its users, well drained and maintained.

Conditions

19. In allowing the appeal a new planning permission is granted. I have consulted the appellants, the council and Mr Trybis who attended the site inspection, on a set of suggested draft conditions. I have had regard to all the conditions appertaining to the original permission and the comments of the parties consulted and conclude that the conditions should be retained, varied or omitted for the following reasons:

Condition 1.

20. Concerns the details of the scheme. Retained with no change.

Condition 2.

21. The original condition 2 required a detailed access plan for the estate. The council agrees with the appellants' rewording of condition 2 which essentially refers to a revision for the previously submitted access plan, but with the inclusion of conditions 2a and 2b. I agree that condition 2c may be deleted as the pedestrian bridge has been completed and is in use.

22. The appellants consider that conditions 2a, and 2b have been purified under a different, but materially relevant consent (ref:17/00400/PP). However, the appeal before me relates to the wording of conditions imposed on permission ref: 17/02052/PP. The council has advised that condition 2a is still required as it forms the eastern component of access arrangements which depend upon works at the eastern driveway entrance being completed to allow suitable access on to the main drive to reach the Chinese Lakes. The council also informs me that whilst very basic information was received about the construction of the path it was never formally agreed or the condition discharged. Therefore, I consider that condition 2b should be retained to ensure that the details may be formally approved. Condition 2d is modified in line with the suggested draft condition for clarity now that a single route for the southern footpath is discernible. The word 'pedestrian'

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has been omitted from my suggested draft condition 2f to reflect that access is not just for pedestrians.

Condition 3.

23. This condition required gates within the deer fence to be left open until alternative access routes were provided and available for public use. The council agrees with the appellant's alternative wording requiring temporary measures to be put in place. I consider that this is reasonable given that access will be available via the western entrance gates, or via the opening in the stone wall at the eastern entrance (which the council advises will require some improvement to the short diversion route) and improved route along the southern access link between the western and eastern entrances. However, I have amended the wording of the condition to ensure that it meets the six tests.

Condition 4.

24. Condition 4 concerns the southern footpath link. I have added a requirement for directional signage to my alternative wording, as suggested by the council. Mr Trybis has requested a specific condition covering the new short section of entrance access path between the A815 at the eastern entrance and the eastern driveway inside the vehicle gate in order to ensure ease of access similar to that which would be available if the eastern gate was open. The appellants dispute that there has been any previous disabled access on the site that would require restoration and they advise that adequate protocols are in place to facilitate disabled access where necessary. The council has not commented upon the suggested need for a condition. However, in the interest of equal opportunity of access, I consider that condition 4 should include a reference to the eastern entrance access path in order that the council may have control over its construction details.

Conclusion

25. I conclude that conditions 2d and 4 of permission ref: 17/02052/PP were reasonable and necessary and met the tests in Circular 4/1998, having regard to policy LDP 11 of the Argyll and Bute Local Development Plan (LDP) and supplementary guidance SG LDP TRAN 1. I allow the appeal and grant planning permission for the erection of 1800 mm high deer fence in accordance with the application ref: 17/02052/PP subject to the conditions included in the schedule at the end of this decision.

Martin H Seddon

Reporter

Schedule of Conditions

26. The conditions listed below have been re-numbered in instances where other previous conditions have been omitted.

1. The development shall be implemented in accordance with the details specified on the application form dated 28 July 2017 and the approved drawing reference numbers: 1544_L(P.7)700 Rev A and 1544_LP(P.7)701 Rev A, unless the prior written approval of the Planning Authority is obtained for an amendment to the

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approved details under section 64 of the Town and Country Planning (Scotland) Act 1997.

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. Within three months of the date of this permission, the previously submitted 'Access Plan' (1544_L(MP)005) submitted through application ref: 16/02356/MPLAN shall be revised as necessary and 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 the width to be 1.8 m and the finishing materials;
 - c. The route of the proposed path linking the east and west driveways within the southern part of the estate below the 'ha-ha' including start and finishing points;
 - d. 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 Access Plan will need to show the line of the diversion;
 - e. Location and details of public access points to the estate and directional signage to be provided to guide and manage public access on the estate.

Reason: To ensure continued public access around Castle Toward Estate and to meet the requirements of Argyll and Bute Local Development Plan policy LD P11 and supplementary guidance policy SG LDP TRAN 1.

3. Within 3 months of the date of this permission details of temporary measures to provide adequate means of access along the southern boundary of the estate prior to or during the implementation of improvement works in the southern area of the estate as detailed in condition 4, shall be submitted for the written approval of the Planning Authority. The temporary measures shall be carried out in accordance with the approved details within one month from the date of approval.

Reason: In order to facilitate continued access to the general estate grounds.

4. Within 3 months of the date of approval of the Access Plan, details shall be submitted for the written approval of the Planning Authority of the improvement works for the footpath that will link the east and west driveways within the southern area of the estate, in accordance with the route approved in the Access Plan. Such details shall include but are not limited to:
 - a. Location including start and finishing points and proposed directional signage,
 - b. Construction details that shall include 1.8 m width, details of the eastern entrance access path, sections of the route where footpath drainage is proposed, and sections of the route which require a type 1 finish.
 - c. Timetable of works with the footpath improvements and directional signage to be completed within three months of the approved improvement works details.
 - d. The footpath improvement works shall be carried out in accordance with the approved drainage and surfacing details, and unobstructed public access along the footpath and adequate surface drainage thereafter retained.



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Reason: To improve access around Castle Toward Estate, address loss of access resulting from the development hereby approved, and to meet the requirements of Argyll and Bute Local Development Plan policy LDP 11 and supplementary guidance policy SG LDP TRAN1.



APPENDIX 2: APPEAL EXPENSES DECISION NOTICE

Planning and Environmental Appeals Division

Claim for an Award of Expenses
Decision Notice

T: 0300 244 6668

E: dpea@gov.scot



Scottish Government
Riaghaltas na h-Alba
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Decision by Martin H Seddon a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-130-2080
- Site address: Land south-east of Castle Toward, Argyll
- Claim for expenses by Mr Keith and Denice Punler against Argyll and Bute Council
- Date of site visit by reporter: 29 June 2021

Date of decision: 23 December 2021

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. The claim was made at the appropriate stage of the proceedings. The appellants consider that the council acted unreasonably in imposing conditions which in their view clearly failed to meet the criteria set out in Circular 4/1998: The use of conditions in planning permissions.
2. The council submits that it did not act unreasonably as suggested by the appellants but required necessary safeguarding conditions to ensure that continuous public access was available through certain parts of the estate and also in line with the appellants' vision of the estate stated in their approved Masterplan.
3. Circular 6/1990: awards and expenses, advises that in planning proceedings the parties are normally expected to meet their own expenses and expenses are only awarded on grounds of unreasonable behaviour. In my appeal decision I have set out my assessment of the two disputed conditions (conditions 2d and 4 of permission ref: 17/02052/PP) having regard to the six tests in circular 4/1998. Examples of unreasonable behaviour include if a council imposes conditions on a grant of planning permission which clearly fail to meet these tests.
4. Having regard to the representations from the appellants I found that condition 2d and condition 4 both met the six tests. In response to the appellants' submission regarding the lack of precision of condition 2d, I consider the issue of which southern path/s required to be improved could have been resolved when details were submitted to the council for approval of a detailed Access Plan in accordance with condition 2. I found that both conditions met the requirements of relevant development plan policies.

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5. I conclude that unreasonable behaviour by the council in imposing conditions on the grant of permission ref: 17/02052/PP has not been demonstrated. Consequently, I have no reason to find that any unnecessary expense has been caused for the appellants in this appeal.

Martin H Seddon

Reporter