

Public Document Pack

Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

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16 March 2022

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held by **MICROSOFT TEAMS** on **WEDNESDAY, 23 MARCH 2022** at **10:30 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 23 February 2022 at 11.00 am (Pages 3 - 18)
- (b) Planning, Protective Services and Licensing Committee 23 February 2022 at 2.00 pm (Pages 19 - 24)
- (c) Planning, Protective Services and Licensing Committee 23 February 2022 at 2.30 pm (Pages 25 - 32)
- (d) Planning, Protective Services and Licensing Committee 28 February 2022 (Pages 33 - 64)

4. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: TAXI FARE SCALE REVIEW (Pages 65 - 68)

Report by Executive Director with responsibility for Legal and Regulatory Support

* 5. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: TAXI DRIVER/PRIVATE HIRE CAR DRIVER MEDICALS AND DELEGATION FOR SUSPENSION OF LICENCE (Pages 69 - 76)

Report by Executive Director with responsibility for Legal and Regulatory Support

6. MR CALLUM MACDONALD AND MISS CARA KEMP SMITH: ERECTION OF DWELLINGHOUSE: LAND SOUTH OF CAOLSIDE, LADY ILEENE ROAD, TARBERT (REF: 21/02359/PP) (Pages 77 - 94)

Report by Head of Development and Economic Growth

7. **UPDATED PLANNING ENFORCEMENT AND MONITORING CHARTER 2022**
(Pages 95 - 118)
Report by Executive Director with responsibility for Development and Economic Growth
 8. **NATIONAL PLANNING FRAMEWORK 4 FINAL DRAFT CONSULTATION** (Pages 119 - 150)
Report by Executive Director with responsibility for Development and Economic Growth
 9. **LOCAL DEVELOPMENT PLANNING - REGULATIONS AND GUIDANCE CONSULTATION** (Pages 151 - 172)
Report by Executive Director with responsibility for Development and Economic Growth
 10. **SCOTTISH GOVERNMENT CONSULTATION: OPEN SPACE STRATEGIES AND PLAY SUFFICIENCY ASSESSMENTS REGULATIONS** (Pages 173 - 192)
Report by Executive Director with responsibility for Development and Economic Growth
 11. **DEVELOPMENT PLAN SCHEME UPDATE - LOCAL DEVELOPMENT PLAN 2**
(Pages 193 - 214)
Report by Executive Director with responsibility for Development and Economic Growth
- REPORTS FOR NOTING**
12. **UPDATE ON PLANNING APPEAL REFERENCE: ENA-130-2045 - INVERGARE, GLENARN ROAD, RHU, G84 8LL** (Pages 215 - 226)
Report by Executive Director with responsibility for Development and Economic Growth
 13. **CIVIC GOVERNMENT (SCOTLAND) ACT 1982: CONTINUED REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NUMBER 5434) (G DEMPSEY, KILCREGGAN)** (Pages 227 - 230)
Report by Head of Legal and Regulatory Support

Items marked with an “asterisk” are items, on the basis of information available at the time this Agenda is published, on which the Committee may not have delegated powers to act, and which may therefore require to be referred to the Council or another Committee, and that referral may depend on the decision reached at the meeting.

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

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Fergus Murray, Head of Development and Economic Growth
Shona Barton, Committee Manager
Peter Bain, Development Manager
Tim Williams, Area Team Leader – Oban, Lorn and the Isles
Sandra Davies, Major Applications Team Leader
Howard Young, Area Team Leader – Bute & Cowal/Helensburgh & Lomond
Derek Wilson, Development Management Officer
Steven Gove, Planning Officer

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mary-Jean Devon, Audrey Forrest and Sandy Taylor.

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 19 January 2022 at 11.00 am was approved as a correct record.
- b) The Minute of the Planning Protective Services and Licensing Committee held on 19 January 2022 at 2.00 pm was approved as a correct record.

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)

The Area Team Leader spoke to the terms of the report. Planning permission is sought for the sub division 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. The sub division 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 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 considered and pragmatic opinion of Officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional residential unit 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. There will, therefore, be no likely increase in the actual occupancy levels of the building. Accordingly, it is not considered that there will be any ‘real world’ change in vulnerability of the proposed development from flood risk.

While it must be accepted that the proposed development is contrary to both national and local flood risk planning policy, it is recommended that having due regard to the Development plan and all other material considerations that planning permission be granted as a minor departure to the provisions of the Local Development Plan subject to the condition and reason detailed in the report of handling 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.

Decision

The Committee agreed to grant planning permission as a minor departure to the provisions of the Local Development Plan subject to the following condition and reason and the Scottish Government being 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:-

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 No.	Ref.	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.

(Reference: Report by Head of Development and Economic Growth dated 31 January 2022, submitted)

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)

The Area Team Leader spoke to the terms of the report. Planning permission is sought for the sub division 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. The site is located within the main town centre of Oban. All works to facilitate the sub division of the flat are internal and with no works proposed to the exterior of the building. The sub division of the flat is considered to be an acceptable proposal within this area of the town centre. 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 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 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. There will, therefore, be no likely increase in the actual occupancy levels of the building. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk.

While it must be accepted that the proposed development is contrary to both national and local flood risk planning policy, it is recommended that having due regard to the Development plan and all other material considerations that planning permission be granted as a minor departure to the provisions of the Local Development Plan subject to the condition and reason detailed in the report of handling 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.

Decision

The Committee agreed to grant planning permission as a minor departure to the provisions of the Local Development Plan subject to the following condition and reason and the Scottish Government being 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:-

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 No.	Ref.	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.

(Reference: Report by Head of Development and Economic Growth dated 27 January 2022, submitted)

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)

The Major Applications Team Leader spoke to the terms of the report. Before proceeding with her presentation, she referred to an error at section J of Appendix A of the report which stated that the Argyll Raptor Study Group had not responded to information sent to them. She explained that it was thought this information was sent to the Group at the same time as to NatureScot and the RSPB. On further investigation it was established that the information was not sent to the Group as they were not a statutory consultee. Officers have apologised to the Group for this error and oversight.

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 Dhub, 484m AOD at its summit, and partially below Creag an t-Suidheachain, across an area of commercial forestry and open moorland. 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. Objections have been received from NatureScot and Loch Lomond & the Trossachs National Park 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. The RSPB have objected on the grounds of insufficient Golden Eagle data. Sixteen letters of representation have also been received comprising 14 objections and 2 letters of support.

The proposal is considered contrary to National and Local Policy and Guidance. It is also considered that the proposal will have significant adverse landscape and visual impacts and it is recommended that planning permission be refused for the reasons detailed in the report of handling.

Decision

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

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 EIA 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 EIA 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.

(Reference: Report by Head of Development and Economic Growth dated 11 February 2022, submitted)

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)

The Development Management Officer spoke to the terms of the report. The application site relates to community owned land and playing fields at the Ramsay Hall, Port Ellen and is located within the Key Rural Settlement of Port Ellen. The site lies within the Islay Tourism Development Area and the extension of an existing motorhome site by provision 8 additional would cumulatively fall within the definition of 'medium' scale development. The development is however located within an Open Space Protection Area (OSPA). In this instance the creation of the motorhome site would 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 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. 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 it is considered that a discretionary pre-determined hearing would add value.

It was recommended that planning permission be granted subject to holding of a discretionary pre-determination hearing and to the conditions and reasons detailed in the report of handling.

Decision

The Committee agreed to hold a virtual discretionary hearing and to not hold an informal site visit.

(Reference: Report by Head of Development and Economic Growth dated 15 February 2022, submitted)

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)

The Planning Officer spoke to the terms of the report and to supplementary report number 1 which advised of a late representation. The Anchor Tavern is located on Marine Road, which is visually prominent in the Port Bannatyne townscape. The application site is located within the Bute Area of Panoramic Quality and the Rothesay Conservation Area. 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 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. A total of 17 objections have been received to the proposed development. However, land use planning related issues raised are not considered to be unduly complex. It is considered that the proposed development is consistent with the relevant provisions of the Local Development Plan. A Noise Management Plan 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 objection to this proposal.

It was recommended that planning permission be granted subject to the conditions and reasons and informative notes detailed in the report of handling.

Decision

The Committee agreed to grant planning permission subject to the following conditions, reasons and informative notes:

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.

- 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.

- 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.

- 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.

- 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.

(Reference: Report by Head of Development and Economic Growth dated 15 February 2022 and supplementary report number 1 dated 22 February 2022, submitted)

Councillor Donald MacMillan left the meeting at this point.

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)

The Planning Officer spoke to the terms of the report. Planning permission is 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 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 with the possibility of people choosing to walk up to it. It is considered that these points (and other factors), when taken cumulatively, represent a form of 'exceptional case'. The visual impact of the development is relatively confined given that it can be seen only over a very short stretch of the A8003. 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. An objection has been received from one source but many of the points raised do not have a material bearing upon the Planning aspects of the case.

It was recommended that planning permission be granted subject to the conditions and reasons set out in the report of handling. It was also recommended that prior to the decision paperwork being issued, the Development Management Service obtain appropriately scaled plans containing a red line within which the accurate description of the Ark Sculpture is drawn.

Decision

The Committee agreed to grant planning permission subject to the following conditions and reasons, noting that prior to the decision paperwork being issued, the Development Management Service would obtain appropriately scaled plans containing a red line within which the accurate description of the Ark Sculpture is drawn:

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.

(Reference: Report by Head of Development and Economic Growth dated 3 February 2022, submitted)

10. KEY PERFORMANCE INDICATORS FQ3 2021/22 - DEVELOPMENT AND ECONOMIC GROWTH SERVICE

A paper presenting the FQ3 2021/22 Key Performance Indicators (KPIs) for the Development and Economic Growth Service was considered.

Decision

The Committee reviewed and scrutinised the FQ3 2021/22 KPI report as presented.

(Reference: Report by Executive Director with responsibility for Development and Economic Growth dated 24 January 2022, submitted)

11. PLANNING PERFORMANCE FRAMEWORK 2020/21

A report containing feedback from the Scottish Government in relation to the Council's Planning Performance Framework was considered.

Decision

The Committee agreed the content of the report and to publicise (*press, Twitter, Facebook and website release*) the positive feedback from the Scottish Government.

(Reference: Report by Executive Director with responsibility for Development and Economic Growth dated 4 February 2022, submitted)

12. UPDATE ON PLANNING APPEAL REFERENCE: PPA-130-2080 - LAND SOUTH EAST OF CASTLE TOWARD, TOWARD

A report providing an update on the recent decision by the Planning and Environmental Appeals Division in relation to Planning Appeal Reference PPA-130-2080 was before the Committee for information.

Decision

The Committee noted the contents of the report.

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

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**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
James Hutchinson, Applicant
Sgt Wendy Maginnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Audrey Forrest and Sandy Taylor

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A PRIVATE HIRE DRIVER LICENCE (J HUTCHINSON, BOWMORE, ISLAY)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by video call, by audio call or by written submission. For this hearing the Applicant opted to proceed by way of video call and joined the meeting by MS Teams. Police Scotland opted to proceed by way of audio call and Sgt Maginnis joined the meeting by telephone.

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

APPLICANT

Mr Hutchinson said he understood why the objection had been brought forward as the evidence did not look good. He advised that 5 to 6 years ago, when the incidents occurred he was not in a good way. He had problems at home, problems with family and that he was just not in a good place. He acknowledged that his mistakes were serious. He said that 5½ years on his life had totally turned around for the better. He advised that he has been fully employed for 4 years and in that time he had gained promotion twice. He also gained his HGV licence and had a family with 2 children and a girlfriend he provided for. He said that was why he was submitting this application as he wanted to provide for his family. He advised that he was embarrassed and ashamed about the offences. He said that at the time in 2015 when it happened he lost his job due to the offence and that he felt that he had served his time and he just wanted a chance to provide for his family. He advised that he was fully employed but as could be seen in the

news and the papers, life was getting harder for everyone. He said that he was in a totally different place and would like the opportunity to work and provide for his family. He advised that he has been given the opportunity help out at his family's local taxi firm. He said he would not quit his current job as he would just be helping out the taxi firm when needed.

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 29 November 2021 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit and proper person to be the holder of a licence by virtue of convictions Mr Hutchinson received at Court on 14 September 2009 and 29 September 2015.

MEMBERS' QUESTIONS

Councillor McCuish sought and received confirmation from Mr Hutchinson that the Council put him through his HGV licence.

Councillor McCuish asked Mr Hutchinson if he had to declare his convictions when he applied. Mr Hutchinson said he did not. He advised that he had to go for a medical and an eye test and that he passed both.

Councillor McCuish sought and received confirmation from Mr Hutchinson that he drove lorries, gritters, tractors and all sorts of other vehicles in his job with the Council.

Councillor Trail noted that Mr Hutchinson had said he was fully employed. He asked how he would be able to do the taxi work. Mr Hutchinson explained that the taxi job would be just to help out on the weekends and for events such as the Whisky Weekend. He said it would not interfere with his other employment.

Councillor Trail asked why Mr Hutchinson was applying for a private hire driver licence if he was going to work for a taxi firm. He asked if a taxi driver was different from a private hire driver. Mr McMillan advised that the application was for a private hire driver to drive a private hire car. He said he believed the operator was a private hire operator that Mr Hutchinson proposed working for.

Councillor Moffat referred to Mr Hutchinson driving lorries and gritters and commented that it would be unfortunate if he was not able to drive a private hire car. She asked Mr Hutchinson if he would agree. Mr Hutchinson replied yes. He said that he felt he had moved on so much with his life. He acknowledged that to drive HGVs was a massive responsibility and that he knew every time he went out in that vehicle he had peoples' lives in his hands. He said that if he could do that, and advised that he did so very professionally, he felt he could be a taxi driver.

Councillor Colville asked Mr Hutchinson what had brought him to Islay. Mr Hutchinson advised that he used to install soft surface flooring for play areas and 15 years ago, when working on Islay, he first met his girlfriend. He said that they lost touch while he was working around England and Wales and that 5 years ago they got back in touch. He came back to Islay and fell in love with it and the rest was history. He did not want to go back home. He advised that he and his girlfriend had a baby together and she also had another child. Their children were now 9 years and almost 2 years old.

Councillor Colville sought and received confirmation from Mr Hutchinson that he would be driving for his girlfriend's uncle.

Councillor Colville asked Mr Hutchinson why he did not declare his convictions on his application form. Mr Hutchinson advised that this had been an error. He thought that he did not need to due to the time that has passed since they occurred. He apologised for his mistake.

Councillor Devon sought and received confirmation from Mr Hutchinson that he worked for Argyll and Bute Council in the Roads Department on Islay. He said that in March he would be there 4 years and during that time he had gained promotion twice, going up the grades. He advised that he loved his job and liked working for the Council.

Councillor Redman sought and received confirmation from Mr Hutchinson that he had only 2 offences. Mr Hutchinson said he was embarrassed and ashamed and had done nothing before or after these offences. Sgt Maginnis confirmed that there were 2 offences that Police Scotland held on record.

Councillor MacMillan asked Mr Hutchinson if the Council had asked questions about any convictions when he applied for his job. Mr Hutchinson said no. He advised that he filled out a CRB check. He advised that he did not hold a HGV licence at that point. He only had a normal driving licence.

Councillor Kinniburgh asked Mr Hutchinson when he started working with the Council. Mr Hutchinson said thought it was from March 2018. He advised that his first job was on the roads as unskilled. He was then semi-skilled and now he was skilled. He confirmed that he had driving duties when he first started work.

Councillor Kinniburgh commented that he was surprised convictions did not have to be declared for employment. Mr Hutchinson advised that he could not recall all the forms he had to fill in.

Councillor Kinniburgh said he had taken on board that there were 6 years between the 2 offences that occurred. He commented that it was now approaching 6½ years since the last offence. He asked Mr Hutchinson to tell him what was different from then till now. Mr Hutchinson said everything was different. He advised that he had a totally different lifestyle and thought process. He said he now had children and a family and that he was in a totally different place from 6 years ago. At that point he did not have any children and he did not have a lovely home and family. He said that every aspect of his life was totally different.

Councillor Kinniburgh questioned when Mr Hutchinson first started working for the Council. He said he noted that Mr Hutchinson had driving duties at that time but had calculated that he would still have been disqualified from driving in March 2018 as he received his conviction in September 2015 which included a 3 year driving ban. Mr Hutchinson recalled that he started work in March 2019.

Councillor Kinniburgh asked Mr McMillan if it would be normal practice to declare convictions when applying for a job with the Council. Mr McMillan advised that as part of the HR process the Council would carry out criminal checks and that the Committee could only operate on the assumption that this happened when Mr Hutchinson applied for his job.

Councillor Kinniburgh asked Mr McMillan if these checks would normally identify any convictions. Mr McMillan confirmed that these would be flagged up on a basic disclosure check which, he believed, applied to most, if not all, Council jobs.

Councillor Kinniburgh asked if the Council had decided that Mr Hutchinson was employable at that time. Mr McMillan advised that the information before the Committee today would imply that and that it would be fair for the Committee to make that assumption.

SUMMING UP

Police Scotland

Sgt Maginnis confirmed that the Chief Constable objected to this application on the grounds that Mr Hutchinson was not a fit and proper person due to having drink driving convictions.

Applicant

Mr Hutchinson said he just wanted to be given the opportunity to provide for his family. He said that if anyone was worried about it coming up to 6 years since his last conviction, he advised he was a totally different person now and had too much to lose. He said he was a fit and proper person and had made 2 mistakes during his 37 years. He acknowledged that these were serious mistakes and that he just wanted to better himself and provide for his family.

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

DEBATE

Councillor McCuish said he firmly believed that Mr Hutchinson was not a fit and proper person at the time of the offences but he was happy with his explanation that he was now a fit and proper person given the fact that he drove HG vehicles around Islay. He commented that Islay was a very busy island and said the responsibility of a HGV driver could sometimes be greater than a taxi or private hire car driver. He said that a person became more responsible with the more responsibility they had. He advised that perhaps Mr Hutchinson was not a fit and proper person 5 years ago but he firmly believed he was now and would like to grant him the licence.

Councillor Colville said he agreed with Councillor McCuish. He advised that he was particularly impressed with Mr Hutchinson and his commitment to his family. He commented that having a young family was life changing and that to have a family member put faith in him was reassuring too. He confirmed that he would be happy to grant the application.

Councillor Green said he agreed with what had been said. He commented that 2009 and 2015 was quite a long time ago, particularly when you had someone here that was still young. He said that he had clearly moved on with his life and should be given a second chance. He advised that he thought the licence should be granted.

Councillor Devon said that Mr Hutchinson had really opened his heart to the Committee and that he had been very honest. She noted that he had held down a job and had been promoted twice. She said that did not take anything away from the offences committed in

2009 and 2015. She advised that she would have no hesitation in granting Mr Hutchinson his licence.

Councillor MacMillan said he had the same opinion and that he supported this application.

Councillor Moffat said she was delighted to share that 53 years ago she took on a partner who already had a child and that child was loved as much as her own children. She said that children needed a strong loving background and that this was a wonderful thing Mr Hutchinson was doing and that he should be proud.

Councillor Redman said he agreed with a lot that had been said. He advised that as a local Councillor he knew that Mr Hutchinson was well thought of. He commented that it was his opinion that it would be wrong to punish a man twice. He said that a lot of time had passed and that having a family changed you. He said he was minded to grant the application.

Councillor Kinniburgh said obviously there was a great responsibility when driving a private hire vehicle or taxi as there were other people in the car. He noted that Mr Hutchinson had acknowledged and realised the responsibility of driving a HGV. He commented that reading on paper he would have been reluctant to grant this application but having heard Mr Hutchinson he believed he had changed and that he did realise the responsibility that went with driving a HGV. He said he thought this responsibility would continue on driving a private hire car. He confirmed that he would also be happy to grant the licence.

DECISION

The Committee unanimously agreed to grant a Private Hire Driver Licence to Mr Hutchinson. It was noted that Mr Hutchinson would be notified of this decision within 7 days but would not be issued with his licence until after the 28 day appeal period.

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

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**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
James Buchanan, Applicant
Jane MacLeod, Applicant's Solicitor
Sgt Wendy Maginnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Audrey Forrest and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (J BUCHANAN, DUNOON)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by video call, by audio call or by written submission. For this hearing the Applicant opted to proceed by way of audio call and joined the meeting by telephone. The Applicant's Solicitor opted to proceed by way of video call and joined the meeting by MS Teams. Additional paperwork was also submitted on behalf of the Applicant and this was contained within a Supplementary Agenda pack.

Police Scotland opted to proceed by way of audio call and Sgt Maginnis joined the meeting by telephone.

The Chair referred to a preliminary matter and advised that Police Scotland had requested the Committee take into account a number of matters that were considered "protected" in terms of the Rehabilitation of Offenders Act 1974. It was noted that the Committee may take into consideration evidence relating to protected matters where they were satisfied that justice could not be done except by admitting such evidence.

The Chair outlined the procedure that would be followed in this respect and invited Police Scotland to address the relevancy of the protected matters.

POLICE SCOTLAND

Sgt Maginnis said that the Applicant had a number of matters considered protected in terms of the Rehabilitation of Offenders Act 1974. She advised that it was the Chief Constable's contention that justice could not be done without admitting these issues as they were relevant to this application.

The Chair then invited the Applicant's Solicitor to ask Police Scotland questions and to address the relevancy of the protected matters to his application.

APPLICANT

Mrs MacLeod said that Mr Buchanan had no secrets but Sgt Maginnis had referred to matters which could be covered by the Rehabilitation of Offenders Act. She commented that she had listened to the latter part of the previous hearing and that more than one Councillor had referred to reformed character and matters that happened in the past. She said that if the protected matters Police Scotland were taking about were spent then that was what they were and the purpose of the Rehabilitation of Offenders legislation was to allow a person to move on afresh and rehabilitate themselves. She said she would speak later about Mr Buchanan's character and to the fact that he was a well-known character in Dunoon and a driver for many years. He was also a taxi driver for many years and the loss of this licence in 2017 would be spoken about later. She advised that under the Rehabilitation of Offenders legislation that offence would also shortly become spent. She asked the Committee to not look into the past and to not pay attention to matters now classed as spent.

The Chair invited Police Scotland to comment on the Applicant's submission. Sgt Maginnis advised that she had no comment to make.

The Chair then invited questions from Members.

MEMBERS' QUESTIONS

Councillor McCuish asked Sgt Maginnis why she believed the Committee should see these convictions. Sgt Maginnis said she believed they were relevant to someone driving a taxi.

Councillor Moffat said she thought the protected matters should be brought to the attention of the Committee.

Councillor Green said it would be helpful to ensure the Committee were coming to the fairest possible decision.

Councillor Colville also agreed that the Committee should see the protected matters and this was supported by Councillor Kinniburgh.

The Committee decided that the protected matters were relevant to the Application and a copy of a letter from Police Scotland was shared on screen and emailed to the Committee.

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

APPLICANT

Mrs MacLeod advised that Mr Buchanan was a long standing resident of Dunoon. He was 55 years old and had held a driving licence for over 31 years. She referred to a spell in his life before his licence when he had a form of epilepsy. He had recovered from that and she referred to a letter she had lodged from Mr Buchanan's GP which confirmed that he'd had no seizures since 1992. Mrs MacLeod commented that Police Scotland had mentioned in their correspondence, Mr Buchanan's failure to declare any medical conditions. She said that they were not aware of any other medical condition. She advised that Mr Buchanan was not on any medication. She said that he had held a taxi driver's licence from Argyll and Bute Council for a period of over 13 years until this licence was suspended in 2017. She advised that some Members may recall that this licence was suspended as a result of an extremely unfortunate incident in January 2015. She explained that Mr Buchanan had been picking up a taxi client near the Co-op in Dunoon. She said it was January and there was low sun. She advised that a gentleman was staggering across the road and was hit by Mr Buchanan as the sunlight had prevented him from seeing the pedestrian. She advised that regrettably the gentleman in question had passed away. She said that Mr Buchanan lost his driving licence for 3 years in 2017 and was given a community payback order. She confirmed that Mr Buchanan carried out the community payback order and his driving licence was returned to him in August 2020. She said that there had been no issues with his driving licence since then.

As well as being a taxi driver, Mrs MacLeod advised that Mr Buchanan was employed as a Shelf Stacking Supervisor with the Co-op. She said that he has been employed by the Co-op for 15 years and that he participates in Co-op fundraising for the community and that he did a lot of good work for the community. She advised that should the Committee be good enough to grant Mr Buchanan his licence he would not be giving up his work with the Co-op. She said that he would drive his taxi at the weekends and evenings and that there would be no clash with his work with the Co-op.

She advised that as well as lodging the letter from his GP, she had also lodged 3 letters of support. One was from Alan Forrest of Cowal Cabs who had advised he would be prepared to re-employ Mr Buchanan. Letters from Isobel Macleod and Heather Good of Dunoon also spoke highly of Mr Buchanan and his ability to drive a taxi.

Mrs MacLeod commented that Sgt Maginnis had also referred to one offence in 2002. She pointed out that this was almost 20 years ago. She explained that on that occasion Mr Buchanan had lent his car to a friend and that friend told him he was insured to drive the car. That was not the case and as a result of that Mr Buchanan was convicted. She said this was a spent conviction of 19 years ago and that since that date the Committee had granted Mr Buchanan a taxi driver licence so they must have discounted that conviction then some 13 or 14 years ago.

Mrs MacLeod advised that the other matter referred to was in 1999 and no proceedings took place so the Procurator Fiscal did not consider it was serious enough to take matters further and subsequently Mr Buchanan was given a taxi driver licence by the Council.

She advised that Mr Buchanan was an upstanding and good member of the community in Dunoon and that he felt he had been punished enough. He lost his licence 3 years ago and also his income. He received his driving licence back almost 2 years ago and has had no problems since then. She advised that he worked hard in the Co-op and wanted to contribute further to life in Dunoon and work as a taxi driver.

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 23 September 2021 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit and proper person to be the holder of a licence. Sgt Maginnis advised that as a result of an incident which took place on 3 January 2015, Mr Buchanan was convicted at Glasgow High Court on 19 June 2017 under the Road Traffic Act 1988. s. 2B.

Mr Buchanan was also reported to the Procurator Fiscal for failing to disclose a relevant medical condition on his taxi driver applications to Argyll and Bute Council on 15 June 2012 and 22 June 2015. On 20 April 2017, for reasons unknown to the Police, the Procurator Fiscal decided to take no proceedings against Mr Buchanan.

The letter also advised that as a result of an incident on 17 December 2006, Mr Buchanan was reported to the Procurator Fiscal for s3 Road Traffic Act 1988. On 11 June 2017, for reasons unknown to the Police, the Procurator Fiscal decided to take no proceedings against Mr Buchanan.

Sgt Maginnis also referred to another letter also dated 23 September 2021 which advised that the Applicant had a number of matters regarded as 'protected' in terms of the Rehabilitation of Offenders Act 1974. As the Committee had agreed that these matters were relevant to this application, she proceeded to advise of a conviction Mr Buchanan received at Court on 5 December 2002 under the Road Traffic Act 1988 s.143(1) & (2). She also advised that as a result of an incident on 24 December 1999, Mr Buchanan was reported to the Procurator Fiscal for s.3 Road Traffic Act 1988. The Procurator Fiscal, having decided there was enough evidence to prosecute, issued a Fixed Penalty fine in respect of the charge libelled.

MEMBERS' QUESTIONS

Councillor Colville referred to the Police letter advising that no declaration of impediment to health was declared in Mr Buchanan's taxi driver applications in 2012 and 2015. He asked Mrs MacLeod if Mr Buchanan still stood by this. Mrs MacLeod said yes and that was why the letter from his GP was obtained. She confirmed there was no other medical reason apart from the form of epilepsy which had not occurred since 1992.

Councillor Colville commented that Mr Buchanan had an unfortunate record. He referred to the incident with a motor cycle, hitting another vehicle after veering onto the opposite carriageway and also hitting a pedestrian. He asked Mrs MacLeod if she would agree this was not normally something you would expect to see from someone driving every day to have so many instances. Mrs MacLeod advised that the incident in 2002 did not relate to Mr Buchanan's driving. He had allowed someone else to drive his car and this had been an error of judgement. She said the motor bike incident in 1999 was almost 20 years ago and advised that this matter should not really be considered due to the passage of such a long time. She advised that the 2017 incident was as a result of low sun and was extremely regrettable. Mr Buchanan was referred to the High Court and at the end of the day his sentence was to lose his licence for 3 years and to do a community payback order.

Councillor Green asked Sgt Maginnis if there was a particular reason why the Committee should be asking Mr Buchanan about his medical condition. Sgt Maginnis said the reason was there was an allegation that Mr Buchanan had epilepsy and this should be disclosed on application forms and it was not. She advised that Police records showed that he did

have epilepsy and this had been declared to the DVLA. She advised that the Committee should confirm whether there were any medical concerns that needed to be disclosed prior to granting a licence.

Councillor Kinniburgh referred to the GP letter which advised that Mr Buchanan last had a seizure in 1992. He sought and received confirmation from Mrs MacLeod that this related to his epilepsy. She advised that there was no evidence of anything after that.

Councillor Kinniburgh referred to the passage of time since the seizure. He asked Sgt Maginnis if this was what Police Scotland were referring to or if there was anything else that Police Scotland were aware of. Sgt Maginnis referred to the incident in 2015 and advised that as part of that investigation Mr Buchanan was sent certain medical forms from the DVLA. In these forms Mr Buchanan declared he had epilepsy. Sgt Maginnis advised she could not say how many episodes he'd had or if he was on any medication, but the disclosure was made by Mr Buchanan at that time and that was why Police Scotland charged him with failure to provide that information when applying for a taxi licence in 2012 and 2015. Sgt Maginnis read out the Police statement relating to the medical questionnaire completed by Mr Buchanan confirming he had epilepsy. She confirmed that was why these charges came about.

Councillor Kinniburgh asked Mrs MacLeod if Mr Buchanan was referring to the incident in 1992 when declaring his epilepsy in 2015. Mrs MacLeod said she thought it must have been. She advised that Mr Buchanan obtained his driving licence 31 years ago. She commented that she believed if you suffer from epilepsy you could not get a licence until you were 2 years free of seizures. She said that after he lost his licence he was given it back in August 2020 and that he had also been given a taxi driver's licence in the intervening years and at each of these stages, at least for the DVLA, he would have had to have fitness to drive. She said that it must have been 10 years since his seizure and the Committee may wish to ask Mr Buchanan why he declared it in 2015.

Councillor Kinniburgh asked Mr Buchanan why he declared his epilepsy in 2015 and if he was referring to the 1992 seizure. Mr Buchanan confirmed that his declaration in 2015 related to the 1992 seizure.

Councillor Kinniburgh commented that Mr Buchanan had not declared his epilepsy to the Council when applying for his taxi driver licence before 2015. Mr Buchanan said he did not think he needed to declare it.

Councillor Trail sought and received confirmation from Mr Buchanan that he was not on any medication for epilepsy.

Councillor Kinniburgh referred to the section in the taxi driver application which asked for medical conditions to be declared. He asked Mr Buchanan why he did not declare his epilepsy on the application form. Mr Buchanan said that he thought had declared everything.

Councillor Kinniburgh sought and received confirmation from Mr Buchanan that his GP did not think his epilepsy was an issue anymore.

Councillor Kinniburgh asked Mrs MacLeod if she was involved in the case in 2015. Mrs MacLeod advised she became involved in 2016 when Police Scotland wrote to the Committee calling for Mr Buchanan's licence to be suspended. At that stage the matter had not been dealt with at court and his licence was not suspended until 2017 after he

was convicted. She said that it was almost 5 years down the line and that this conviction was almost spent in itself.

Councillor Colville sought clarity on the 2016 incident. He asked for an explanation why the car had veered across the carriageway and crashed into a car. Mrs MacLeod said that case did not go to proceedings. Councillor Colville asked Mr Buchanan for an explanation. Mr Buchanan said he took his eyes off the road for 2 seconds to look for something that had dropped between his legs from the dashboard. This caused him to veer over the road.

SUMMING UP

Police Scotland

Sgt Maginnis said that as per the Chief Constable's letters, he objected to this application on the grounds that the Applicant was not a fit and proper person to hold a licence due to his previous convictions and for causing death by dangerous driving.

Applicant

Mrs MacLeod asked the Committee to not take account of the matters which had happened a long time ago in 1992. The most recent incident in 2006 was, some 15/16 years ago. She pointed out that for a period after these incidents referred to, the Council gave Mr Buchanan a taxi driver's licence until the incident in 2015. She said there was a pedestrian on the road that should not have been, which led to a very unfortunate incident when his sight was restricted by low sun glare. She advised that Mr Buchanan was an upstanding member of the community in Dunoon. She added that his epilepsy had not required treatment for 30 years, with the last seizure being in 1992. She said it was not surprising that someone could become confused as to whether it should be declared or not. She said that his driving licence was returned to him in 2020 and that the DVLA could have pointed out that he was not a fit and proper person to drive but they did not. She said that the references lodged spoke to his suitability to drive a taxi and his employability. She advised that he worked hard in the Co-op and worked hard in the community and that he deserved another chance. She asked the Committee to look at the old matters as spent and advised that the current matter would be spent soon.

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

DEBATE

Councillor McCuish referred to the old convictions and commented that the Committee had granted the man a licence on these old convictions before. He said that the one outstanding conviction was due to be spent very soon.

Councillor Green said he had not made up his mind about this. He advised that the additional material provided by the Applicant helped in terms of building a case for why he should be given a licence but the death by dangerous driving conviction was very serious. He said that he accepted the argument that convictions became spent but the Committee needed to think of the wider public safety.

Councillor Colville said he was not an expert in epilepsy and questioned whether it ever disappeared. He said this gave him concern. He said he had no doubt Mr Buchanan was an excellent driver but he had concerns given the history. He said he took on board what

Councillor McCuish said. He said it would be good to get assurance that regular testing was done.

Councillor MacMillan referred to the sun glare. He commented that it could happen to anyone and that he supported the view of Councillor McCuish.

Councillor Hardie said he had serious reservations about this application. He said he was not sure he could support granting a licence to someone who had a conviction of death by dangerous driving. He said that he had a friend with epilepsy and that it could come back at any time. He said he did not want to grant the licence.

Councillor Moffat commented that Mrs MacLeod had referred to the previous hearing and had suggested the Committee show the same leniency. Councillor Moffat pointed out that the previous Applicant was a much younger, healthy man. She said she felt immense sadness for Mr Buchanan. She commented that she had a sister with epilepsy and advised that she had never known it to just disappear. She said that she would like to be kind and agree with Councillors McCuish and MacMillan but she was pulled and constrained by the medical issue. She said she found it very difficult to come down on the side of the Applicant and that she did not think there was anything else that could be said to enlighten the Committee further.

Councillor McCuish commented that the Committee had to be careful when starting to mention a person's age and also mentioning epilepsy as the Committee were not experts in that. Confirmation had been received in a letter from Mr Buchanan's GP that he had not had a seizure since 1992 which, he said, almost guaranteed he had no outstanding medical issues. He said he was basing his thoughts purely on facts.

Councillor Redman said it was important as a Committee to judge each case on facts rather than feelings. He advised that as far as he could see factually the Applicant had not had a seizure since 1992 and the Committee had to go with the facts. In line with Councillor McCuish and others, he said he was probably minded to approve the application and that he was basing his decision on facts not feelings.

Councillor Kinniburgh noted that Members were finding it difficult to reach a decision on this case and he felt the same. He advised that the position in relation to epilepsy, he felt in this instance this was something the Committee needed to put to the back of their minds due to the passage of time since the Applicant last had an episode. He advised that his difficulty was why Mr Buchanan felt he needed to declare it in 2015 but not previous to that and not after that and not with this application. He said he felt the Committee needed to look at the convictions. He advised that he accepted what was said about sun glare and acknowledged that could happen. He noted that Mr Buchanan was convicted in 2017, got a community payback order and a disqualification for 36 months and his licence endorsed. He advised that his feeling at the moment was that it might just be too soon to consider granting this licence.

Motion

To agree to refuse Mr Buchanan's application for a taxi driver licence on the grounds that he was not a fit and proper person to hold a licence.

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

Amendment

To agree to grant a taxi driver licence to Mr Buchanan.

Moved by Councillor Roderick McCuish, seconded by Councillor Donald MacMillan.

A vote was taken by calling the roll.

Motion

Amendment

Councillor Colville

Councillor Devon

Councillor Green

Councillor MacMillan

Councillor Hardie

Councillor McCuish

Councillor Kinniburgh

Councillor Redman

Councillor Moffat

Councillor Trail

On there being an equality of votes the Chair gave his casting vote and the Motion was carried by 6 votes to 5 and the Committee ruled accordingly.

DECISION

The Committee agreed to refuse Mr Buchanan's application for a taxi driver licence on the grounds that he was not a fit and proper person to be the holder of the licence.

(Reference: Report by Head of Legal and Regulatory Support, written information from the Applicant submitted and written information from Police Scotland, tabled)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS
on MONDAY, 28 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Iain Jackson, Governance, Risk and Safety Manager
David Moore, Senior Planning Officer - Planning
Howard Young, Area Team Leader - Planning
Derek Scott, Planning Consultant - Applicant
Dr Paul Baker, Ecologist - Applicant
Jim Malcom, Architectural Agent - Applicant
Ross Helliwell, Helco Developments Ltd - Applicant
Fergus Madigan, Garelochhead Community Council - Consultee
Marina Curran-Colthart, Biodiversity Officer - Consultee
Donna Lawson, Traffic and Development Officer - Consultee
Michael Puxley - Objector
Bonnie Puxley - Objector
Lorna Masterton - Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rory Colville and Roddy McCuish.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

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

The Chair welcomed everyone to the meeting which was held remotely in line with the Council's current approach to the Covid-19 guidelines. For the purposes of the sederunt, Iain Jackson, Clerk to the Committee, read out the names of the Members of the Committee and asked them to confirm their attendance.

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

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

PLANNING

Mr David Moore, Senior Planning Officer made the following presentation to the Committee making reference to Powerpoint slides –

Thank you, chair. Good Morning everyone.

Chair there have been further objections received after the Supplementary report 2 report was written and appendix C produced. These have been received Friday afternoon, Sunday and this morning. I will quickly run through these and all should now be on public access.

Susie Will (EMail provided)	25.02.22	14.22
Lois Smith (Email provided)	25.02.2022	14.41
Jacky Baillie MSP	25.02.22	13.45

On behalf of Lorna Masterton - Questions Adequacy of Surveys and that Members do not have adequate information to make a proper decision – this is addressed in Supplementary Report 2

She received a telephone call from one of the teachers at the local school who had taken a photograph of a red squirrel in their grounds. She has since spoken to the headmistress and she has registered the sighting – This off site report is not considered material to the application.

Debbie Carr - Braeside Cottage Portincaple – 26.02.22 – 16.50

Angela Anderson (Time for change Argyll and Bute) E mail – 28.02.22 (0.45)
Questions quality and conclusions of ecological surveys

A. Anderson (Plastic Free Helensburgh) –
Also Questions quality and conclusions of ecological surveys

All known objections are on public access.

4 additional objections received by post and booked in this morning -
G Brownhill
Vivian Flemming
Alan Flemming
N Flemming

No matters have been raised in these additional objections which are not already addressed in the reports provided to Members.

As of this morning the planning authority has received 163 Objections and 6 representations in respect of the proposals.

Slide 2 – This is a local planning application for the construction of 24 housing units on land accessed off station road Garelochhead.
Construction of new vehicular access road off Station Road
Junction improvements at junction of A814 and Station Road
Installation of traffic calming measures on Station Road

Construction of footway on Station Road

Slide 3 – identified the Railway Station, Station Road Access Point, Junction works, Location

Slide 4 – Aerial View. Shows site on edge of urban boundary on white land contained by the railway line, station road

Point out the extent of the housing development itself and those parts of the site not subject to development. Treed boundary and core path linkages.

Slide 5 LDP 2015 extract - This indicates the allocated housing site for 24 units under H-AL 3/3

Slide 6 LDP 2 - Housing allocation removed. Site now in settlement boundary. Site is not identified for any protective designation such as OSAP and therefore housing development could still be considered acceptable subject to compliance with plan policies. Application would have to be judged on merits.

Slide 7 – Overall Layout - Larger detached homes – railway to top/north – point out large areas of the site towards the railway not developed and also trees retained around the edges of the site. Will return to this at slide 12 which indicated landscape strategy and planting.

Slide 8 – House Type A - 3 bedroom – 2 spaces

Slide 9 – House Type B - 4 bedroom – 3 spaces

Slide 10 – House Type C - 4 bedroom – 3 Spaces

Slide 11 – House Type D - 4 Bedroom – 3 Spaces

The house designs are considered to have provided attractive accommodation.

Slide 12 – Officers noted the growing concerns of representations on biodiversity interests and advised the applicants that this matter required a more robust approach than had historically been the case in previous approvals, with particular reference to the 07 permission.

As a result of these Drawing LS-01 Landscape Strategy – Committing to biodiversity enhancement approach has been submitted. Tree protection measures for many on the larger boundary trees and trees not within the development footprint are also proposed.

Slide 13 – Core access road to site. This was submitted at the request of the area roads engineer to provide reassurance that acceptable standards could be met in terms of any RCC submissions.

Slide 14 – Cross sections of road gradients were requested by the Area Roads Engineer and provided by the applicants provided to ensure acceptable gradients for RCC could be provided

Slide 15 - Visibility splays at new access to station road achieved

Slide 16 - off-site footway improvements and traffic calming

Slide 17 - Proposed off site junction works with A814 improving junction layout and safety

Slides 18 - 34 Photographs of site and Station Road from now on

Chair in Conclusion

The principle of the development is acceptable having regard to the allocation of land for residential development in the adopted development plan. The proposals will provide an appropriate layout and design for this well contained site. Notwithstanding the third party objections which have been received, it is considered that the topography of the site, the layout of the scheme, the landscaping proposed, and the house designs and external finishes present a form of development which will accord with LDP and SG policy requirements.

The proposal accords with the adopted Argyll and Bute Local Development Plan (LDP) and supplementary guidance and there are no other material considerations, including views expressed by third parties, which would on officers' opinion warrant other than planning permission being granted in this instance.

Thank you chair that concludes my presentation.

APPLICANT

Mr Derek Scott, Planning Consultant

Mr Derek Scott made the following presentation –

Good morning Councillors and thank you for the opportunity to attend and to make representations to your Committee this morning. As introduced, my name is Derek Scott and I am here in my capacity as a Planning Consultant acting on behalf of the applicants, Helco Developments Limited. As previously advised, I am accompanied today by our client's architectural agent, Mr. Jim Malcolm, who has been dealing with the day to day progression of the application and by our client's ecologist, Dr Paul Baker. Both are available to answer questions specific to their particular involvements and areas of expertise.

Our clients acquired this particular site in 2019 as part of a portfolio of projects and sites which had fallen into administration. Subject to receiving planning permission today and other statutory consents in due course, it is their intention to commence development within the next 12 months and thereafter to embark on a 12-18 month construction programme. The programme outlined is fuelled to a large extent by the significant interest they have received in the development from prospective house purchasers keen to either move to the village or relocate within it.

Your Planning Officer, Mr. David Moore has just now and very comprehensively, outlined the proposals to you and his reasons for recommending the application for approval following his and the wider Council's assessment of the key issues relating to it – a process which I might add has been ongoing for over two years.

You will be aware from the papers presented that a wide range of views have been expressed by third parties, as to why they consider that this particular application should not be granted planning permission. Whilst it is important that you take those views into

account in your determination of the application, it is equally important that they are viewed and appropriately weighted within the context of your legal obligation as set out, in the Planning Acts, which, as you will be aware, is to determine applications in accordance with the development plan, unless material considerations indicate otherwise.

The relevant Development Plan in this instance is, of course, the Argyll and Bute Local Development Plan which was adopted by your Council in 2015. This plan identifies the site for the development of 24 dwelling houses – in other words it accepts the principle of developing the site for exactly the number of dwellings proposed in the application before you for determination.

The emerging Argyll and Bute Local Development Plan 2, whilst not specifically allocating the site for housing purposes, or any other purposes for that matter, continues to include it within the Garelochhead Settlement Envelope in a location where the principle of residential development is considered acceptable. We refer to such land in the trade as 'white land' although, somewhat ironically, it is coloured 'brown' in your emerging plan.

It is important for me to point out to you that your Council had the opportunity to zone the application site as an 'Open Space Protection Area' in the emerging Local Development Plan 2 as other areas of Garelochhead have been so zoned - but you chose not to do so. It is also incumbent upon me to point out that it would be highly highly inappropriate to ascribe such status to it, as many objectors have argued and lobbied for, in the determination of the application before you.

This point is very significant, particularly in the context of those objections put forward which support and advocate the refusal of the application due to perceived ecological and other environmental considerations. Our client's ecologist, Dr Baker, a highly distinguished consultant in his field, has confirmed that there are no statutory environmental designations pertaining to the site and furthermore that there are no ecological constraints preventing its development that cannot be satisfactorily and appropriately mitigated against. Dr. Baker, who undertook his initial habitat studies in October 2020 and June/July 2021 revisited the site last week to further update his work in response to third party objections and has reaffirmed his position in an updated study submitted to your Council last Thursday and available to view on the application file on your Council's Planning Portal. Within that most recent study referred to Dr. Baker highlights that the development proposed can actually bring positive benefit to the biodiversity of the area which will outweigh the perceived negative impact of the scheme proposed. Those benefits derive in part from the fact that some 40-50% of our client's overall land holding is being retained as open space and in part from the landscaping scheme proposed in association with the development. I have also noted and would draw your attention to the fact that your Council's own biodiversity officer has confirmed that she has no objection to the proposals subject to the imposition of conditions which our client is happy to accept.

No credible evidence submitted in opposition to the application to discredit the conclusions of Dr. Baker or your own biodiversity officer has been brought to my attention and therefore I assume it does not exist. Notwithstanding this and in view of the obvious concern that ecological considerations are causing to a section of the local community, our client would be happy, but only if you as a Council consider it to be required, to survey the site again in advance of construction works commencing and to engage the services of an ecological clerk of works during site stripping and initial construction works. Dr. Baker, as I have already advised, is available to answer any specific questions in relation to ecological considerations and the survey work he has undertaken.

Parties objecting to the application have also raised concerns about the transportation implications arising from the development of the 24 dwellings proposed. However, as I have previously outlined, the site is allocated for the development of 24 dwellings in your Council's Local Development Plan and as such has been ratified for the development of this number of units. I would also remind you that planning permission has previously been granted for the development of 24 houses on the site in 2005 and again in 2010 with exactly the same mitigation measures proposed and granted then as are proposed now. The specific circumstances pertaining to the wider road network within which the site is located and the number of vehicles using that road network will not have changed significantly, if at all, in the intervening years. Your Roads Engineers, in responding to the current application, have confirmed their satisfaction with the scheme as proposed and with the off-site mitigation measures identified.

Concerns have also been raised about drainage and flooding issues on the site. Scottish Water, SEPA and your Council's Flood Risk Manager have all been consulted and none of them have raised any objections - all being satisfied that any issues associated with drainage or flooding can be addressed through the incorporation of appropriately worded conditions on any consent granted. That is exactly what I would expect on a site and in a situation of this nature.

Objections have also been raised about the impact of the development on the public footpath through the site. I can assure you that our client will work closely with relevant officials in your Council to ensure that any disruption to the use of that Core Path is minimised and that there will remain, at all times, an alternative route to gain access to the wider path network. Mr. Moore has proposed the imposition of a condition in this regard which our client is again more than happy to accept.

As I have referred to earlier, a section of the local community have campaigned against the granting of planning permission for the development of this site, notwithstanding its status and identification as being suitable for housing development in both your adopted and emerging local development plans. Posters inviting residents to object to the application have been placed throughout the village and along the path that runs through the application site. Standard pro- forma letters encouraging parties to object have also been placed in local shops and other public places. An organisation called 'Save Garelochhead Wetland' has been set up as has a Facebook campaign against the application on such grounds. Notwithstanding the efforts made, only a fraction of households in the settlement (10-12%) have objected – that does not in my opinion constitute significant opposition.

There remains a very large percentage of the local population who have not objected – these parties or at least a proportion of them might well support and welcome the development including the opportunities and benefits that will arise from it:

Firstly the scheme overall will contribute to rather than detract from the biodiversity of the area within which the site is located noting in particular the large part of the overall holding which will be protected from development and the landscaping scheme proposed as part of it.

Secondly, it will lead to the introduction of off-site traffic calming and related road improvements on Station Road as required by your Roads Department.

Thirdly, it will lead to an increased choice of housing in the village for existing residents already living there and wishing to move house or for those wishing to move to the village in the first place. Our clients, as noted previously, have received a lot of interest in that regard;

Fourthly, it will provide much needed affordable housing in relation to which discussions are ongoing with the Argyll Community Housing Association;

Fifthly, the development will bring jobs and economic benefits to those involved in the construction and related sectors; and

Finally, it will, through the injection of new life in the settlement support local facilities and services including shops, schools, clubs, societies, and so on, hopefully for generations to come;

It is, in light of the considerations, I have outlined today, that I would commend this scheme to you and respectfully request that planning permission be granted for the proposals as they have been applied for; for which they are zoned in your adopted local development plan; and for which they have been granted on two previous occasions. I am happy to take questions or as previously outlined to direct them to my colleagues, Mr. Malcolm and/or Dr Baker. Thank you.

CONSULTEES

Fergus Madigan – Garelochhead Community Council

Referred to late publication of ecological report and made the following presentation

Good morning and thank you for the opportunity to speak on behalf of the clear majority of the residents and business owners of Garelochhead.

The community council is objecting to the application. We recognise and acknowledge the overwhelming opposition from the community of Garelochhead to this application.

The first point of the objection we would like to draw your attention to is the proposed junction realignment at the intersection of station road, Bromley place and the B872. The current junction is not perfect, but it does work. It supports the iconic village store and allows a small parking area directly in front of that store, the legality of which is often tested by dubious parking but it does dramatically slow down traffic entering and exiting the junction, organic and highly effective traffic calming is the best way to describe it, the area allows safe access to the store which is invaluable to the elderly, to those with mobility issues, those with young children and even those who are simply in a bit of a hurry, its very existence is vital to the owners (Marco and Roberto's) ability to trade and keep a long established business open that serves a vital need. We ask the committee to be pragmatic here and recognise the purpose it serves.

The proposed realignment takes away that small parking space and offers no alternative, nowhere for a delivery vehicle, nowhere for Mrs Stratton with her dodgy hip to pick up her milk and weekend paper as she has done for the past 65 years. There is no other parking that is readily available close by and we have huge concerns that this appears to have never been considered, it would be utterly shameful if this leads to the closure of the business especially considering the most salient point - the community, the business owners, the road users, the bus companies have never been consulted, there has never

been an effective process to ensure we get this right. Instead we are being asked to agree to a realignment drawn up in 2004 for a 2005 application, reused in 2007 and reused again today. The community has some very serious concerns that the junction will become dangerous with much higher average speeds. There are no pedestrian crossing included, there is no safe cycle crossing or path, the closest marked crossing is a distance down the main road and it itself has not been fit for purpose for the last 5 months as the warning light is awaiting repair. There is no enforcement of parking in Garelochhead and I am asking you to be realistic here, people are inherently lazy in their parking choices and we rightly fear that people will park in far more dangerous places than they currently do. Alternatively they do not park at all and this family run business simply ceases to exist, nobody wants that and alternatives should have been explored. A lot has changed in Garelochhead since 2004, the police station closed in 2013, the population has increased, there are many more road users and the community council asks you to consider the implications of using an 18 year old document produced without consultation on the busiest junction in the village.

The application also entails further conditions that a significant number of road safety apparatus be installed including new footpaths, whilst we welcome these it must be noted the community council finds it staggering that pedestrian crossings and safe cycle paths were not included as this is also the access road to the Garelochhead railway station, the access to the 3 lochs way and the cycle link path to the A817 junction. When we brought our concerns to the attention of the roads department we were told they were statutorily bound to accept this document regardless of some fairly serious misgivings that were expressed in my conversations with council officers. We respectfully ask the committee to make a powerful statement that this is unacceptable.

The community council often feels over-consulted, the A83, the A82, aviation strategy but we are generally happy to defer to the experts in delivering the best result for our communities but the very thing the community should have been consulted on has not been offered. We ask the committee to consider what current data was used, what consideration was given to providing alternate parking spaces, what feedback from the very road users in the best position to give real time and accurate insight into a junction realignment that meets the needs of the community in the best way possible. Was fair and just consideration given with the best interests of a wide cross section of the community in mind? We have serious and valid concerns as to why a site that has a long list of approved applications has never been built on, what stopped the MOD in 1998, what stopped the further 3 applications. The planning office cannot tell us why, the site itself, a steep, waterlogged area of regenerating native woodland may provide the most accurate answer. The conditions of having to deal with all surface water drainage on site via a suds system? The staggering financial burden of building on such a steep and waterlogged area in one of the wettest towns in the UK. Perhaps your recent site visit gave you a fair indication of the rather absurd notion that a simple soakaway could provide the necessary drainage?

We ask why relatively simple percolation tests were not undertaken to determine the viability of the project. We have serious concerns over the Scottish water consultee response, it makes no mention of the ability of the current sewer line to deal with further waste, confusingly it states 'the applicant should be aware that this does not confirm that the proposed development can currently be serviced' it also asks the applicant to submit a pre-development enquiry report. There is no record of this being completed on the portal. I myself have cleaned up raw sewage from the roadside and the rear garden of a friend's house adjacent to Station Road that was pouring out of the old brick lined sewer pits on

the road itself. I have been informed by the very people who reside in Station Road and below Station Road that this is a regular occurrence. The community council feels it is pertinent to remind the committee that the current storm water system is at full capacity and the recurrent flooding and sewer overflows that have plagued Station Road are not fallacy nor figment of imagination, just because an occurrence does not appear on a SEPA report it does not and must not be taken as a case of 'it didn't happen'. We simply ask you to listen to the testimony of the people best placed to give accurate information regarding this, that being the residents themselves.

The wildlife survey is one of the most questionable documents I have seen, it has morphed from a bat and otter survey originally presented as commissioned for a previous applicant (Northkirk Ltd) from 9 years ago (this is printed on the front page) and whose scope of works is clearly stated to be exclusively for a bat and otter survey. It is referenced in an email from the planning portal dated 31st August 2021 in a communication between the applicant and the planning office, the applicants agent makes the following statement 'Hi David, see attached revised bat survey with changes to conclusions to suit comments, I look forward to sign off, regards Jim' - 'changes to conclusions', that may have just been poorly worded but it gets worse.

It has now been given a serious makeover, changed the name of the company commissioning the survey, changed the opening statements, changed the scope of survey, added pages and pages of additional findings and resubmitted 3 days ago but also stating it is the same October 2020 survey just with a few tweaks. It now claims that whilst doing the bat and otter survey the ecologist just happened to undertake a detailed and non-commissioned survey of a full list of European protected species. Just so happened to do a detailed survey at an inappropriate time of the year (October) without ever being asked to. Anyone who has experience of commercial survey activity and indeed any commercial activity will struggle to believe this actually happened. I will highlight a quote from the document submitted on Friday. The original Bat roost potential and Otter surveys were, as noted, completed in October 2020. The client requested that these previously completed surveys be updated following the submission of late observations by third parties to the application and to ensure a broad range of valid in-date ecological survey information was available to assist with the final planning decision making process and will remain valid for post-approval use. The survey update therefore included not only bat roost potential and otter surveys but also a walkover extended Phase I habitat survey that included a protected species walkover survey that considered the potential presence of Badgers, Water Voles, Red Squirrel, reptiles, and breeding birds, with particular reference to those species with enhanced statutory protection' We are being asked to believe that the applicant requested an updated survey showing a full list of European protected species and it just so happened that the ecologist actually performed this incredibly generous and very detailed survey in October 2020 and just happened to keep it very quiet until last Friday. There is not a sniff test in existence that this passes. At least they managed to erase the previous applicant's details from the survey and put the current one. That is something I guess. The applicant has had a long, long time to prepare for this hearing. The sheer waste of officers' time and ratepayers' money, the drain on council resources, the time spent on 4 previous applications on the same site, for the same number of houses is staggering and must be considered a failure of the system. We question the wisdom of not ever commissioning a small survey to at least ascertain if this can be developed on a commercially successful basis or is the application simply being used as collateral by developers to further their financial needs. It is worth noting that when this land last changed hands in 2019 it was at the under instruction of the RBS as a charge had existed on it since it was purchased in 2008 having

been sold by the previous owner less than 12 months after permission was granted in 2007, the owner previous to this was the MOD who had applied and been granted permission in 1998. Do you see a pattern emerging here? It may be pointed out these are not material considerations, we would argue that a material consideration is one which is relevant to the site. How is this not relevant to the site? The application before you is a clear and unequivocal example of a serious flaw in the planning system coupled with some very dubious and questionable documentation and we hope you see fit to dismiss it and make a clear statement that valuable council funds will no longer be wasted on such spurious applications. We welcome growth in Argyll and Bute but we can grow whilst protecting our communities, there are residents along Station Road who have lived with the unwelcome possibility of their properties being overshadowed and their privacy compromised for over 20 years, let us also be fair and just to them, real people just like you and me. And while you may be inclined to think it is allocated for housing but notably soon to be rezoned, why not give it one last roll of the dice, well that would be simply condoning the status quo. Fundamental change does not just happen. Thank you for the opportunity to speak today.

Marina Curran-Colthart

Ms Curran-Colthart confirmed she was in attendance to answer questions and that she had no presentation to make.

OBJECTORS

Michael Puxley

Mr Puxley thanked the Committee for the opportunity to speak. He said that most of the points they had raised in their objection had been covered by Fergus Madigan and that they wholeheartedly supported them. In respect of the parking and access issues he advised the plans did not show the cars currently parked along Station Road and that both the flat and vertical sections would be repositioned. He said that this was a major concern because of the addition of approximately 50 cars from 24 houses to the current pinch point. He said that the second issue was with regards to the wetlands, and referred to slide 34 of David Moore's presentation advising that you could see that even with the current level of foliage in the development area there was over land flow and that the path led onto an area that was flooded with water 11 months of the year. He added that for 3 of these months it iced over and became a hazard. He said that in respect of drainage the water from the modern drains would be decanted into the older drainage system that was not fit for purpose. Mr Puxley referred to the comments made by Mr Madigan about sewerage and advised that the Council had been informed and that they had to come out and fix it, and therefore would be in Council records. The final point he made was around the plan for access to the three lochs way and mention that there would be consultation and advised that given the only access to this was via the railway underpass which was only accessed via the development area and if there was no plan in place for access then they would lose access completely and would mean taking cars out of Garelochhead to get around the railway line and accessing the area from the top end which was not ecologically sound. He referred to mental health and green spaces and advised that this would affect people's mental wellbeing.

Bonnie Puxley

Mrs Puxley confirmed she was in agreement with Michael and had nothing to add.

Lorna Masterton

A short video was played to the Committee showing the Garelochhead Wetlands and then Lorna Masterton made the following presentation –

I'm Lorna Masterton and I'm representing the residents of Garelochhead and the Save Garelochhead Wetland group which was set up a few months ago in response to a lack of awareness of the planning application amongst local residents as no public consultation has taken place.

Due to the 11th hour submission of a new biodiversity report on Friday afternoon we have had to formulate a new response over the weekend in consultation with our environmental solicitor. I will try to keep my presentation as succinct as possible but hope that the committee will be understanding of the difficult position we the objectors, have been put in.

Thank you for giving me this opportunity to speak and I hope I won't take up too much of your time.

The site in question is an undeveloped wild green space with two ponds, several waterways, countless pockets of standing water, and woodland of semi-mature and mature trees. It is smaller than half a hectare, permanently waterlogged and abundant in life, much of which is unseen.

I will present three main arguments, firstly that the planning application does not comply with legislation on Climate breakdown mitigation and is in contravention of Argyll & Bute's own planning policies.

Secondly, I will raise material planning issues concerning the Local Development Plan.

And thirdly, I will highlight serious concerns about the Biodiversity Report, demonstrating that it is not fit for purpose and must be disregarded when making a final decision on this planning application.

This is an important site in the local area for biodiversity and climate change mitigation and should be safeguarded from development. We consider it unlawful for this development to be granted planning permission and urge the Council to protect this important green space.

Moving to the first section of my presentation, the Climate Change (Scotland) Act 2009 states that Scottish Ministers are bound to meet a "net-zero emissions target" by 2045.

Section 44 imposes the duty on public bodies, of which the council is one, to ensure that in the operation of their ordinary functions they act in a way that is sustainable and most likely to contribute towards that target.

I note that Argyll and Bute Council has set its own ambitious targets for climate change mitigation, also aiming for net zero emissions by 2045.

Section 1 of the Nature Conservation (Scotland) Act 2004 places additional duties on public bodies to further the conservation of biodiversity and protect species of 'principal importance for conserving biodiversity' when exercising their functions.

The Planning Committee is accountable for ensuring compliance with these statutory obligations throughout the planning process, for the benefit of local residents and the wider community.

The 4th National Planning Framework which sets out the approach to achieving net zero, asserts that we need to change the way we plan our places to focus on the long-term public interest including Nature Recovery, creation and strengthening of nature networks, flood risk management (this site holds a huge amount of water and offers natural protection to the homes and businesses below from flooding and water run-off due to the extremely high rainfall in Garelochhead), carbon sequestration, biodiversity recovery and easy access to green spaces, all of which are relevant to this site.

Policy 12 of NPF4 states that 'Development proposals that result in the quantitative and/or qualitative loss of children's outdoor play provision should not be supported.'

Local children have played on this site for generations, looking for newts and frogspawn and connecting with nature. The shore path and the local park are the only other areas in Garelochhead for recreation away from traffic, so this is a much valued local amenity.

Policy 32 states that 'development proposals that would have an unacceptable impact on the natural environment including biodiversity objectives should not be supported.'

The woodland and grassland within the proposed development site is part of the Woodland and Acid Grassland network within the Central Scotland Green Network Integrated Habitat Network. This is a wildlife corridor that is a proposed national development in both NPF 3 and 4. Any development activity that results in the removal of woodland and grassland from the site would be contrary to Scottish Planning Policy.

The site is also part of the Central Scotland Green Network IHN Woodland Network, being classed as lowland mixed deciduous woodland and is a Priority Habitat under the UK Biodiversity Action Plan. Local authorities are obliged to preserve these habitats and help to reverse their decline.

In this section I have referred to several points of climate and environmental law, and Planning policy to argue that permission must not be granted for development on this site. In light of the 2021 Intergovernmental Panel on Climate Change (IPCC) report, COP26, and with the upcoming COP15, Climate Concerns must be at the forefront of the Council's minds when considering any development proposal.

Argyll and Bute Adopted Local Development Plan 2015

Moving on to the second section of my presentation regarding the Local Development Plans. The LDP 2015 enshrined certain principles including avoiding the loss of important recreational and amenity open space; conserving and enhancing the natural environment

and avoiding significant adverse impacts on biodiversity, natural heritage resources; and respect for the landscape character of an area.

Paragraph 3.2 of the 2015 Plan notes: “A development proposal will not be supported when it does not protect, conserve or where possible enhance biodiversity, soils, woodland, green networks, wild land, water and environment”

As asserted in our letter on the 9 February and highlighted in the short video, this is an important area for the community as it directly borders the village and serves as a green buffer between the village and the railway line to the east.

It is an area of naturally regenerating woodland and wetland with a distinctive character. The attractive winding path is the only accessible hillside walk and is a much-utilised amenity for local residents for dog walking, cycling, running, quiet time and respite though proximity to nature, something that has been widely acknowledged during the COVID 19 pandemic as being important for mental wellbeing. The path is also an important link to the Three Lochs.

There appear to be doubts amongst Senior Council planners as to whether the site is effective.

In an email dated 24 November 2021, the Senior Planning and Strategies Officer questioned the effectiveness of the site due to the number of planning applications for residential development since 1999, none of which have resulted in successful builds. He advised that for this reason the site had been excluded from the proposed Local Development Plan as an allocated housing site, particularly since there were no representations from the landowner / developer whilst the new Local Plan was being prepared, and the land was not required in order to meet housing land supply targets.

Whereas it is recognised that the proposed development site has been allocated within Local Development Plan 1, the process for LDP2 is almost complete and would have been finalised by now had it not been for the delays caused by the COVID-19 pandemic. But for COVID 19, LDP1 would not have any weight as a policy. We argue that it should be considered in that light, and local Garelochhead residents should not be penalised for these delays.

LDP1 is now 7 years out of date. The up-to-date strategy of LDP2 reflects current housing demands, having undergone a Strategic Environmental Assessment. Crucially, LDP2 does not include the proposed development site at Garelochhead in its zoning.

LDP2 for Helensburgh and Lomond states that there is enough allocated land for 971 dwellings. This far exceeds the housing supply target of just 690 dwellings, proving that there is no urgent housing demand that this proposed development would satisfy.

Further, the majority of the units in this proposed development are large private houses and are not classified as ‘affordable.’ The Argyll and Bute Housing Land Audit 2020 states that there is already an abundance of land for private housing.

Whilst there is a very low demand for housing in the area due to population decline, any demand that may exist is for social rent housing, as described in the Argyll and Bute Local Housing Strategy 2022 to 2027 report.

"Need" is a material consideration yet this proposed development does not meet the actual needs of the community and therefore it cannot be justified.

We submit that the terms of LDP2, which is the most up to date statement by the council of its development intent in so far as it excludes this site, are a material consideration, which the Committee must give very significant regard to when making their planning decision.

Section 25 of the Town and Country Planning (Scotland) Act 1997 states that decisions should be made in accordance with the current Development Plan unless material considerations indicate otherwise, therefore, I argue that this material consideration outweighs any support the site might otherwise draw from its historic inclusion within LDP1.

For these reasons, we respectfully urge the Council to reject this planning application and help safeguard this important green space.

Moving on to the third section of my presentation, here I will be commenting on the biodiversity report submitted by the applicant at the 11th hour on Friday 25th February. Despite the late submission we have managed to consult with our environmental solicitor R & R Urquhart LLP in conjunction with the Environmental Law Foundation and would like to focus your attention on six key areas of this flawed submission.

Firstly, the applicant has not followed due process. This late submission is contrary to article 6 on the European Convention of Human Rights. It is also contrary to the Aarhus Convention and Scottish environmental law which enshrines the principle of public participation and protects the public's right to transparency and proper consultation in the Planning process.

Any government body has a duty to follow these terms therefore we ask that this submission be refused as it is quite simply too late in the day for the objectors and the Planning Office to be able to read, fully consider and respond.

Indeed it renders the Report of Handling obsolete as this refers to the previous biodiversity survey from October 2020 and June/July 2021.

Secondly, in spite of this walk-over survey having been rushed through (indeed the surveyor has even failed to notice the second larger pond on the site) in February when many species are dormant, the report confirms that European Protected Species including otters and bats are in fact present on the site and that the site contains semi-natural habitat that is suitable for Lizards. Nine species of protected plants such as yellow marsh saxifrage and fen orchid have been referenced as being potentially present.

Indeed the NBN Atlas confirms that there are many protected species within a 2km radius of the site. Slow worms have been recorded on site by local residents and there has been a recent sighting of a red squirrel at the nearby primary school.

Thirdly, no quantitative surveys have been undertaken and bat detectors were not used to identify the types of bats, therefore we remain very much in the dark as to numbers and species of bats present. Individual surveys have not been completed for other protected species noted in the report such as Otters, lizards, and plant species to analyse what is on or making use of the land and to advise how any risk of harm to these protected species from development activity can be mitigated.

My fourth point. Please refer to Section 6.9, Limitations. The surveyor admits that a Phase 1 Habitat survey was completed in February which is clearly outwith the core Phase 1 habitat season of March to October. The species are not being studied at the correct time of year when they can actually be identified. It is no surprise that protected plants, water voles, reptiles, breeding and migrant birds were not found during this period of dormancy or hibernation.

Section 6.9 finishes by saying that no constraints were found, yet the single most important constraint was that the survey was completed at entirely the wrong time of year rendering it completely useless.

My fifth point. The conclusion of this report is an exercise in Greenwashing and contains useless hypothetical advice that cannot be used by the planning office to make a decision. It paints a false picture of a neglected landscape choked with invasive species, and attributes blame to local residents for littering whilst not acknowledging the private land owner's responsibility to maintain their own land. I would hope that the video of the site will serve as evidence that this is in fact a beautiful, wild space that is in no way suitable for development.

On to my sixth and final point on the biodiversity report. The surveyor states that the developer wanted to do the survey just before planning permission was due to be given and recommends that proper assessment of the protected species on this site be deferred until after planning permission has been granted.

The precautionary principle, an underlying principle of Environmental law, aims to prevent harm from the outset rather than manage it after the event. An absence of scientific data is not reason to proceed, and the onus of proof is on the developer to show that this proposal is environmentally benign.

We submit that no proper data set has been provided to adequately inform the council about the European Protected Species that are confirmed as present and using this site, and therefore they cannot and must not award planning permission.

To conclude, I have covered three main areas in this presentation.

One, that development on this land would contravene laws on climate change mitigation and ignore Planning policy to the long-term detriment of local inhabitants and the wider community.

Two, that the allocation in the out-of-date Local Development Plan 2015 must be overlooked in favour of the more relevant LDP 2 with its focus on the actual needs of the community based on up-to-date data.

Three, the biodiversity report submitted by the applicant beyond the 11th hour is unfit for purpose and using it as justification for awarding planning permission would be in contravention of the human rights of the Garelochhead community.

As previously stated, this is an important site in the local area for biodiversity and climate change mitigation and should be safeguarded from development. We consider it unlawful for this development to be granted planning permission and urge the Council to protect this important green space.

Thank you. And now I will pass you over to Nick Beevers.

Nicholas Beevers

Mr Beevers thanked the Committee for the opportunity to speak advising that he was a resident of Station Road. He advised that he seconded what both Lorna and Fergus had said about the late submission of the ecology report and that it was not fit for purpose. He said that he had seven points to make and wanted to remind the Councillors that the site was not fit for purpose. The first point he made was that planning permission was granted for 24 houses in 1999 but was abandoned because development was not feasible and this had the backing of the MOD, who had agreed it was not feasible. He advised that major landscaping works were undertaken at this stage and stopped. He said that the developer had spread knotweed during this process. He advised that in 2004 the land had been sold to North Kirk who had applied for planning for 24 houses and had also failed to build but had installed a box barrier on Station Road. This was evidence that it was not economically viable. He said that 23 years on and the land was in other hands and the latest plans were a re-hashing of something that was 20 years old and was not relevant. He said that there was no intention to build on the site and that the current developer had not removed the previous developers' names from the plans submitted which did not show commitment. He advised that the land owner was seeking planning permission to increase the value of the land which was a common tactic that wasted time and resources that the Council did not have. He advised that in 2021 and in preparation for LDP2 the Council had removed the housing allocation from the site due to inaction and the previous builder did not even comment on this which had shown how disengaged they had been with the developer. He asked why if the Council were relying on the private sector to deliver house builds why they did not push for infilling within the Garelochhead area as per National Planning Framework 4 which would avoid the use of a green area which was used by residents every day.

Mr Beevers said that his final comment was about the civil engineering involved on the site and advised that they had employed a civil engineer with around 50 years' experience who had serious concerns about the feasibility and suitability of the site for building. He had noted the steepness and the quantities of water flowing over the land which would make it a very expensive build. He advised that the developer could be looking at £2000 per square metre for each house which did not even include the road works proposed. He referred to the serious problems with water pressure and drainage on Station Road that had been overlooked, and advised that as a resident on Station Road they had daily issues with water pressure and a foul drainage problem at the bottom of the road. He advised that managing that would add to construction costs in building the houses. He

concluded by saying that it had nearly been 25 years since the process had begun and nothing had been built, therefore to approve it again was not correct. He asked that Councillors and planners made the correct decision not to approve planning permission.

Councillor Iain Shonny Paterson

Councillor Iain Shonny Paterson made the following presentation –

If the planning committee grant permission today for this development, the community will lose a significant area of woodlands and wetlands which are of huge benefit to the people of Garelochhead, community woodlands have always been special places and none more so now in light of what the country has went through in the last two years due to the covid pandemic.

Woodlands and wetlands like this provide more than places to visit, their value to our physical and mental health has never been more apparent, where places like this provide space solace and time for reflection.

They are a place where children play and develops there imagination, I am struck when I walk this path when you see the evidence of this, you see paths interspersed through this area coming from the houses that border the wetlands, with homemade bridges across the burn and dens being built in amongst the trees and bushes .

The strong feeling and objection to this development has been conveyed by many of my constituents, and the main reason we are having this meeting today, I know there is a need for good quality housing, and the Scottish government reflects that view in its commitment in providing that but Garelochhead wetlands is not the place for this development, when you also see that there has been planning applications for development on this site since 1999, the last being approved in 2010 you have to question the suitability of this site, especially in light of what I said earlier regarding the pandemic and importance of having places such as the Garelochhead wetlands that we can access easily, instead of putting a housing development here we need to preserve Garelochhead wetlands, so that it can continue to be enjoyed by the people .

I am asking the planning committee to reject this application on behalf of my constituents.

MEMBERS QUESTIONS

Councillor Devon referred to the gradient of the road and asked the Roads department if the gritter was able to drive up the road. Dona Lawson said that she was unable to advise if the gritter was able to drive up Station Road but said that the proposed access met their minimum design standards which was in accordance with both local and national guidance. The gradient of the proposed access road would require to be submitted and justified via the RCC process and would need to meet minimum requirements in terms of local and national guidance.

Councillor Devon referred to comments made around the Local Development Plan and asked how many objections had been received from the community since 2005 in respect of the housing allocation placed upon this site within the local development plan. Mr Moore advised that Mark Lodge would be better placed to answer this question as it was related to the review of the Local Development Plan. Councillor Devon asked if there was

anyone present in the meeting that could answer this and Mr Moore advised that there was not.

Councillor Trail referred to complaints made about the biodiversity report and asked Marina Curran-Colthart if she was satisfied that the biodiversity report had been carried out competently. Ms Curran-Colthart advised that she had received the report at the same time that it had gone into the public domain. She advised that there were a number of maps submitted with the report and in terms of the detail supplied by the applicants' ecologist she had found this acceptable because of where the development was going to take place as it was only on a proportion of the site. In terms of European protected species she advised that the suggested pre-start survey to ensure no species were compromised, tool box talks and an environmental management plan was a lot for a development of 24 houses. She advised that she had visited the site twice and that there were some wetlands that could be saved and that this could be conditioned by the Council to offset any development floor jam. She advised that the onus of keeping a watching brief was on the developer. Ms Curran-Colthart recognised the disappointment by the objectors at the lateness of the publication of the report but said that the focus of the report had been the effect of the development on European protected species and that it did not appear to have any effect. She advised that the developers had also included a tree protection plan under section 9 of the conditions to ensure that there was no construction creep from the development during the build.

Councillor Freeman advised that he was the local member and that he lived within 100m of the site. He advised that he was aware of the history of the site. He advised that he had concerns over the biodiversity of the site and asked Ms Curran-Colthart if her comments within the report of handling had taken into account the survey that had been published the previous Friday on the Council's website. She advised that on Friday she had spent a considerable amount of time reading the report and discussing it with the lead planner and raising any issues. She advised that comments made within supplementary report 2 reflected these discussions including what had been proposed by the applicant in terms of mitigation and pre-surveys. She said that she would have preferred longer but having had a number of years' experience and understanding the concern from objectors they had tried to balance that in terms of mitigation. Councillor Freeman asked her to explain what had been offered in terms of mitigation. Ms Curran-Colthart advised that mitigation was protecting areas out with the development site highlighting that only some of the site would be subject to development; making sure that a tree protection plan was going to be in place, and that pre-construction surveys would be done to ensure no species were compromised at the initiation state of the development. In addition to this she advised in terms of keeping a watching brief that tool box talks would be carried out with contractors to ensure that they were aware of the possibility of protected species entering the site. She advised that these were sound measures to ensure that no species were compromised. Councillor Freeman referred to the tree protection plan and asked for confirmation that this was not a Tree Preservation Order as there had been no request for one on the site. Ms Curran-Colthart advised that these were standard measures for tree protection which could be conditioned to ensure that they were fit for purpose. Councillor Freeman asked Ms Curran-Colthart to confirm that these surveys and reports complied 100% with Council and Scottish Government regulation. She replied that they would, eventually, and that they had supplied the information required of them albeit very late. Councillor Freeman referred to the use of the word eventually and asked if at this time the surveys and reports did not comply. She advised that anything submitted before an application was determined was still valid.

Councillor Freeman referred to a number of issues that had been raised in respect of roads and the access to the site. He asked the Roads Officer to confirm if the alterations to the junction would result in the loss of the parking area in front of the shops. Ms Lawson advised that the proposed realignment of the junction would not remove any road space and that it realigned the way that people access and egress from Station Road. She advised that there were no plans to restrict any parking or change anything. Councillor Freeman asked her to confirm that there would be no restriction to parking in front of the shops and that these parking areas would remain. Ms Lawson advised that the plans submitted did not propose any change in the parking but if it was brought forward that restrictions be placed in terms of safety then that would need to be looked at.

Councillor Freeman referred to discussions that had taken place at the site visit in relation to the number of additional vehicles that would be using Station Road which would be in the region of around 50 extra vehicles and asked Ms Lawson if she agreed that was a reasonable assessment. Ms Lawson advised that based on local and national guidance there was a need to check the percentage of affordable housing and proposed guidance on the number of cars per household, which was around 2 cars per household. She advised that as the proposed road was not a single carriageway with passing places she had no objection to an additional 50 vehicles using the road. Councillor Freeman advised that 25% of the development was proposed as affordable housing which was 6 houses but accepted that 50 additional vehicles was a reasonable figure. He referred to the comment she had made about the road not being single track and advised that the access to the site off Station Road was very narrow and that there was no space for vehicles to pass each other. He asked if the proposals would allow for 2 way traffic to access the site. Ms Lawson advised that both carriageways would be capable of carrying 2 way traffic in either direction, and neither of them were single track. She advised she had no concerns over 50 additional vehicles using the proposed roads. Councillor Freeman referred to the access to the site off Station Road and advised that after seeing the junction it was clearly not a two lane access track at this time and asked if the conditions attached specified a 2 lane road off Station Road onto the site. Ms Lawson advised that two lanes were what was currently proposed but if the applicant proposed a single lane carriageway with passing places then that would be looked at and determined if that was suitable access using both local and national guidance. The current proposal was for a 5.5m wide carriageway.

Councillor Freeman referred to the visibility splays required at the junction to the site and asked if the applicant owned the land to allow these visibility splays to be developed as on the plans. Mr Malcom advised that the visibility splays shown were within the applicant's ownership and within the public domain therefore there were no third party ownerships. He also confirmed in respect of the previous query regarding the 2 lane traffic, that it was a 5.5m two lane carriageway that was proposed.

Councillor Freeman referred to the site boundary and asked if the whole area within the site was within the village envelope. Mr Moore advised that he had noticed no discrepancy between the housing allocation site and the planning application site. He highlighted that all of the proposed development was on the allocated site.

Councillor Freeman referred to the comment Ms Curran-Colthart had made about the development not covering all the site and asked if she agreed that although this was the case that any development on the site could have a biodiversity impact on the whole of the site. Ms Curran-Colthart advised that if it was properly managed and there was no construction creep including the ends of the gardens that it could be balanced in terms of the landscape initiative. Additional work could be done in the area not proposed for

development to ensure the integrity of that area was not lost by introducing a management plan to ensure invasive and non-invasive species do not take over the area. She advised the site proposed for construction was an open site, possibly cleared for construction in the past and therefore that made the north side and the south side of the site different in the ways that they should be managed. She advised there were opportunities in both areas for biodiversity improvement. Councillor Freeman asked if the management plan she had referred to was included in the conditions for this application. Mr Moore advised there were conditions covering a construction environmental management plan, tree protection etc. which were usually imposed on major applications that had been applied due to the tightness of the site and also a traffic management plan for construction. In terms of open space management he advised these were standard conditions that would be built into the existing framework of the planning conditions. Councillor Freeman referred to an intimation made that work had started on the site in the past and asked for clarification on this as at the site visit they had been told by Mr Moore that no work had been started on any of the previous applications. Mr Moore advised that two freedom of information requests had been submitted in relation to this and he had found no evidence of commencement of development in terms of the Planning Act. He advised that this did not include clearing of the site for development.

Councillor Moffat asked Mr Scott if the proposed footpath was still planned at the side of the road and if it would be within the 5.5m width of the road or in addition to it. Mr Scott advised that the footpath was still proposed and it would be in addition to the 5.5m width of the road.

Councillor Moffat referred to the ecological survey and asked the biodiversity officer what weight was given to her input as against the ecological survey that had been provided by the applicant when considering the application. Ms Curran-Colthart advised that her role was to advise the planning process, to make sure ecological surveys were requested, phase one habitat surveys were requested and if anything came in via the public website to follow these up and make sure they are within the site. Her judgements were based on facts and findings within these reports and also on any mitigation measures that were proposed. She asked members to bear in mind that the ecologists were fully qualified and this was stressed in her requests for information. She advised that she took into account everything from an objectionable side of things and a supporting side of things and communicated fully with the planning officers. When no studies are provided she provides a list of what is required.

Councillor Hardie asked the planning officer how construction traffic would enter the site as the roads did not look wide enough when they conducted the site visit. He asked if road improvement would be made prior to commencement of construction as he had serious concerns about lorries travelling up the current roads. Mr Moore advised that the offsite improvements had been conditioned to be advanced prior to construction on the site and that a traffic management plan would be provided to show how construction traffic would get on and off the site safely. Councillor Hardie asked if any environmental health issues had been addressed such as noise. Mr Moore told him that standard conditions would be put in place to protect residents and construction hours would be in accordance with normal practice although with any construction there would be a degree of disruption which was unavoidable.

Councillor Devon asked Garelochhead Community Council if there was a housing need for young people in Garelochhead as 2 bedroom houses would be a good starter home. Mr Moore advised Councillor Devon that the proposal was for 3 and 4 bedroom houses.

Mr Madigan advised that there was always a need for housing for young families but it would be naive to look at the proposal and assume that the houses were something that could be afforded by young people. Councillor Devon then asked Mr Scott if there had been any interest in the houses proposed. Mr Scott advised that there had been a number of enquiries through their agent from both parties living in Garelochhead and those looking to move to the village. He advised that the local community housing association had requested 6 units for affordable housing. Councillor Devon asked Mr Scott if he felt the houses would be out of reach for young people. Mr Scott replied that the 25% affordable housing was not just for purchasing, it was for renting also and there wasn't an area that didn't need affordable housing.

Councillor Trail referred to the Community Council's view that the majority of residents were against the proposal and asked if any surveys had been done which provided figures to show this. Mr Madigan advised that no survey had been carried out but a community engagement exercise had been held the previous week. He advised that the opposition to the development was overwhelming and this was apparent from conversations that had taken place throughout the village. He referred to the applicants' intimation that 15% of houses had lodged an objection and advised that this was a significant number in a small village.

Councillor Freeman referred to slides 7 and 15 of the planning presentation showing the visibility splays at the access to the site and to the intimation made by the developer that the land was in their ownership. Mr Moore advised that the visibility splays, although they were not within the developers land, were on the public road and not third party land. He told Councillor Freeman that all road improvement works were conditioned to be carried out prior to any construction work on the site.

Councillor Hardie asked if the developer had sourced any local tradesmen for construction as mentioned in their presentation. Mr Scott advised that they had not sourced anyone yet but would if planning permission was obtained.

Councillor Kinniburgh asked about the proposed footway on Station Road and its location from the speed table along Station Road and then asked if the road would meet the 5.5m width criteria for two way traffic with the footpath. Ms Lawson advised that there was no proposal to reduce the width of the carriageway and that the footpath would be constructed on the existing road verge.

Councillor Kinniburgh referred to Ms Masterton's presentation and her mention of MPF4. He asked if he was correct in saying that MPF4 was still open to consultation until 30 March 2022. Mr Moore advised that it was out for consultation at the moment and was not an adopted or statutory document at that time, but would be once it was adopted. He advised that when considering the application, under Section 25 of the Planning Act, primary regard was given to the Local Development Plan and therefore Local Development Plan 1 was the substantive basis in the consideration of the application. He referred to comments about the current LDP1 being set aside and advised that it was clear in the report that although they accept LDP2 is a material consideration that they should not set aside LDP1. He advised that he believed MPF4 was a material planning consideration but it was a draft document and in his view the Local Development Plan and Housing Allocation policies were the substantive basis in which the application should be determined. Councillor Kinniburgh asked if the affordable housing allocation of 6 houses was covered by condition and Mr Moore confirmed that it was.

Councillor Moffat referred to slide 16 and her memory of the site visit and asked when constructing the 1.5m wide walkway if it would be on top of the deep gully. Ms Lawson replied by saying that it would be a design feature that the applicant would need to submit as part of their RCC as part of the planning conditions. Councillor Moffat said that if they added a 1.5m footway it would mean that Station Road would be 7m wide and that she did not think the verge was 1.5m wide currently. Ms Lawson said that the carriageway would not be reduced below 5.5m and that the developer would need to ensure that they could meet the requirement of 5.5m for the carriageway plus 1.5m for the footway. Councillor Moffat asked if the width could be measured and assurance given that this could be achieved before they could make a decision. David Moore advised that this matter could be dealt with by suspensive condition and that the onus would be on the developer to demonstrate how this would be achieved prior to any development taking place. Councillor Moffat said that she found it difficult to give it any credence without seeing the final plans. Mr Moore advised that the drawings submitted did give an indication of what was proposed in terms of off-site improvements. He highlighted that they were looking to install traffic calming measures as well. Councillor Moffat referred to the footway and being on site and said that she found it surprising that she didn't have all the details she needed to make an informed decision. Mr Moore said that it was imperative that anything put in was safe and that he was comfortable that there were a series of conditions requesting that the applicant demonstrate the details of how a safe access could be achieved, therefore, in terms of providing everything up front he felt that the plans submitted were sufficient for a planning application. He said that due to the way the planning conditions were framed everything had to be in place before any development on the site could take place. If this could not be achieved it would inhibit the building of the houses.

Councillor Kinniburgh asked for confirmation that if conditions were not met on any application then development could not take place. Mr Moore advised that this was correct and explained how a breach of a planning condition was dealt with and what would make something unlawful. He advised that if they were to breach the condition regarding the provision of safe footways and traffic calming then this would need to be addressed before any work took place on site or it would be unlawful.

Councillor Freeman referred again to the footpath, drainage channel and proposed traffic calming measures and advised that he did not think it was possible to put a 1.5m wide footpath at the side of the existing road, even though the drainage channel was underneath and still retain a 5.5m wide carriageway. He asked Ms Lawson to confirm the current width of the carriageway was the full 5.5m required. Ms Lawson advised that she had not measured it and that it would be the responsibility for the applicant to provide legal road construction consent (RCC) and for them to provide what was conditioned. Councillor Freeman asked if it would be possible to approve the application subject to confirmation that the 1.5m footpath and 5.5m carriageway could be provided. Mr Moore read out suggested condition 3 from the report of handling. He confirmed that the condition already required that the applicant provide necessary road and footway improvements before any development could take place on site. Councillor Freeman said that this would require an approval from the Committee for the condition to apply, and asked if the Committee was minded to approve could they approve it subject to confirmation to the planning officer that the 1.5m footpath and 5.5m carriageway could be provided. Mr Moore said that the wording of the condition could be amended to state clearly that certain things should be provided before commencement of development. Councillor Kinniburgh suggested that Councillor Freeman direct this question to Mr Jackson as it was a legal matter.

Mr Jackson advised that it would not be competent for the Committee to approve the application on the basis that the applicant provided the information and if they could not do this then the approval would fall. He referred to the condition around the roads consent agreement and advised that if they could not provide that then development could not take place on site and that it would be a matter for planning to address if this could not be achieved. He confirmed that for this condition to apply then the Committee would have to first approve the application.

Councillor Green referred to the size of the development being substantial and advised that many applications he had seen had included a lot more supporting documentation and considerations such as public transport. He asked the applicant if any consideration had been given to improving the road in the direction towards the station. He also asked if the applicant started work on the road improvements and footways and it became too expensive could they ask for the condition around the road improvements to be discharged. Mr Scott advised that works towards the station had not been raised with roads during the application. He advised that currently residents walked to the station and he assumed that residents from this development would do the same. He said that he did not envisage any added traffic from the development to the station therefore he didn't feel improvements were necessary. Councillor Green asked if the applicant felt that people from the development would want to make use of the station and increase the footway traffic. Mr Scott replied that he felt there would be additional foot traffic from the development to the station but could not see why it could not operate as a shared surface as it was currently. Mr Moore advised that Councillor Green's second question was hypothetical around the circumstance where the developer came back and said they were unable to carry out the road improvement works and stressed the importance of the safe operation of vehicles and pedestrians in this application and any other for this site saying that safety was first and foremost and at the heart of the consideration of the application.

Councillor Kinniburgh referred to the width of the road and sought clarification from Ms Lawson that they were looking for the carriageway to be 5.5m in width and the footway to be 1.5m. Ms Lawson said that they ask for a standard 5.5m width but the bare minimum was 4.8m. She advised that she would need to check the drawings to see what had been submitted but their bare minimum was a 4.8m wide carriageway and 1.5m wide footpath. Councillor Kinniburgh said he was led to believe that Station Road would be 5.5m wide with a 1.5m wide footway but what was showing on the drawing was a 4.8m carriageway and a 1.5m footway and asked if this was acceptable. Ms Lawson confirmed that it was 4.8m and 1.5m was their bare minimum acceptable.

Councillor Freeman referred to the point Councillor Kinniburgh made and said that he had concerns around this. He asked if officers were now saying a 4.8m carriageway could be provided or if an application came in for an amendment that they would accept 4.8m. Ms Lawson confirmed that a 4.8m width was acceptable in accordance with local and national guidance. Councillor Freeman reiterated his concerns around this given that discussion had been around a 5.5m width throughout the meeting.

The Committee adjourned for lunch from 13.40 to 14.15.

Mr Jackson asked the Members of the Committee to confirm their attendance.

The Committee confirmed that they had no further questions following the adjournment.

SUMMING UP

Howard Young – Planning

Mr Young summed up as follows –

Good afternoon. We are required to assess planning applications in terms of Development Plan Policy and other material considerations. The policy background is set out in the report.

In terms of material considerations the following are considered key:

1 The previous 3 approvals for housing on this site.

2 The responses from Statutory Consultees.

3 Objections to the proposal.

The proposal seeks to develop an allocated housing site (H-AL-3/3) to provide 24 dwellings of varying sizes. The principle of the development is acceptable having regard to the allocation of land for residential development in the adopted development plan. In the new LDP the site is within the settlement boundary which presumes in favour of development subject to a site based criteria assessment.

The proposals will provide an appropriate layout and design for this well contained site. Notwithstanding the third party objections which have been received, it is considered that the topography of the site, the layout of the scheme, the landscaping proposed, and the house designs and external finishes present a form of development which will accord with LDP and SG policy requirements.

The proposal has attracted a considerable number of objections raising issues relating to design, amenity, ecology, drainage/flooding, protection of footpath and road traffic safety. In relation to road safety we aren't starting with a blank canvas but a housing development within the existing urban fabric with its historical roads and pathways. I understand that 5.5 and 1.8 can be achieved within the site. 4.8 and 1.5 elsewhere which satisfies the Area Roads Manager. As such this and the other issues are addressed in the Officer report and can all be dealt with by way of safeguarding conditions.

The proposed extension would give rise to a significant adverse effect on the residential amenity of the lower flat of Dunsheen through loss of daylight to a habitable room having due regard to the applicable minimum standards relating to "Developments Affecting Daylight to Neighbouring Properties" as defined in the Sustainable Siting and Design Principles set out in the Appendix of the Argyll and Bute Local Plan 2015. As such the proposal is contrary to Policies LDP 3 and LDP 9 of the Local Plan which presume against development which does not protect, conserve or where possible enhance the established character of the built environment in terms of its location, scale, form and design and will resist development which does not comply with the relevant siting and design principles contained within the Appendix of the same.

Derek Scott – Applicant

Mr Scott advised that he had listened very carefully to the representations made by all parties, the questions raised and the responses made to the questions. He advised there were a number of key points that should be at the forefront of members' minds as they moved towards debate. The first being that the application site had been zoned for the

development of 24 houses which was the exact number that had been applied for. The site was included in the Garelochhead settlement envelope where the principle of development was acceptable. Planning applications had been granted twice previously for the development of 24 dwelling houses in 2005 and 2010. The circumstances had changed little since these applications had been granted. He said that a considerable amount of objections had been lodged to the application, some of which had been heard at the meeting, and whilst it was important to give consideration to these objections little weight should be given to them. In terms of ecological issues he said that Dr Baker had undertaken surveys on the site on 3 occasions and had confirmed that there were no constraints preventing development. He had concluded that development of the site would result in significant improvements and benefits to the diversity of the site rather than detract from it and this had been agreed by the Council's biodiversity officer. He added that the developer had offered to provide further surveys in advance of development and to employ an ecological clerk of works at the commencement of development. He said there had been nothing mentioned today that had challenged these considerations. In terms of transportation issues he advised that the scheme applied for was exactly the same as what had been applied for previously and would deliver benefits in terms of traffic calming and other measures on Station Road that would otherwise not be delivered. The roads officer had confirmed that she had no objection to the scheme. He said that the site was zoned for residential development and had already received permission on two separate occasions. In respect of matters raised in terms of drainage and flooding, he said that these were capable of being addressed which was also the view of SEPA, Scottish Water and the Council's own flooding consultant. The issues referred to by the objectors could be addressed through the development of the site. He advised that obstruction to the core path would be minimised and that there would always be an alternative route provided to access the wider core path network.

Mr Scott advised that the planning officer had recommended the application for approval as the site was a housing allocation within the local development plan and that the proposals accorded with the policies within the plan and with supplementary guidance and that there were no other material considerations including views by third parties. He said that these were strong words and a powerful recommendation and that it was within the Committee's right to agree or disagree with the recommendation but sound and unchallengeable grounds were required to do so. He said that given the history of planning applications on the site and the specific zoning allocated to the site the application was black and white, there were no grey areas to consider.

Mr Scott made reference to the advantages of the development that he had mentioned in his presentation including that it would contribute to the biodiversity of the site, the introduction of traffic calming measures and roads improvements on Station Road, the provision of much needed affordable housing of which discussions were ongoing with ACHA, the provision of jobs and economic benefits, and the support to local facilities and services.

Mr Scott told the Committee that should they refuse the application, the applicant would lodge an appeal with the Scottish Government and make a claim for entire expenses associated with such an appeal. He said that it was not intended to come across as a threat but as a matter of courtesy to ensure that they were aware of the consequences in arriving at such a decision.

He concluded by saying that he commended the scheme to the Committee and requested that planning permission be granted for the proposals as they had been applied for and granted previously on two separate occasions.

Mr Baker and Mr Malcom confirmed that they had nothing further to add. Mr Malcom reinforced that his position was the same as Mr Scott's.

Fergus Madigan – Garelochhead Community Council

Mr Madigan summed up as follows –

We note the hesitancy from the roads officer in answering the question from Councillor Freeman about parking spaces we ask you examine to proposed junction alterations as they clearly show the current parking spaces outside the spar are now an extended footpath and thus there are no parking spaces available, I ask you to listen carefully to Councillor Freeman's thoughts. He knows this junction very well and may understand the ramifications for Marco and Roberto and their business if this goes ahead. We also note the hesitancy from the biodiversity officer and noticeably vague answer of 'eventually' when asked if the very rejigged survey lodged on Friday meets required standard. The eminently qualified ecologist is a commercial ecologist first and foremost, you get what you pay for! The biodiversity officer has stated it would be fairly standard practice whilst doing a paid survey for bats and otters to also keep an eye out for other protected species, would it also be common practice to perform an extensive survey and mapping exercise with full notes and references unpaid for? The previous lodging (Dec 2020) of the October 2020 survey- Its title reads 'bat roost potential and otter surveys for proposed development' chapter 2- 2. Scope of Assessment and Survey- The survey considered the potential presence of relevant European Protected Species (bats and Otters). The updated 2020/2021 survey submitted sept 2021 is titled 'Bat roost surveys for proposed development' its scope and assessment of survey states the following. The very same survey is now a full 'Ecological survey' and its scope of assessment now encompasses all relevant protected species. How many times can you change the scope of and conclusions of a wildlife survey, post survey? It is easy for an applicant to claim they will do a full raft of further ecological surveys before building commencement. It's very easy to claim this when you have not even bothered to ascertain whether there is current capacity to deal with sewage, nor measured the width of a road, if you're serious about a project you simply lodge an enquiry to find out very early on in the process. This information has huge commercial ramifications. We are quite dumb founded by the claim that there has been a lot of interest from potential buyers in this project, it is a nice claim, but think about it seriously, this project hasn't even been given planning permission and there have been no builders contacted so the thought that these houses are on websites being marketed is dumb founding. That is all from the Community Council. Thanks for your time.

Marina Curran-Colthart

Ms Curran-Colthart said that in terms of ecological surveys, the applicants had eventually met the requirements of the site, and that these things could often be produced in an unordered way. She advised that the applicant could produce as many ecological surveys as they wished until the application was looked at and agreed.

Donna Lawson

Ms Lawson referred to the question regarding the parking outside the shop and advised that in accordance with the highway code you should not park within 10m of a junction. She advised the distance from Station Road to the junction with the B872 was 13m and anyone parking within that was in breach of the highway code. She advised that any proposal to widen the footway was not removing any parking as no one should have been parking there.

Michael Puxley

Mr Puxley made reference to the comment made that there were no parking restrictions being enforced which meant that Station Road on the horizontal and on the incline are both single track roads. He said that it could be seen from the photographs that were part of the presentation the parking that was on Station Road and if that was not going to be removed then it would be down to a one lane carriageway. He added that reversing out onto the main road was a common event without the building traffic. Mr Puxley told the Committee that during the lunch break, he, plus others, had measured the width of the road. He said that 4.8m minimum plus 1.5m minimum added to 6.3m and that a lot of the width of Station Road above the junction was less than 6.3m. He urged that a survey to back that up was done as soon as possible.

Bonnie Puxley

Mrs Puxley confirmed there was nothing further to add.

Lorna Masterton

Ms Masterton said that her presentation had covered 3 key material planning issues which should have been taken into consideration under Section 25 of the Town and Country Planning (Scotland) Act 1997. She advised the first of which was amenity as the area was well used by the community and would be detrimental to the whole community if it was lost. The second point she made was that the Local Development Plan 1 was out of date because LDP2 was more up to date and more in line with the needs of the community. She advised that need was a material condition and there was no housing need evidenced by the site being deallocated and the evidence proved by them earlier in terms of housing need. She advised ecology was the third issue and was a material consideration. She advised that European species were present on the site as evidenced in the NBN Atlas and the landowner as well. She said that the area should be safeguarded. She said that the latest biodiversity report was defective, came in far too late and had not been peer reviewed. She said that a planning application awarded on the basis of this information would be a contravention of the Human Rights of the people of Garelochhead, the vast majority of which were in opposition to the proposal. She referenced Article 6 of the Convention of Human Rights saying that it was contrary to convention and Scottish Environmental Law which enshrines the principle of public participation and protects the public's right to transparency and proper consultation in the planning process. Due to a lack of public consultation she advised that the local community were totally unaware of the proposal which led to a small group of people raising awareness and allowing them to have a voice. She advised that despite the late start the level of opposition was enormous and had been growing daily. She highlighted the fact that further representations had been submitted that day as evidenced by the planning officer.

Nicholas Beevers

Mr Beevers advised that he had found the developers comments threatening and he had been unsettled by them. He referred to the lack of understanding of the roads officer in respect of the parking outside the Spar shop advising that this showed the disconnect between planning and the village. He said that if they knew the village they would have known that people had no choice but to park there. He advised that there had been no enforcement. He referred to the width of the road advising that they had measured the road and that it was not wide enough. He advised that the application was setting a bleak precedent for biodiversity if a survey that had been submitted, which was wrong, was accepted. He advised that if the application went through it would be removing a green space in Garelochhead and starting a cycle of the land being used as capital and another 20-30 years of it not being delivered as housing or delivering the biodiversity that they had said would come from it. He asked the Committee not to put through the development as it would just start the cycle again, create traffic in Garelochhead and would mean the loss of a green space. He thanked the Committee for listening.

Nicola Sullivan

Ms Sullivan advised that she would like to make a few points in response to what had been said. She advised that European protected species had been found on the site including otters and that it was highly unlikely that one otter was passing through the site. It had also been noted that bats had been using the site and she advised there was a need to remember that these species were legally protected as they would not realise that only half the site was being built on and would not know to stay away from the works. She advised the biggest constraint to the biodiversity survey was its timing and that it was done at the wrong time of year as most of the species using the site would have been dormant or hibernating. She advised for that reason alone the survey should have been disregarded as it was useless.

Ms Sullivan advised that in relation to parking, that it had been said that there would be no parking restrictions imposed near the Spar shop, and that the bigger pavement area would encourage cars to park further into the busy road which would be dangerous. She referred to the access and the statement by roads that it was not single track advising that currently cars parked all the way along Station Road to the junction. She advised that photographs in the slides clearly showed that it would be a single track. She said that elderly residents were worrying about not being able to park on the road outside their homes. She referred to the footpath going down the track to Station Road advising that houses would be overlooked from this path and this was evidenced in photographs on slide 45 of their presentation which showed the view from the track where people would be able to see into kitchens and upper bedroom windows, gardens and living rooms due to the low wall also. She advised there would be no privacy.

In relation to construction traffic Ms Sullivan advised that when they previously attempted to build on the site there were JCBs going up and down the track which was approximately 15 years previously. She advised that they dragged knotweed all the way down the track until it was by the bordering wall of Rannoch Brae and onto Station Road. She said that the turning circle was not big enough for these vehicles therefore knotweed was tracked onto the other side of the road as well and the land had been churned up by the vehicles. She advised of the steep drop to the side of Station Road which was a safety issue. Ms Sullivan referred to objections made about noise and air pollution from

construction directly outside Rannoch Brae and that this had not been addressed at the hearing. She said that the cars which currently parked around the junction would still continue to do so therefore the road would be single track and that there were no parking restrictions to be put in place to ensure safety around this area creating a hazard on Station Road.

Councillor Iain Shonny Paterson

Councillor Paterson said that if the Committee were to grant permission for the application the community would lose a significant area of green lands and wetlands which were a huge benefit to Garelochhead. He advised that these areas provided more than just places to visit as they were of value to physical and mental wellbeing and this had never been more essential. He asked the Committee to reject the application before them.

The Chair received confirmation from all parties that they had received a fair hearing. In terms of the Councillors' National Code of Conduct, Councillor Iain Shonny Paterson, Objector, left the meeting at this point.

DEBATE

Councillor Freeman said that he had a number of points to be made on the application. He said he was surprised to hear that if the application was refused that there would be an appeal and that costs would be allocated against the Council. He said that in all the hearings he had attended that he had never heard a developer say this and although it was said that it was not intended as a threat that was the way that he had taken it. Councillor Freeman referred to the parking that was likely to be lost advising that the roads officer had stated that it was illegal to park within 10 metres of a junction and that he had complained to the Council on a number of occasions about other junctions in the village having cars parked on them and no action had been taken. He advised that this was a police issue and not a planning matter that could be taken into account. During the site visit he advised that his understanding was that there was serious concern raised about access to Station Road and to the site. He advised that parking on Station Road had been the norm for a number of years. He said that one of the important issues raised was the width of Station Road and the options for achieving at 5.5m carriageway with a 1.5m footway, a total of 7m; and although officers had said they would accept a minimum carriageway width of 4.8m this was still a total width of 6.3m. He said that he would not be happy with a width of 4.8m and had concerns that no one had measured the road, however he noted that from his own judgement the road and current channel were exactly 5.5m and no further width could be achieved therefore he could not see how the condition could be achieved.

In terms of biodiversity Councillor Freeman advised that he had serious concerns as they had been told that the survey did not achieve all the Scottish Government and Council regulations but that eventually it might be. He said that the fact the survey was only placed on the website on Friday raised further concerns and that he could not see how officers could have read the report fully. He added that the report did not contain any comments from the biodiversity officer in respect of this, another serious concern.

Councillor Freeman referred to comments made that objections had come from a small number of the local population and advised that it was very seldom that he had seen all representations of objection and no representations of support; he said that as officers had stated there had been 163 objections to the proposal which from a small community

like Garelochhead was a massive amount and clearly showed the community was completely opposed to the proposal. He said it was for Councillors to place appropriate weighting on the number of representations received but as a Councillor himself, he would be placing a high level of weighting on the representations that were received.

Councillor Freeman advised that it was disappointing to see that there were no proposals for electric car charging points on the site, which did nothing to help achieve net zero. He said that he believed all new developments should be asked to provide electric car charging points.

Councillor Freeman pointed out that this was one of the few open amenity areas within the village which was well used and would be a great loss to the village. The Council, in LDP2, he advised, had removed the housing allocation from this site and there had been no objections to its removal.

Councillor Freeman referred to the presentations by Fergus Madigan and Lorna Masterton saying they had clearly put in a lot of time and effort into the preparation of the presentations and congratulated them on the work they had put in.

Councillor Trail advised that he concurred with Councillor Freeman's comments about the standard of the presentation by the objectors who had clearly done their research. He advised that he shared their concerns over ecology and green spaces but advised that Councillors had to respect planning law therefore he was minded to agree to the planning officer's recommendations; but the history of the site gave a good indication of what the outcome of the application would be.

Councillor Green said that he had considered everything that had been said. He said it was a difficult case as there was clearly a united view from the community. He referred to the history of the site and that favoured a presumption of granting the planning permission. He said that the community had made very good points about the situation with the history of the site but he was minded to agree with the officers' recommendation. He made reference to the comment by the applicant about the steps that would be taken if the committee did not grant the application saying that he did not think that it was necessary.

Councillor Moffat thanked those who had made presentations. She said that she felt that planning had their hands tied by planning law and felt she was not skilled enough to prepare a competent motion against the application. She said that it was an appalling development, saying that she had visited the site. She advised that Station Road did not require any traffic calming measures as no one would be able to move through Station Road with additional traffic. She said that it was unsuitable and the access was dangerous. She said ruining the ecology of the area was monstrous. She advised that it was dreadful for the Committee to have to go against 163 objections to the proposal, that she felt sorry for planning officers and that it was shocking to receive a threat from the developer in respect of costs and legal action.

Councillor Devon said that as Councillors sitting on the Committee they were dependent on consultees. She advised that she was saddened that the Community Council had not carried out a full consultation. She advised that from 9 statutory consultees who responded, 8 had no objections and 1 did have an objection. She advised that she found it very difficult, but like Councillor Trail, would be going with the officers' recommendation. She said that she was very aware of all the work that the people of Garelochhead had put

in but she felt that she had to go with the officer's recommendation. She said that she had also been saddened by disrespectful remarks made and that in 15 years she had always respected peoples differing views. She asked that it be noted that this had saddened her.

Councillor Hardie said that he had found the hearing interesting with all the different views and whilst he was aware of the objectors' reasons for objecting he had found the planners case more persuasive. He said that for that reason he would be voting as Councillor Devon, Green and Trail for the application.

Councillor Freeman advised that at the appropriate time he would table a Motion.

Councillor Moffat advised that she was taking comfort in the fact that this was an undeliverable build. She said that this was because Station Road was too narrow and could not be made any wider.

Councillor Kinniburgh said that he had listened to everything carefully and congratulated those who had made presentations that had been very well put together. He advised that he did not concur with the comments made that the LDP was out of date and highlighted that the site was a housing allocation within the current development plan. He advised that LDP2 was still with the Scottish Government. He made reference to the comment by Mr Scott which he advised could only be taken by a threat. He advised that members were very aware of the planning process and the rights of applicants; and therefore the way that this was raised could only have been viewed as a threat, which he did not like.

Councillor Kinniburgh advised he had doubts that the development could be delivered due to issues with the access, which he said was a major issue. He said that they had heard about the conditions that would have to be met, and that the point of conditions was to make sure the road was safe. He referred to the views of the roads officer that this could be achieved and advised that he felt there would still be issues around the access, as after being on site he felt the road was not easy to access currently and even with the improvements he felt with another 50 vehicles there would still be issues.

Councillor Kinniburgh said he felt he had found himself in a position where he would have to reluctantly agree with the recommendations of planning but that he did have reservations.

Motion

To continue consideration of the application to allow for the opportunity for the formulation of a competent Motion to refuse the application.

Moved Councillor Freeman, seconded Councillor Moffat.

Amendment

To agree to the recommendation by officers to grant planning permission.

Moved Councillor Trail, seconded Councillor Hardie.

As the meeting was being held on a virtual basis, the vote required to be taken by calling the roll and Members voted as follows –

Motion	Amendment	No Vote
Councillor Audrey Forrest Councillor George Freeman Councillor Jean Moffat	Councillor Mary Jean Devon Councillor Kieron Green Councillor Graham Hardie Councillor David Kinniburgh Councillor Alistair Redman Councillor Richard Trail	Councillor Donald MacMillan

The Motion was carried by 6 votes to 3 and the Committee resolved accordingly.

DECISION

The Planning, Protective Services and Licensing Committee agreed to grant planning permission subject to the conditions and reasons appended to the report by the Head of Development and Economic Growth dated 7 January 2022.

(Reference: Report by Head of Development and Economic Growth dated 7 January 2022, Supplementary Report No.1 dated 18 January 2022 and Supplementary Report No.2 dated 24 February 2022, submitted)

ARGYLL AND BUTE COUNCIL**PLANNING, PROTECTIVE
SERVICES AND LICENSING
COMMITTEE****LEGAL & REGULATORY SUPPORT****23rd March 2022**

CIVIC GOVERNMENT (SCOTLAND) ACT 1982**TAXI FARE SCALE REVIEW**

1. INTRODUCTION

- 1.1** 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.
- 1.2** The Committee at their meeting on 19th January 2022 agreed to propose an increase of 15% on the 3 tariffs and other charges as detailed in Appendix 1.
- 1.3** An advert was placed in the local press week commencing 24th January 2022 detailing the proposed changes to the scales and inviting any person wishing to lodge representations in respect of these proposals to do so in writing by 28th February 2022.
- 1.4** One representation was received on 7th February 2022 as follows:-
We ask that the flag fall on all tariffs stays as it is at the moment but instead of 860 yards can you cut it to 764 yards and the 15 per cent increase still goes through and it will mean we don't need to use both 2p and 1p coins which the government might decide to stop using leaving a bit of a dilemma for the drivers and it would leave us an easier task when we negotiate a price for a hire it would also make it easier to get the taxi meters adjusted.

Members require to consider this representation before fixing the scales.

2. RECOMMENDATIONS

The Committee are asked whether they wish to:

- 2.1** Proceed with the 15% increase as previously proposed at their meeting on 19th January 2022 as detailed in Appendix 1.
- 2.2** Amend the proposal as per the one representation received from the trade. If members agree to propose a further amendment to the scales members are asked to authorise the Head of Legal and Regulatory Support to advertise the proposed changes to tariffs and to invite any responses within one month of the advertisement and report back to members at their next available meeting.
- 2.3** Should no objections or representations be received in relation to the proposal delegate authority to the Executive Director with responsibility

for Legal and Regulatory Support in consultation with the Chair of PPSL to conclude the review without the requirement for the Committee to consider a further report on the review.

3. DETAIL

- 3.1** Following consideration of the representation on the proposal if Members agree to proceed with the 15 % increase on the fares and other charges as detailed in Appendix 1 as proposed by the Committee at their meeting on 19th January 2022 a letter will be issued to all operators detailing the committee's final decision on 24th March 2022.
- 3.2** There is a right of appeal to the Scottish Traffic Commissioner by any person or any persons or organisations appearing to the Traffic Commissioner to be representative of taxi operators. Any appeal has to be lodged within 14 day period of notification of the decision. It is anticipated that the period for appeal will end on Friday 8th April 2022. If no appeal is lodged the new scales will be advertised in the local press as required by the Act.
- 3.3** If Members agree to amend the proposal to amend the scales as proposed by the one representation there would be a requirement to re-advertise the proposal and report back to members on any representations received. This would delay the commencement date for the new fare tariff

4. CONCLUSION.

- 4.1** Members are further advised that an advert will be placed in the local press following their decision week commencing 11th April 2022 if it is agreed to fix the scales as originally proposed. This will still enable the fares to come into force by 22nd April 2022 as previously agreed.
- 4.2** If members agree to amend their proposal as requested by the one representation received then this proposal would need to be advertised week commencing 28th March 2022 with a 28 day period for representations. The date for the proposed scales coming into effect would require to change from 22nd April 2022 to 20th June 2022. A further report would require to be placed before members if any representations were received.

5. IMPLICATIONS

- 5.1 Policy- None
- 5.2 Financial -none
- 5.3 Legal – The Council require to review taxi fares in terms of the Civic Government (Scotland) Act 1982
- 5.4 HR -none
- 5.5 Fairer Scotland Duty:-none

- 5.5.1 Equalities - protected characteristics-none
- 5.5.2 Socio-economic Duty-none
- 5.5.3 Islands -none
- 5.6 Climate Change-none
- 5.7 Risk-none
- 5.8 Customer Service-none

Douglas Hendry

Executive Director with responsibility for Legal and Regulatory Support

Policy Lead: Cllr David Kinniburgh

For further information contact: Sheila MacFadyen, Senior Solicitor

Tel: 01546 604265

Email Sheila.macfadyen@argyll-bute.gov.uk

Appendix 1 – Tariffs and Charges

APPENDIX 1

Tariff 1	Hirings from ranks or "flag" Hiring between 7am and 10pm	£3.45 23 pence
	Initial charge (860 yards or part thereof) Subsequent charge (each 176 yards or part thereof) (general effect is an increase of 15% = 45p and 3p)	
Tariff 2	Hirings from ranks or "flag" Hiring between 10pm and 7am	£4.14 23 pence
	Initial charge (860 yards or part thereof) Subsequent charge (each 150 yards or part thereof)	
	Tariff 2 also applies to hirings from ranks or "flag" between 6pm and 10pm December 24 th , 6pm and 10pm December 31 st and between 7am 2 nd January and 7am 3 rd January (general effect is an increase of 15% = 54p and 3p)	
Tariff 3	Hiring from ranks or "flag" between 10pm 24 th December and 7am 27 th December and between 10pm 31 st December and 7am 2 nd January	£4.83 23 pence
	Initial Charge (860 yards or part thereof) Subsequent Charge (each 120 yards or part thereof) (general effect is an increase of 15% = 63p and 3p)	

Soiling Charge - £100 maximum (with permission to display warning signs indicating that there may be an additional charge for any potential loss of earnings suffered as a consequence)

Waiting Time – 40 pence per minute commencement of journey, charged on a pro rata basis per second
(general effect is an increase of 5p)

Taxi called by mean of telephone – 35 pence additional charge
(general effect is an increase of 5p)

Large Mini-bus type vehicle (carrying 5 or more passengers together at their own request)-

- Where Tariff 1 would apply – charge Tariff 2
- Where Tariff 2 would apply – charge Tariff 3
- Where Tariff 3 would apply – surcharge £1.15 **(general effect is an increase of 15p)**

Fee by negotiation – for all journeys commencing within but finishing outwith Argyll and Bute, in a place of the above charges, such fares may be charged as prior to the acceptance of the hire, were proposed to the hirer and accepted by him/her

Ferry Fares – The hirer shall be liable for the cost of a return ferry fare for any journey involving a ferry

ARGYLL AND BUTE COUNCIL**PLANNING, PROTECTIVE
SERVICES AND LICENSING
COMMITTEE****LEGAL & REGULATORY SUPPORT****23RD MARCH 2022**

CIVIC GOVERNMENT (SCOTLAND) ACT 1982**TAXI DRIVER/PRIVATE HIRE CAR DRIVER MEDICALS AND DELEGATION FOR
SUSPENSION OF LICENCE**

1. INTRODUCTION

- 1.1 This report relates to the requirement for medicals for taxi/private hire car drivers in terms of the Civic Government (Scotland) Act 1982.

2. RECOMMENDATIONS

- 2.1 This report invites the Committee to agree to consult private hire/taxi drivers and operators by writing to them seeking their views on the proposed amended procedure for taxi/private hire car driver medicals.
- 2.2 That the Committee agree to recommend to the Council that a delegation be given to the Executive Director with responsibility for Legal and Regulatory Support in consultation with the Chair and Vice Chair of the Committee to immediately suspend a licence in terms of paragraph 12(1) of Schedule 1 of the Civic Government (Scotland) Act 1982 if they determine that the circumstances of the case justify immediate suspension, on the grounds of undue public nuisance or a threat to public order or public safety.

3. BACKGROUND

- 3.1 In terms of section 13(4) of the Civic Government (Scotland Act) 1982 a licensing authority may, at any time, for the purposes of satisfying themselves that he is physically fit to drive a taxi or, as the case may be, private hire car, require an applicant for or holder of a taxi driver's licence or private hire car driver's licence to submit to medical examination, at their expense, by a medical practitioner nominated by them.
- 3.2 Originally when the Act came into force Group 1 driving licence standards were applied and those drivers who required medicals obtained written confirmation of their fitness to drive from their GP and submitted this with their application.
- 3.3 In April 2016 the DVLA issued guidance to Licensing Authorities which recommended that taxi drivers and private hire car drivers should be medically assessed to a Group 2 driving licence standard as required for lorry and bus drivers. In November 2016 the Scottish Government wrote to the Conveners of all Licensing Authorities in Scotland specifically directing them to the updated guidance issued by DVLA. The Scottish Government Best Practice Guidance was amended to recommend Group 2 Standards should apply and this was adopted by the Council.
- 3.4 Currently applicants aged 65 years and over who are making an application for a taxi/private hire driver's licence will be required to submit a medical certificate in form D4. This certificate is obtained by the applicant from their GP and any charge levied met by the applicant. Group 2 standards of the medical aspects of fitness to drive booklet applied by

DVLA in relation to bus and lorry drivers are applied to taxi drivers in Argyll and Bute. Applicants requiring insulin treatment for diabetes need to provide evidence supporting C1 medical standards. Should an applicant reach their 65th birthday during the period of the licence, a medical certificate will also require to be produced at that time at a cost to the licence holder.

Initially, GP's were prepared to confirm whether or not the Applicant met the required standards. However, over time they have advised that they are not prepared to confirm this, stating that this is a decision for the DVLA. However the DVLA do not determine the outcome of this process, rather Council's administering the process require to ensure that the medical is determined in accordance with the requirements to a Group 2 driving licence standard.

- 3.5 This has resulted in the D4 forms used for Group 2 licences being completed by the GP without any recommendation as to fitness to drive.

4. CONSIDERATION

- 4.1 Consideration has been given to a more robust process and it has been ascertained that a private company are prepared to assess drivers and advise on their fitness to drive.
- 4.2 This would require applicants to attend an appointment at a central location rather than attend their GP as at present. The locations would be in Glasgow, Oban, Helensburgh, Campbeltown and Dunoon.
- 4.3 Currently applicants pay GP's £125 for the completed D4 Form. The fee for a medical in terms of the new process would be in region of £50. This would be met by the Council.
- 4.4 Currently approximately 10 to 15 medicals are required in any year.
- 4.5 Consultation as part of the Equality and Socia-economic Impact assessment will require to be carried out with taxi/private hire drivers and operators on the proposed new arrangements and a further report placed before members once this consultation has been completed. It is recommended that this consultation take place by writing to them asking their views on the proposal. The period for response will be 1 month. A copy of the Equality and Socia-economic Impact assessment is attached to this report as Appendix 1. It will be updated following the consultation.
- 4.6 As a consequence of considering the position regarding medicals it is currently noted that within the Council's Scheme of Delegation there is no delegation to the Executive Director with responsibility for Legal and Regulatory Support to consider the immediate suspension of a licence. This is competent in terms of paragraph 12(1) of Schedule 1 of the Act if a licensing authority determine that the circumstances of the case justify immediate suspension. This can be on grounds of undue public nuisance or a threat to public order or public safety; it is recommended that members recommend to the Council that this delegation be made as this would allow a licence to be suspended immediately if for example a driver did not meet the Group 2 standard.

5. CONCLUSION

- 5.1 A further report will be placed before members following the consultation. Should the Committee agree that the new procedure should be adopted then it will be implemented from 1st July 2022.

- 5.2 That the Committee agree to recommend to the Council that a delegation be given to the Executive Director with responsibility for Legal and Regulatory Support in consultation with the Chair and Vice Chair of the Committee to immediately suspend a licence in terms of paragraph 12(1) of Schedule 1 of the Act if they determine that the circumstances of the case justify immediate suspension, on the grounds of undue public nuisance or a threat to public order or public safety

6. IMPLICATIONS

- 6.1 **Policy:** If the recommendations of this report are approved, a number of policies will be developed in relation to medicals for taxi/private hire drivers
- 6.2 **Financial:** None
- 6.3 **Legal:** The recommendations made in this report have taken due consideration of the Council's statutory role, duties and powers under the Civic Government (Scotland) Act 1982.
- 6.4 **HR:** None
- 6.5 **Fairer Scotland Duty:**
- 6.5.1 Equalities - protected characteristics: An Equisa has been completed and will be updated following the results of the consultation with drivers and operators of taxi and private hire cars
 - 6.5.2 Socio-economic Duty:
 - 6.5.3 Islands: impact on drivers in rural /island areas as would require to attend central location rather than their local GP.
- 6.6 **Climate Change:** None
- 6.7 **Risk:** None
- 6.8 **Customer Service:**

DOUGLAS HENDRY

Executive Director with Responsibility for Legal and Regulatory Support

Policy Lead: Councillor David Kinniburgh – Planning and Regulatory Services

DATE 23-02-2022

For further information contact: Sheila MacFadyen. Senior Solicitor – Legal Services
Email: sheila.macfadyen@argyll-bute.gov.uk
Tel: 01546 604265

Appendix 1 – Argyll and Bute Council: Equality and Socio-Economic Impact Assessment

APPENDIX 1

Argyll and Bute Council: Equality and Socio-Economic Impact Assessment


Section 1: About the proposal

Title of Proposal
Taxi /private hire car driver medicals

Intended outcome of proposal
To have more robust policy for medicals

Description of proposal
To have medicals for taxi/private hire drivers carried out by a private company rather than by their GP's

Business Outcome(s) / Corporate Outcome(s) to which the proposal contributes

Lead officer details:	
Name of lead officer	Sheila MacFadyen
Job title	Senior Solicitor
Department	Customer Services
Appropriate officer details:	
Name of appropriate officer	DAVID LOGAN
Job title	Head of Legal and Regulatory Support
Department	Customer Services
Sign off of EqSEIA	
Date of sign off	01/03/2022

Who will deliver the proposal?
Legal services licensing team

Section 2: Evidence used in the course of carrying out EqSEIA

Consultation / engagement
Consultation will take place with current licence holders before proceeding with the proposal

Data

Other information

Gaps in evidence

Section 3: Impact of proposal

Impact on service users:

	Negative	No impact	Positive	Don't know
Protected characteristics:				
Age				
Disability				
Ethnicity		x		
Sex		x		
Gender reassignment		x		
Marriage and Civil Partnership		x		
Pregnancy and Maternity		x		
Religion		x		
Sexual Orientation		x		
Fairer Scotland Duty:				
Mainland rural population		x		
Island populations		x		
Low income		x		
Low wealth		x		
Material deprivation		x		
Area deprivation		x		
Socio-economic background		x		
Communities of place		x		
Communities of interest		x		

If you have identified any impacts on service users, explain what these will be.

If any 'don't know's have been identified, at what point will impacts on these groups become identifiable?

Impact on service deliverers (including employees, volunteers etc):

	Negative	No impact	Positive	Don't know
Protected characteristics:				
Age		X		

	Negative	No impact	Positive	Don't know
Disability		X		
Ethnicity		X		
Sex		X		
Gender reassignment		X		
Marriage and Civil Partnership		X		
Pregnancy and Maternity		X		
Religion		X		
Sexual Orientation		X		
Fairer Scotland Duty:				
Mainland rural population	X			
Island populations	X			
Low income		X		
Low wealth		X		
Material deprivation		X		
Area deprivation		X		
Socio-economic background		X		
Communities of place		X		
Communities of interest		X		

If you have identified any impacts on service deliverers, explain what these will be.
 Taxi drivers/private hire car drivers will have to attend appointment at mainland central locations which will be more expensive for them rather than attending their own GP. However, they will not have to pay for the medical which will be cost saving.

If any 'don't know's have been identified, at what point will impacts on these groups become identifiable?

How has 'due regard' been given to any negative impacts that have been identified?
 The specialist provider is not able to provide the service in remote locations and in any event, it considered that if a specialist provider were able to do so, to carry out medicals in every location would be prohibitively expensive.

Section 4: Interdependencies

Is this proposal likely to have any knock-on effects for any other activities carried out by or on behalf of the council?	NO
--	----

Details of knock-on effects identified

Section 5: Monitoring and review

How will you monitor and evaluate the equality impacts of your proposal?

Will monitor on annual basis whether medicals being done and whether any reduction in taxi /private hire drivers as result of new policy

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

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: 21/02359/PP

Planning Hierarchy: Local Development

Applicant: Mr Callum MacDonald and Miss Cara Kemp Smith

Proposal: Erection of dwellinghouse

Site Address: Land South Of Caolside, Lady Ileene Road, Tarbert, Argyll and Bute

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwellinghouse

(ii) Other specified operations

- None
-

(B) RECOMMENDATION:

It is recommended that Planning Permission be granted for the proposal subject to conditions and reasons appended below.

(C) CONSULTATIONS:

Transport Scotland

No objection – 24/01/2022

Roads and Amenity Services

No objection subject to conditions appended below – 25/01/2022

Scottish Water

No objection. Available capacity for connection to the Tarbert waste water treatment works for foul drainage only but states that water supply capacity cannot currently be confirmed until a full appraisal is carried out following submission of an application directly to SW – 18/01/2022

Core Paths

No response to date.

(D) HISTORY:

11/01413/PP – Erection of dwelling-house and formation of new vehicular access – Withdrawn on 13/09/2011 following the advice of the Planning Authority that the proposed dwelling-house would adversely affect the character of this part of the Conservation Area because of its' design and materials.

12/00081/PP – Erection of dwelling-house, involving alteration of ground levels, formation of new vehicular access with parking and installation of oil tank. Approved – 21/11/2012

(E) PUBLICITY:

Regulation 20 Advert (expiry date: 22/02/2022)

Neighbour notification (expiry date: 07/02/2022)

(F) REPRESENTATIONS:

(i) Representations received from:

A representation was received from Mr Arthur McFarlane of Mount Pleasant, Lady lleene Road, Tarbert dated 7th February 2022.

(ii) Summary of issues raised:

Comments raised in the representation are noted below:

- I approve of the design and dimensions of the proposed house. I consider that a house of the proposed design and dimensions will sit well among the existing properties in this part of the Tarbert Conservation Area.
- *[Comment: This point raised in support of the application is noted]*
- I approve of the position of proposed house. I consider that the position of the proposed house is the most appropriate which can be achieved within the restrictions of the site.
- *[Comment: This point raised in support of the application is noted]*

- I approve of the First Floor Level (FFL) of the proposed house. I consider that the FFL which is shown in the application plans (28.000 M) places the proposed house at a level which demonstrates respect towards the neighbouring properties and the conservation area.
- *[Comment: This point raised in support of the application is noted]*
- I approve of the heating methods for proposed house which are described in the application. I consider that the use of low carbon forms of energy production is to be welcomed and encouraged for every new residential development.
- *[Comment: This point raised in support of the application is noted]*
- I approve of the new stone dykes which, it is proposed, will run along the front of the application site. I consider the proposed dykes will improve the appearance of the entrance, from the A83 trunk road, to Lady lleene Road.
- *[Comment: This point raised in support of the application is noted]*
- I do not approve of the 2 metre high wooden fence which, it is proposed, will run along the rear of the application site and border the access road shared by Mount Pleasant and Caolside. I consider that the proposed fence would present a conspicuous and unattractive feature within the immediate neighbourhood and the conservation area. I do not consider that it is necessary to erect a crash barrier between the above mentioned access road and the rock-face within the application site but would suggest that, for safety reasons, a sturdy stone dyke of appropriate height is erected.
- *[Comment: Though a decade ago, the previous application is deemed material to this application in that development had commenced on site. The proposed fence was previously assessed and conditioned to be established as part of the application for two main reasons. Firstly, to provided adequate privacy for the occupants of the dwelling and neighbours while the other related to screening a significant section of the dwelling when viewed from the rear of the property.]*

This view has no changed in this assessment. The fence still remains a necessary feature for the development in the interest of the occupants who are likely to be most impacted in that their western neighbouring properties are sited on slightly higher ground level with their private access directly running behind the plot]

(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

The proposal is for a new house in replacement to the previously approved house, ref planning consent 12/00081/PP, which has been initiated with the construction of the access roadway, car parking, retaining walls and foundation preparations.

The proposed new house is designed with a traditional feel which lends itself to the area of individual villas and houses. The finishes in the main are consistent with similar new houses approved on Lady lleene Road.

The proposed new house is to be highly insulated and will have heating and hot water provided by an air source heat pump and mixture of solar and PV roof panels.

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

General supporting statement with reference to the initiation of the approved proposal on the site and describes the current proposal and design evolution.

(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 DM 1 – Development within the Development Management Zones
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

Local Development Plan Schedules

'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)

Landscape and Design

SG LDP ENV 14 – Landscape

Historic Environment and Archaeology

SG LDP ENV 17 – Development in Conservation Areas and Special Built Environment Areas (SBEAs)

General Housing Development

SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources and Consumption

SG LDP SERV 2 – Incorporation of Natural Features / SuDS
SG LDP SERV 5(b) – Provision of Waste Storage & Collection Facilities within New Development

Transport (Including Core Paths)

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes
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.

- Planning History
- Consultee Responses
- Scottish Planning Policy
- SEPA Standing Advice for Planning Authorities and Developers on Development Management Consultations, November 2020

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 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

(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): No

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

This is an application for the erection of a dwellinghouse on a site South of Caolside, Lady lleene road in Tarbert.

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

A detailed application for planning permission was initially submitted for the under reference 11/01413/PP for the erection of dwelling-house and formation of new vehicular access. This was however withdrawn by the applicant on 13/09/2011 following the advice of the Planning Authority that the proposed dwelling-house would adversely affect the character of this part of the Conservation Area because of its' design and materials.

A subsequent proposal 12/00081/PP for the erection of dwelling-house, involving alteration of ground levels, formation of new vehicular access with parking and

installation of oil tank was then submitted. This was granted permission subject to conditions. It is evident on site that work commenced but halted.

This application is for the construction of a 3 bedroom detached property to be constructed over two floor levels. The application site is the immediate vacant corner plot to the South of Caolside on Lady lleene Road in Tarbert. It measures 842 square metres on an elevated ground and bounded by Lady lleene road southward, A83 to the east with established residential dwellings to its north and west. The site is accessible via a laid private access directly off Lady lleene road.

The determining factors in the assessment of this application are whether this location is acceptable for the erection of a dwellinghouse having regard to its visual impact upon the landscape and Conservation Area, its visual relationship with neighbouring properties and its integration with the existing settlement pattern.

In this case, the principle of development on the site for the erection of a dwellinghouse have been established previously. The development will not have a materially detrimental adverse effect upon the character of the landscape nor setting of the Conservation Area. It would be in keeping with the established pattern of development where there are no concerns with respect to residential amenity or finishing materials.

This application would normally have been determined as a local application under the Council's agreed scheme of delegation. However, one of the applicants works in the Planning Department. Therefore, to meet the requirement of the scheme of delegation and the purposes of transparency within the decision making process, it is considered that the planning application for the proposed development should be determined by Members.

(Q) Is the proposal consistent with the Development Plan: Yes

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

The nature of the proposal constitutes small scale infill development deemed acceptable and consistent with the requirement for a Key Settlement area. By virtue of its massing, orientation, design, materials, infrastructure and access, the development integrates well with the immediate surrounding. It does not raise any detrimental residential amenity concerns neither would it detract from the existing character of the conservation area or the wider environment where it will be established.

The proposal, subject to the appended conditions, is deemed compliant with the adopted Argyll and Bute Local Development Plan policies LDP STRAT1, LDP DM1, LDP 3, LDP 8, LDP 9, LDP 10, LDP 11 and Supplementary Guidance SG LDP ENV14, SG LDP ENV 17, SG LDP HOU 1, SG LDP SERV 2, SG LDP SERV 5(b), SG LDP TRAN 4, SG LDP TRAN 6 and SG LDP Sustainable. There are therefore no other planning material considerations which would justify refusal of this application for Planning Permission.

(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: Tiwaah Antwi

Date: 02/03/2022

Reviewing Officer: Peter Bain

Date: 10/03/2022

Fergus Murray
Head of Development & Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 21/02359/PP

1. The development shall be implemented in accordance with the details specified on the application form dated 29/12/2021, 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	00.01		08/11/2021
Site Plan (1:200)	90.10.1		21/01/2022
Site Block Plan (1:500)	90.20		21/01/2022
Proposed Floor Plans and Sections	100.10.1		05/01/2022
Proposed Elevations	100.20.1		05/01/2022
Other: Fence and Wall Details	21.01		05/01/2022

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

2. Notwithstanding the provisions of Condition 1, the proposed access shall be formed in accordance with the Council's Standard Roads Drawing SD 08/002 Rev A and the approved Site Plan drawing ref. 90.10.1 with the junction located a minimum distance of 25 metres from the A83 Tarbert Kennacraig / UC 45 Lady lleene Road junction and shall have visibility splays of 25.0 metres by 2.4 metres from the centre line of the proposed access with the bellmouth area surfaced in dense bitumen macadam for a distance of 5.0 metres back from the existing carriageway edge. Prior to work starting on site the bellmouth shall be fully formed and the visibility splays shall be cleared of all obstructions over 1.0 metre in height above the level of the adjoining carriageway. The visibility splays shall be maintained clear of all obstructions over 1.0 metre in height thereafter.

Reason: In the interests of road safety.

3. The parking and turning area and refuse collection point shall be laid out and surfaced in accordance with the details shown on the approved plans prior to the development first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles and, refuse collection.

Reason: In the interest of road safety.

4. Prior to commencement of development a scheme of boundary treatment, surface treatment and landscaping shall be 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. A programme of measures for the protection of trees during construction works which shall include fencing at least one metre beyond the canopy spread of each tree in accordance with BS 5837:2005 "Trees in Relation to Construction".
 - ii. Existing and proposed ground levels in relation to an identified fixed datum;
 - iii. Existing landscaping features and vegetation to be retained;
 - iv. Location, design and materials of a safety barrier to be located between the new access/turning area and existing private access to safeguard users of the private access and the new dwellinghouse;
 - v. Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted. No hedges, fences or walls shall be permitted, built or grown within 2 metres of the public road;
 - vi. 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. The approved safety barrier shall be installed prior to any excavation works commencing within the site.

The approved means of boundary enclosure shall be fully implemented prior to the first occupation of the development.

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, road and public safety and the privacy of adjacent residential property.

-
5. The dwellinghouse shall be constructed with a finished floor level height at the specified 28m AOD as shown on the approved site plan (drawing no. 90.10.1) and the ground levels of the driveway, turning and parking areas shall also be created to reflect their specified levels respectively as shown on that same drawing, relative to the surveyed fixed datum points off-site within the approved drawing unless minor amendments to these levels are otherwise submitted to and agreed in writing by the Planning Authority.

Reason: To ensure the development satisfactorily integrates into the neighbouring topography, landscape and built environment within this part of the Conservation Area.

6. Samples of the proposed materials to be used for the external walls (the colour/texture of the wet dash render, material and colour of the cill and door/window bands as shown) and the roof of the development (which shall be mock slate as specified on the amended approved drawing no. 100.20.1) hereby granted consent shall be submitted to and approved in writing by the Planning Authority prior to any work starting on site. The development shall be completed in accordance with the duly approved details.

Reason: In the interest of visual amenity and in order to integrate the proposal with its surroundings within this part of the Conservation Area.

7. No development shall commence until the surface water drainage system has been submitted to and approved in writing by the planning authority. This shall be consistent with the principles of Sustainable urban Drainage Systems (SuDS) and compliant with the guidance set out in CIRIA's SuDS Manual C697. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

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

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. 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.
- The attention of the applicants is drawn to comment made by Scottish Water in their response dated 18th January, 2022 and comments regarding connection to public water supply and general advice.

This proposed development will be fed from Tarbert 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 Operations.

The applicant/developer is advised to contact Scottish Water directly concerning connection to public water supply and infrastructure issues. Planning and Development Services, The Bridge, Buchanan Gate Business Park, Cumbernauld Road, Stepps, Glasgow G33 6FB; Development Operations, Tel. 0800 3890379, or email DevelopmentOperations@scottishwater.co.uk quoting ref. DSCAS-0041573-PN9.

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

- Private surface water drainage arrangements are also subject to separate regulation by Building Standards. Further advice on SuDS can be found in SEPA's Standing Advice for Small Scale Development – www.sepa.org.uk.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/02359/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

This application seeks detailed planning permission for the erection of a dwellinghouse on Land South of Caolside, Lady lleene Road, Tarbert.

The site was previously granted planning permission under application reference 12/00081/PP for a similar development – Erection of dwelling-house, involving alteration of ground levels, formation of new vehicular access with parking and installation of oil tank.

In terms of the adopted Argyll and Bute Local Development Plan (LDP) the application site is located within a Key Settlement of Tarbert where Policy LDP DM1 gives encouragement to sustainable forms of up to and including large scale development on appropriate sites and subject to compliance with other relevant policies and supplementary guidance.

Policy LDP 3 aims to protect, conserve and where possible enhance the built, human and natural environment. SG LDP ENV 14 states that outwith National Scenic Areas and Areas of Panoramic Quality, the Council will consider landscape impact when assessing development proposals, and will resist development when its scale, location or design will have a significant adverse impact on the character of the landscape. The application site also falls with the Tarbert conservation area where policy SG LDP ENV 17 further expects development within a conservation area to be of high quality and to respect and enhance the conservation area.

Policy LDP 8 is set out to support new sustainable development proposals that seek to strengthen communities. SG LDP HOU 1 states that there is a general presumption in favour of housing development within settlements unless such development has an unacceptable environmental, servicing or access impact. SG LDP HOU 1 also states that such developments are subject to consistency with all other policies and associated supplementary guidance of the Local Development Plan.

Policy LDP 9 requires developers to produce and execute a high standard of appropriate design and to ensure that development is sited and positioned so as to pay regard to the context within which it is located. The SG LDP Sustainable provides further detail to this policy seeking development layouts to be compatible with, and consolidate the existing settlement taking into account the relationship with neighbouring properties to ensure no adverse impact on visual and/or residential amenities.

Detailed below is an assessment of the proposed development against the above referenced policies deemed relevant to the application.

B. Location, Nature and Design of Proposed Development

The subject of this application is a proposed 3 bedroom detached property to be constructed over one and three quarter storeys. The application site is the immediate vacant corner plot to the South of Caolside and north of Bonawe on Lady lleene Road

in Tarbert. The site measures 842 square metres on an elevated ground where it is bounded by Lady Ileene road southward, A83 to the east and established residential dwelling to its north and west. The site is accessible via a laid private access directly connected to Lady Ileene road.

The application site falls within the designated Key Settlement Area and the Tarbert Conservation Area. The principle for constructing a dwellinghouse on this plot as an infill opportunity was established and accepted a decade ago under the initial application 12/00081/PP with the description "Erection of dwelling-house, involving alteration of ground levels, formation of new vehicular access with parking and installation of oil tank". Planning permission was granted for this on 21 November 2012, having been assessed against the precursor LDP 2009. It is worth noting that there are signs of the development's initiation on site as highlighted on the application form. However, it is unclear whether this was carried out during the 3 year period of the decision date. GIS evidence sourced shows development on site around October 2015 at which time the planning permission would have lapsed. Based on the above coupled with the scale of development proposed on the site, it is considered compliant with Policy LDP STRAT 1 and LDP DM 1.

The proposed development is small scale, T-shaped east facing dwellinghouse with two elevated (upper floor level) balconies and a gross footprint of approx. 96.8 square metres. It will be positioned on the levelled ground of the site where it will be set back approx. 14 metres and 8 metres from the front and rear boundaries respectively and 2 metres from the northern boundary. At this location, it is understood that a further half a metre of rock/ground excavation is expected resultantly in approx. finished floor level of 28m relative to datum or 3.5 metres above trunk road level. The excavated materials will be used to finish off the sloping ground in front of the house which will then be landscaped; details of which will be addressed with a condition to ensure appropriateness and in keeping with the conservation area.

The proposed T-shaped house consists of two levels with the upper floor contained within the roof space. It is designed to have a cross-gabled pitched roof accommodating a number of solar panels and 4 roof lights. A similar pitched roof dormer window is proposed to the front (east) elevation and varied sized windows, doors as well as patio doors are proposed to serve the property. Proposed finishing materials include wet dash render, grey composite vertical cladding, grained upvc windows (double glazed) and doors, aluminium rainwater goods, mock slates and glass balustrades/handrails. Additionally, the proposal seeks to integrated solar panels on the south and west facing roof planes.

It is acknowledged that consideration has been given to the character of the site's immediate surrounding and the Conservation Area where the established residential area boasts of similar moderate house types and sizes (generally 1.5 and two storeys). It is therefore considered that the scale of the proposed dwelling would be in keeping with the immediate surroundings and would not have a domineering effect to the detriment of visual amenity. Additionally, taking into account the elevated position and the overall massing of the dwelling, it is not considered to hinder any key views from the site. However, the introduction of the stone walls and landscaping subject to condition, are deemed acceptable to create a welcoming visual effect which would enhance the Conservation Area.

Due to the development's orientation, there are no concerns associated with overlooking or overshadowing to the immediate neighbours to the detriment of residential amenity. It is worth noting that due to the elevated positioning of the western neighbouring properties and their private access directed behind the site, any potential

overlooking concerns would be to the applicants. It is therefore deemed necessary that the proposed 1.8 metre timber fence to the rear of the site is established to address this.

The proposed finishing materials are considered acceptable for the Conservation Area in that they reflect some of the existing materials in the area and would not detract from the character of the conservation area nor the wider environment. Consequently, the design, scale and massing of the proposal will not have an overbearing effect and is in keeping with its immediate surrounding.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

C. Built Environment

The proposed site though outwith both a National Scenic Area and Areas of Panoramic Quality designations would be assessed against Policy LDP 3 which aims to protect, conserve and where possible enhance the built, human and natural environment. SG LDP ENV 14 further states that landscape impact will be considered when assessing development proposals, and will resist development when its scale, location or design will have a significant adverse impact on the character of the landscape.

The application indicates some landscaping to be incorporated within the development. The site plans demonstrate their location, design, surface water treatment, hardstanding areas as well as highlighting the proposed contours of the site. Taking into account the nature of the proposal, its moderate scale, location and topography coupled with the sympathetic design and finishing materials, it is not considered that the proposed dwelling would adversely impact on its immediate surrounding, the conservation area or wider natural environment.

D. Road Network and Parking

With regards to access and parking, the development seeks to rely on the existing private access layout connecting the site to Lady Ileene road, therefore no additional access would be created for the development. Additionally, two car parking provisions have been indicated on the submitted plans to serve the dwelling.

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. Supplementary Guidance SG LDP TRAN 4 and SG LDP TRAN 6 expands on this policy seeking to ensure developments are served by a safe means of access and have an appropriate parking provision and turning area within the site.

The Area Roads Engineer was consulted and has raised no objection to the application subject to appended condition. The development is considered to comply with Policy

LDP 11 and Supplementary Guidance SG LDP TRAN 4 and SG LDP TRAN 6 of the LDP. Furthermore, the development has been assessed against the relevant unopposed policies of the proposed LDP 2 including Policy 35, Policy 37 and Policy 39. These policies do not reflect much changes to their currently adopted policies, it is therefore considered that the development conforms to Policy 35, Policy 37 and Policy 39 of the proposed LDP 2.

E. Infrastructure

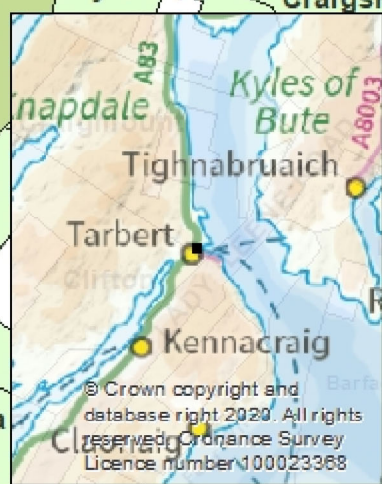
The application site is located in the Tarbert Drainage Operational Area (DOA002408). The proposal intends to connect to both public water supply and foul water drainage network with surface water drainage dealt with on site via the introduction of ditch along the site's northern boundary. Policy LDP 10 supports all development proposals that seek to maximise our resources and reduce consumption and where they accord with other relevant policy requirements. SG LDP SERV 2 states that in accordance with Government Advice the Council will encourage developers to incorporate Sustainable Drainage Systems (SuDs) within development schemes. This provides benefits in terms of flood avoidance, water quality, habitat creation and amenity.

In view of the above, consultation response from Scottish Water (SW) has raised no objection to this application but states they have advised that they cannot guarantee capacity with regard to water supply and the applicant should contact them directly. They note following a full appraisal and in the event there is adequate water capacity, the property will be fed from the Tarbert ARG Water Treatment Works. This has been appended as a 'note to applicant'.

SW has confirmed there is currently sufficient capacity for a foul only connection in the Tarbert Waste Water Treatment works to service the development but will not accept any surface water connections into the combined sewer system in the interest of sustainability and safeguarding against potential future sewer flooding.

The proposed development has incorporated a refuse collection point at the site entrance where it connects Lady lleene road. total of four wheelie bins' storage spaces to the immediate north east corner of the house and therefore complies with SG LDP SERV 5(b) which requires new developments to make effective provision for the storage, recycling, composting where appropriate, separation and collection of waste from within the development site or when appropriate, from an appropriate roadside or other specified collection point.

In conclusion, the proposed development has been assessed against all of the above potential constraints and designations and determined to raise no issues or concerns. It is consistent with relevant policies of the adopted LDP subject to the appended conditions.



Location Plan Relative to Planning Application: 21/02359/PP



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ARGYLL AND BUTE COUNCIL**Planning, Protective Services and
Licensing Committee****Development & Economic Growth****23rd March 2022**

Updated Planning Enforcement and Monitoring Charter 2022

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks the endorsement of an updated Argyll and Bute Enforcement and Monitoring Charter which is contained at **Appendix A**. Enforcement Charters should be reviewed every 2 years and they must outline what service we provide to our customers and complainants in relation to breaches and alleged breaches of planning control.
- 1.2 Our Charter outlines a proportionate and pragmatic approach to planning enforcement to ensure our environment and economy can co-exist and complement each other. Effective regulation and enforcement is also essential to ensure that all developers operate on a 'level playing field' and the aspirations of the Council's development strategy (contained within our Development Plan) are turned into reality on the ground.
- 1.3 It is recommended that the Committee:-
- i) Approve and endorse the updated Enforcement and Monitoring Charter 2022 (Appendix A)
 - ii) Approve that the Planning Position Statement (Appendix B), (setting out the relaxation of planning controls within designated town centres as previously approved by the Council Leadership Group in July 2020, and subsequently extended on 29th October 2020 and by PPSL 17th March 2021 and 22nd September 2021) be further extended until 30th September 2022.
 - iii) Approve the addendum to the Enforcement & Monitoring Charter (Appendix C) for a further temporary period expiring 30th September 2022, subject to periodic review in the event of updated guidance being provided by the Scottish Government.

Updated Planning Enforcement and Monitoring Charter 2022

2.0 SUMMARY

- 2.1 This report seeks the endorsement of the updated Argyll and Bute Enforcement and Monitoring Charter which is contained at **Appendix A**.
- 2.2 The Scottish Government stipulates that Enforcement Charters should be reviewed every 2 years and they must outline what service we provide to our customers and complainants in relation to breaches and alleged breaches of planning control.
- 2.3 Enforcement is one of the most complex parts of the planning system. Effective and timely enforcement is essential for public confidence, fairness and natural justice. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required. Enforcement is an issue that concerns many members of the public.
- 2.4 The Council's Enforcement Service contributes to the making of (and more so the protecting of) our great places and physical environment which is consistent with the Single Outcome Agreement, the Council's Corporate Plan objectives and the Planning Service Plan objectives.
- 2.5 The purpose of planning enforcement is to resolve a problem rather than to punish a mistake. However, the presumption remains that development should be authorised in advance and the regularisation of development after the event by retrospective proposals should be the exception, where there have been inadvertent breaches of control or deviations from previously approved plans, for example. Any action taken has to be appropriate to the scale of the breach and we seek to work progressively with customers seeking negotiated solutions before recourse to formal enforcement intervention.
- 2.6 We also undertake strategic monitoring of consents and these may trigger an enforcement file to be opened and investigated. Given the number of planning consents and geographic size of Argyll and Bute we cannot strategically monitor or review all consents. We give priority to major applications, controversial developments or those in sensitive locations
- 2.7 This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

- 2.8 The Charter reflects increased levels of fines as introduced by s42 of the Planning (Scotland) Act 2019. It is noted that the provisions of s43 and s44 of the 2019 Act will respectively introduce additional powers to utilise Charging Orders and a requirements relating to the monitoring and reporting relating to 'Major' developments. The detail of what this will entail is not yet known however as the Scottish Government's further work on this issue has been delayed by the pandemic. It is considered that it would be appropriate to undertake a more comprehensive review and update of the Enforcement and Monitoring Charter at that time if necessary rather than wait for the two year review period in March 2024.
- 2.9 It is also advised that the Scottish Government's advice on the relaxation of planning enforcement remains in place until 30th September 2022. PPSL have previously reviewed and approved an addendum to the Charter, most recently in September 2021, setting out specific provisions that specifically support town centre businesses and their recovery, and a more general position recognising the circumstances under which the pandemic may provide ground for relaxation of planning enforcement. It is considered that it is appropriate that the Council extend these additional temporary relaxations until 30th September 2022 to retain alignment with the National position on planning enforcement.
- 2.10 It is recommended that the Committee:-
- i) Approve and endorse the updated Enforcement and Monitoring Charter 2022 (Appendix A)
 - ii) Approve that the Planning Position Statement (Appendix B), (setting out the relaxation of planning controls within designated town centres as previously approved by the Council Leadership Group in July 2020, and subsequently extended on 29th October 2020 and by PPSL 17th March 2021 and 22nd September 2021) be further extended until 30th September 2022.
 - iii) Approve the addendum to the Enforcement & Monitoring Charter (Appendix C) for a further temporary period expiring 30th September 2022, subject to periodic review in the event of updated guidance being provided by the Scottish Government.

3.0 IMPLICATIONS

3.1 **Policy:** None

3.2 **Financial:** None

3.3 **Legal:** None

3.4 **HR :** None

3.5 **Fairer Scotland Duty:**

3.5.1 **Equalities – Protected Characteristics:** None

3.5.2 **Socio-economic Duty:** A consistent and proportionate approach to planning enforcement is essential for natural justice.

3.5.3 **Islands:** None

3.6 **Climate Change:** None

3.7 **Risk:** Reputational risk if planning enforcement is not adequately resourced or intervention taken. Development Plan and spatial vision for the Council would be undermined.

3.8 **Customer Service:** Charter defines expected service standards for planning enforcement customers.

Executive Director with responsibility for Development and Economic Growth:
Kirsty Flanagan
Policy Lead:- David Kinniburgh

9th March 2022

For further information contact: Peter Bain – 01546 604204

APPENDICES

Appendix A – Enforcement and Monitoring Charter 2022

Appendix B – Previous report to Strategic Leadership Group July 2020

Appendix C – Temporary Addendum to Planning Enforcement Charter

Enforcement and Monitoring Charter

Cumhnant Sgriobhte Sparradh Dealbhachaidh

Argyll and Bute Council

Reviewed March 2022



Planning, Housing & Regulatory Services



Planaidh, Taigheadais is Sheirbheisean Riaghlaidh

Animal Health, Building Standards,
Development Management, Development Policy,
Environmental Health, Housing & Trading Standards



CUSTOMER
SERVICE
EXCELLENCE

Enforcement and Monitoring Charter

This Charter outlines the procedures and standards of service that customers can expect when they make enquiries to Argyll and Bute Council about development that may not be permitted under the relevant laws.

The Charter also identifies the ways we monitor planning permissions and sets out the enforcement powers currently available to the Council. These powers include the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006, and the Planning (Scotland) Act 2019.

Copies of this Charter are available on the Council's website at www.argyll-bute.gov.uk, and at the following Council offices:

- **Kilmory Castle, Lochgilphead, PA31 8RT**
- **1A Manse Brae, Lochgilphead, Argyll PA31 8RD**
- **Municipal Buildings, Albany Street, Oban, PA34 4AW**
- **Milton House, Milton Avenue, Dunoon, PA23 7DU**
- **Helensburgh & Lomond Civic Centre, 38 East Clyde Street, Helensburgh G84 7PG**

Argyll and Bute Council welcomes feedback on this Charter, how it could be improved and how the Council could improve the service it provides.

Any feedback should be sent:

By email to: planning.hq@argyll-bute.gov.uk

Or by post to:

Development Manager
1A Manse Brae
Lochgilphead
Argyll
PA31 8RD

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DRAFT

CHAPTER 1: INTRODUCTION AND CONTEXT

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. However, developers or householders sometimes undertake work without planning permission or fail to comply with the terms of planning permissions.

The purpose of planning enforcement is to resolve a problem rather than to punish a mistake. Any action taken has to be appropriate to the scale of the breach.

Councils have discretionary powers to enforce planning controls in such cases, if they consider it is in the public interest and expedient to do so having regard to a deemed assessment against the Local Development Plan and material planning considerations. Councils also monitor certain developments to ensure planning controls are being followed. Additionally, the public often alert the council to problems they become aware of.

This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

Enforcement is one of the most complex parts of the planning system. Effective and timely enforcement is essential for public confidence, fairness and natural justice. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required. Enforcement is an issue that concerns many members of the public.

Following the provisions of [Scottish Government Circular 10/2009 – Planning Enforcement](#) ensures that actions taken are in line with national practices and current Scottish Government guidance. The Council's Enforcement Service contributes to delivery of the Single Outcome Agreement objectives, the Council's Corporate Plan objectives and the Planning Service Plan objectives.

We hope you will find this Charter useful and will let us know if you think we could improve the service further.

Argyll and Bute Outcome Improvement Plan 2013 – 2023

The Council's Enforcement Service contributes to the making of (and more so the protecting of) our great places and physical environment which is consistent with the SOA Outcome 1, ensuring Argyll and Bute has a diverse and thriving economy. The Council's whole development strategy is only as good as its implementation 'on the ground' and our Officers have a key role in ensuring that the key outcomes of the Development Plan or relevant planning decision are delivered for each site to the benefit of our economy, communities and environment. The reputation of the Council and our economy as a whole must also be upheld by a proportionate enforcement strategy.

Our businesses need a fair, equitable and safe environment to grow based upon effective and proportionate regulation and control. Planning Enforcement and Monitoring is at the heart of this by ensuring developers operate on a level playing field and investments are underpinned by the certainty of a plan led system that is effectively enforced.

Monitoring and Enforcement Performance Indicators

The Council currently record a number of performance indicators stipulated by the Scottish Government including:-

- Number of cases investigated
- Number of Cases Taken up
- Number of Breaches Identified
- Notices Serves
- Number of Prosecutions
- Number of breaches resolved

CHAPTER 2: BREACHES OF PLANNING CONTROL

Although this Charter relates to the enforcement of planning legislation, it is important to note that planning enforcement also includes legal obligations (S75), listed buildings, tree preservation orders and advertisement regulations. Whilst the legal enforcement procedures may differ, the objectives remain the same; the control and regulation of development and cessation of unauthorised or undesirable development, as well as the remediation and reinstatement of land where necessary. It should also be noted that it is at the Council's discretion whether it is expedient or appropriate to take enforcement action. Most breaches of planning control are not a criminal offence, however, works to protected trees, the display of unauthorised adverts, works to listed buildings or unauthorised works within a Conservation Area are potentially criminal offences and a more formal approach may be required.

For the purposes of this Charter, a breach of planning control is defined as:

- *Development being carried out without the benefit of planning permission*
- *The carrying out of development or alterations to a Listed Building or within a Conservation Area without the required consents (which are criminal offences)*
- *A failure to comply with any condition, Section 75 obligation or limitation attached to any planning permission or related consent*
- *Unauthorised works to protected trees*
- *An unauthorised change of use*
- *Departure from approved plans or consent*
- *Noncompliance with planning conditions*
- *Unauthorised display of advertisements*

Anyone can make a complaint if they are concerned that there has been a breach of planning control. The public play a vital role in reporting these breaches to the Council. Enquiries can be made by telephone to the relevant area office but must be followed up in writing or by e-mail.

DETAILS REQUIRED TO INVESTIGATE AN ALLEGED BREACH OF PLANNING CONTROL

- *The name and address of the person who is suspected to have performed the breach of planning control*
- *The location of the site (a map showing the site would be useful)*
- *Details of the suspected breach with times, dates, etc.*
- *How long has the alleged breach taken place*
- *Explanation of the harm that the alleged breach is causing and how it affects you*
- *Your contact details, including if available, an e-mail address and phone details*
- *Whether or not you wish the enquiry to be treated as confidential*

Information will be treated as confidential as far as the law allows, in accordance with the Freedom of Information (Scotland) Act 2002 (FOI), the Environmental Information (Scotland) Regulations 2004 (EIR), and the General Data Protection Regulation (GDPR). Information will not be released where it is not in the public interest to do so or as a result of a ruling by the Scottish Information Commissioner or court of law. On occasions elected Members, MP's or MSP's may seek information on enforcement cases from Planning Enforcement Officers. When this happens, basic information will be supplied, such as whether or not a breach of planning control has been identified or whether any notices have been served. Additional information may be subject to release under the FOI or EIR after enforcement cases have been concluded.

Please note the Council will not investigate anonymous complaints unless the alleged breach is considered, by the relevant Area Team Leader, to be so serious to demand an immediate investigation. Complaints that do not fall under the jurisdiction of the Planning Authority such as neighbour disputes or civil matters cannot be investigated through the Council's planning enforcement procedures.

CHAPTER 3: INVESTIGATING BREACHES OF PLANNING CONTROL

All enforcement complaints received by the Council will be processed in accordance with the Argyll and Bute Council Customer Service Charter which can be viewed online at www.argyll-bute.gov.uk/council-and-government/argyll-and-bute-council-customer-service-charter.

A written complaint will be acknowledged within **3 working days**. The case will then be passed to the relevant Officer who will undertake an investigation. This will normally require a site inspection and a determination as to whether or not there has been a breach of planning control. Where no breach of planning control has been established the complainant will be advised of the outcome and the case will be closed. Please note that the opening of an investigation does not necessarily mean that a breach has occurred or that formal action will be taken.

One of the priority rating timescales, listed below, will be applied to each case. Owing to home/hybrid working arrangements introduced in response to Covid and the geography of Argyll and Bute including many remote settlements and islands, some site inspections may fall out with the priority timescale shown.

Each case is assessed so as they have a level of priority, these are outlined below.

Level 1 Priority – (site visit within 5 working days of acknowledgement of complaint)

- Works being undertaken in contravention of the requirements of a formal notice
- The unauthorised demolition or alterations of a listed building or the demolition of or alterations to a building within a Conservation Area
- Unauthorised works to trees protected by a Tree Preservation Order or to trees in Conservation Areas
- Unauthorised development that may lead to substantial and/or permanent damage to sites of international or national importance, for example Sites of Special Scientific Interest, National Scenic Areas or Special Protection Areas etc.
- Unauthorised development or breach of condition that may present an immediate danger to members of the public i.e. road safety, health and safety or bad neighbour development, which has a significant detrimental impact on amenity (in the sole view of the Council)

Level 2 Priority – (site visit within 15 working days of acknowledgement of complaint)

- Unauthorised development, likely to cause harm to the landscape or residential amenity
- Changes of use of land or buildings resulting in a potential adverse impact upon existing levels of amenity
- General breaches of planning conditions
- Unauthorised householder developments with the potential for limited impact, i.e. garden sheds, replacement windows etc. within a Conservation Area

Level 3 Priority – (site visits within 20 working days of acknowledgement of complaint)

- Unauthorised householder developments with the potential for limited impact, i.e. garden sheds, replacement windows etc.
- Unauthorised advertisements (unless they are likely to have an immediate adverse effect on road safety)
- Untidy land
- All other potential breaches of planning control

CHAPTER 4: ACTING ON BREACHES OF PLANNING CONTROL

The Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. This means that, even where there is a breach of planning control, the Council has to consider if it is in the public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.

The Council must consider each case on its own merits and decide on the best solution. As part of a deemed assessment of enforcement cases, the Council must have regard to the Development Plan and other material planning considerations. In many cases breaches are resolved through negotiation or the submission of a retrospective planning application and no formal action will be taken.

Where a breach of planning control has been established, it is the Council's objective to proceed in the following manner:

1. Negotiation

It is often possible to rectify a breach of planning control through negotiation with the parties involved as formal enforcement action is only taken as a last resort

In some instances, even though a breach of control has occurred, it may not be appropriate to take further action. This is because the Council has to consider whether, having regard to the circumstances of each case it is necessary and proportionate to issue an enforcement notice.

A high number of enforcement cases are resolved through negotiation.

2. Retrospective Application

There is opportunity to submit a retrospective application seeking to regularise development which has been either wholly or partially completed, either to address inadvertent breaches of control, or to address development which deviates from previously approved plans. Recourse to retrospective applications should be in exceptional circumstances and is not encouraged routinely, as there are risks associated with the merits of development being considered after it has been executed, and uncertainties associated with views which may be expressed by consultees and the public during the process means that there is no guarantee of a positive outcome. Whilst retrospective applications will be assessed on a "without prejudice basis", their persistent and intentional use on individual projects is undesirable and may lead to further formal enforcement.

3. Formal Action

Where it is determined that formal action must be taken to resolve an enforcement case the Council must determine the most appropriate type of formal action to take (see Chapter 5 for more information). This normally involves the serving of either an enforcement notice, Section 33A notice, or breach of condition notice. These notices include the following information:

- A description of the breach that has taken place
- The steps that should be taken to remedy the breach
- The timescale for these steps to be taken
- The consequences of failure to comply with the notice
- Rights of appeal where appropriate

Only a small number of cases require to be dealt with by formal enforcement action. Any notice served on land or buildings will appear against that property on any future property searches, regardless of any change in ownership, until such time as the terms of the notice have been met.

Enforcement Register

Details of enforcement notices, section 33A notices (see Chapter 5), breach of condition notices, advertisement notices and stop notices are entered into the Council's enforcement register which is a public document. The enforcement register for each area office is available for inspection at the relevant address or the complete register is available on the Council's web site at www.argyll-bute.gov.uk.

Powers of Entry

The Council has powers to enter land to:

- Establish if there has been a breach of planning control,
- To check whether there has been compliance with a formal notice,
- To check whether a breach has been satisfactorily resolved.

Time Limit

Enforcement action must be taken within strict time limits.

A time limit of four years for enforcement action applies to "unauthorised operational development" (i.e. the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. After four years following the breach of planning control the development becomes lawful, and no enforcement action can be taken, although this does not mean that the unauthorised development benefits from planning permission.

A time limit of ten years for enforcement action applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition, after which the development becomes lawful if no enforcement action is commenced and as with the time limit for "operational development", whilst enforcement action cannot be taken, this does not mean that the unauthorised development benefits from planning permission.

Council Land

In circumstances where a breach of planning control relates to land within the ownership of the Council it is advised that it would not be appropriate for Planning Services to pursue formal enforcement action against another Council Service on the basis that the Council is unable to take legal action upon itself as the Council is a single legal entity. Council ownership of land does not preclude the undertaking of a planning enforcement investigation however whenever such circumstances arise it is expected that the responsible Service, once informed of the breach of planning control, will take all reasonable steps which are necessary to resolve the matter.

CHAPTER 5: ENFORCEMENT POWERS

Enforcement powers are set out in the Town and Country Planning (Scotland) Act 1997, Listed Building and Conservation Areas (Scotland) Act 1997 and Town & Country Planning (Control of Advertisements) (Scotland) 1984.

Further guidance is set out in:

- Circular 10/2009: Planning Enforcement
- Scottish Government Planning Circular 1/2011: Tree Preservation Orders
- Advertisements (Scottish Office Development Department Circular 10/1984)
- Argyll and Bute Planning Services Advertisement & Signage Policy Technical Working Notes 2017

The circulars can be viewed at

www.scotland.gov.uk/Topics/BuiltEnvironment/Planning/Publications/Circulars

Types of Notices

There are a number of different types of notice that the Council has power to serve under the Planning Acts and related legislation. A notice can require the contravener to remedy the breach of planning control or where more urgent action is required the contravener must cease activity with immediate effect.

- **Enforcement Notice** – This notice is used to deal with unauthorised development and breaches of planning conditions. An enforcement notice will specify; the breach, a notification period before it comes into effect (a minimum of 28 days), the steps that must be taken to remedy the breach and a compliance period by the Council. The compliance period must be reasonable and reflect the amount of work that needs to be undertaken. There are limited grounds of appeal to Scottish Ministers against enforcement notices and, if an appeal is made, the notice is suspended until the decision is reached. Full details of the appeal process is attached to the notice. Failure to comply with the terms of an enforcement notice within the time specified is an offence, and may lead to the imposition of a fine of up to £50,000 in the Sheriff Court or direct action. The notice requires to be served on any person carrying out the unauthorised development and/or any person having control of the land where the development is being carried out.

- **Breach of Condition Notice** – This type of notice is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an enforcement notice and is served on any person carrying out the unauthorised development and/or any person having control of the land where the development is being carried out. There is no right of appeal against this type of notice. Contravening a breach of condition notice is an offence and may lead to the imposition of a fine of up to £5,000.

- **Stop Notice** – This is served in urgent or serious cases where an unauthorised activity must be stopped to safeguard amenity or public safety and/or to prevent serious or irreversible harm to the environment and the surrounding area. When a stop notice is served, the Council must also issue an enforcement notice. The stop notice takes effect between 1-3 days after it has been served and will outline the steps which must be taken to comply with the notice. There is no right of appeal against a stop notice and failure to comply with its terms is an offence and may lead to a fine of up to £50,000 in the Sherriff Court, though an appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause or an appeal against the enforcement notice is successful, the stop notice may be quashed and the Council may face claims for compensation.

- **Listed Building Enforcement Notice** – The Council may serve a listed building notice where unauthorised works have been, or are being, undertaken to a listed building. This notice must be served on the current owner, occupier and anyone else with an interest in the property. The notice must specify the steps to be taken to remedy the breach and a compliance period. Failure to meet the terms of the notice by the date specified is an offence. There is a right of appeal to Scottish Ministers against the notice. It is a criminal offence to execute or cause to be undertaken any works to demolish, alter, or extend a listed building which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The legislation also extends to the interiors as well as the exteriors of statutory listed buildings. Unlike a breach of planning control unauthorised works to listed buildings can never become immune from enforcement action.

- **Advertisement Enforcement Notice** – This notice may be served by the Council where it appears to them that an advertisement has been displayed without the necessary consent, or without compliance with a condition or limitation attached to consent. The notice is served upon the owner, lessee and occupier of the land and on any other person known to the Council to be displaying the advertisement. The notice will require specific steps to be taken within a specified period to remove the advertisement, to restore the land to the condition it was in before the display began or to secure compliance with the condition or limitation. In addition the notice may specify, as an alternative, steps to be taken to bring the display up to an acceptable condition. Where any of the steps required by the notice have not been taken within the specified period the Council may enter the land and take those steps and recover its expenses from the owner or lessee of the land. Any person upon whom a notice of this type is served may appeal in writing to the Scottish Ministers. The siting or erection of an unauthorised advertisement is an offence, with a current maximum fine of £5,000. In cases where an advertisement has been placed on Council owned land or property without consent the advert may be removed and destroyed. Unlike a breach of planning control a breach of advertisement control can never become immune from enforcement action.

- **Advertisement Discontinuance Notice** – Some advertisements may be displayed without the requirement for advertisement consent and are therefore lawful. Previously consented advertisements can remain on display beyond the 5 year consent period. However, the Council may serve a notice requiring the discontinuance of the display of that advertisement.

- **Notice Requiring Application for Planning Permission for Development Already Carried out (Section 33A Notice)** – Where the Council considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its own merits and handled in the same way as any other planning application. Issuing such a notice does not guarantee that permission will be granted. The Council may, on consideration of the application, decide to refuse the application, or to grant permission subject to conditions to make the development acceptable. Failure to comply with the terms of a Section 33A notice may result in further enforcement action.

(ii) **OTHER POWERS/NOTICES OPEN TO USE BY ARGYLL AND BUTE COUNCIL**

- **Planning Contravention Notice** – The Council may issue a planning contravention notice on the owner or occupier of any land, on any other person with an interest in such land, or on a person who is carrying out operations on the land in order to obtain information about activities where a breach of planning control is suspected. Those who receive a planning contravention notice are required to provide specified information about operations being carried out on the land. Failure to comply with the notice within 21 days of it being served is an offence with a current maximum fine of £5,000.

- **Fixed Penalty Notices** – These provide the Council with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice or a breach of condition notice. By paying the penalty imposed by a fixed penalty notice the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the enforcement or breach of condition notice and the Council will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. This notice may be increasingly used as an intermediary option prior to taking direct action or in situations where a prosecution is unlikely to be taken up by the Procurator Fiscal.

- **Temporary Stop Notices** – This is used to require the immediate halt of an activity which, in the Councils view, would cause significant damage to the environment and/or local amenity. A temporary stop notices should only be used where the Council consider that there is a clear and immediate need for such action. Temporary stop notices differ from stop notices in that they can be served with immediate effect and do not require to be served in conjunction with an enforcement notice. The notices ceases to have effect after 28 days after it has been displayed, unless a shorter period is specified in the notice, or the notice is withdrawn by the Council before it ceases to have effect. A temporary stop notice may however be followed by further enforcement action such as an enforcement notice and stop notice. There is no statutory right of appeal against a temporary stop notice. It is an offence to contravene a temporary stop notice which may lead to a fine of up to £50,000 in the Sheriff Court.

- **Listed Building Repairs Notice** – This can be served by the Council on the owner of a listed building at any time if the owner fails to keep a listed building in a reasonable state of repair. Compulsory purchase can be initiated two months after service of a repairs notice.
- **Listed Building Urgent Works Notice** – where it appears to the Council that any works are urgently necessary for the preservation of a listed building, they may execute the works that are required to any unoccupied part of the listed building after giving no less than 7 days written notice to the owner. The Council may give notice to the owner of the building requiring them to pay the cost of the works.
- **Land adversely affecting the Amenity of a Neighbourhood Notice (Section 179 Notice)** – The Council may serve a notice on the owner, lessee or occupier of the land if it appears that the amenity of the area is adversely affected by the condition of the land or buildings. The notice sets out the steps to be taken to address the adverse effect of the condition of the land or buildings within a specified period.

(iii) FURTHER CONTROLS

- **Tree Preservation Order and Trees in Conservation Areas** – Trees within a Conservation Area or subject to a Tree Preservation Order are protected in law and it is an offence to cut down, uproot, willfully destroy a tree or willfully damage, top or lop a tree in such manner as to be likely to destroy it without the consent of the Planning Authority. You can check if a tree is within a Conservation Area or protected by a TPO online at <https://www.argyll-bute.gov.uk/planning-and-environment/tree-preservation-orders>
- **Interdict and Interim Interdicts** – An Interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Interdicts are normally only sought in serious cases or where Enforcement Notices have been ignored in the past. However, the Council can seek an Interdict in relation to any breach without having to use other powers first. Breaching an Interdict is treated as a contempt of court and carries heavy penalties.
- **Direct Action** – Failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council can seek to recover any costs it incurs from the land owner.
- **Power to Require Information as to Interest in Land (Section 272 Notice)** – This provides limited powers to obtain information on interests on land and the use of land. Failure to provide the information required is an offence.

Further enforcement powers may be made available to the Council due to changes in legislation (such as the Historic Environment Act and following implementation of the Planning (Scotland) Act 2019) and these will also be considered for use depending on the circumstances and merits of each individual case.

OTHER POWERS

- **High Hedges:** The High Hedges Act makes a range of provisions relative to high hedges in Scotland, that oblige the Council to act as arbiter where all other avenues to resolve a high hedge dispute have been exhausted. More detail for how the Act is administered within Argyll and Bute can be found at <http://www.argyll-bute.gov.uk/high-hedges-scotland-act>

OTHER COUNCIL DEPARTMENTS AND AGENCIES WHICH MAY BECOME INVOLVED

- **Building Standards:** For example where a dangerous or structurally damaged building is involved or where unauthorised works are being carried out to or in a building the relevant complainants may be directed to Building Standards who may take action under The Building (Scotland) Act 2003.
- **Regulatory Services:** Failure to comply with conditions relating to private water supplies, public safety, health issues, obtaining appropriate licenses or certificates may require investigation from colleagues within Regulatory Services.
- **Streetscene:** Where a reported breach involves Council land or property, Council Officers from Streetscene department may remove unauthorised development/advertisements acting as landowner.

- **Roads Authority/ Trunk Roads Authority:** Where it becomes apparent that an enforcement case is not a planning issue but a Roads or Trunk Roads issue. In cases like these the enforcement case is closed and the relevant complainant informed, the information is then passed to a Roads Technician to progress. The Roads Authority use a series of relevant legislation including the Roads (Scotland) Act 1984 which includes power to remove unauthorised advertisements located within the roads corridor, falling under the control of the Roads Authority.
- **Procurator Fiscal:** If it transpires that the Council considers an offence has taken place it is solely a matter for the Procurator Fiscal to decide on whether both sufficient evidence has been provided, and whether a prosecution would be in the public interest. Such matters are not within the control of the Council.
- **Scottish Environmental Protection Agency (SEPA):** SEPA deal with issues relating to Waste Management Regulation and Japanese Knotweed and more information can be found at <http://www.sepa.org.uk/>
- **Police Scotland:** The Police Scotland have the power to prosecute all criminal offences in relation to planning control and that in some high priority cases the council has the discretion to refer the matter to them to initiate criminal proceedings.

ENFORCEMENT NOTICE APPEALS

There is no right of appeal against some specific notices such as a Planning Contravention Notice, Breach of Condition Notice, Section 272 Notice and Section 33A Notice.

Where appeal rights exist, appeals are submitted to and considered by Scottish Ministers. In almost all cases appeals are dealt with by Reporters from the Scottish Government Directorate for Planning and Environmental Appeals. (DPEA)

Such appeals are usually determined through the submission of written statements from both parties and a site inspection, although some cases are determined through a hearing or public local inquiry. Appeals must be made before the date the notice takes effect which is detailed on individual notices, and is normally 28 days after the notice is served.

Appeals are made to:

Directorate for Planning and Environmental Appeals
 4 The Courtyard
 Callendar Business Park
 Callendar Road
 Falkirk
 FK1 1XR

www.dpea.scotland.gov.uk

CHAPTER 6: SERVICE COMMITMENTS, OUTCOMES AND MONITORING

All enforcement complaints received will be dealt with in the same manner regardless of their source (excluding anonymous complaints). It is the Council's aim to treat all enforcement cases in an even handed and fair way for all parties involved. Whilst it is important to resolve a breach of planning control, satisfactory outcomes can be found through negotiation in many cases and on occasions can be time consuming. The Council will balance the opportunities for negotiation and delay against the seriousness of the breach and the damage caused to health, safety, the environment or amenity.

When a planning enforcement complaint is received, a level of priority will be given in accordance with this Charter, ensuring that all complaints are investigated within an appropriate timescale proportionate to the breach of planning control that may or not have been committed. On occasions it should be noted that the investigations may exceed these timescales.

Complaints will be acknowledged within **three working days** of receipt by letter or e-mail. This period of time allows the Council to register the complaint and pass the case to the relevant Officer.

Following registration and acknowledgement of a possible breach of planning control, a Planning/Enforcement Officer or Planning Technician will visit the site. Priority for both site visits and dealing with the complaint will be established by consideration of the effect of the breach, the significance of the site and the alleged breach of planning control, taking into account the timescales laid out in Chapter 3.

Complainants will be informed of the results of the initial investigation within **25 working days** of the receipt of the complaint. The complainant will be advised whether there is a breach of planning control, the level of priority attached to the case, the findings of the initial site inspection and how the Council propose to proceed with the case wherever possible.

It is not always possible to anticipate the length of time required for resolution by negotiation or on a decision on whether to take action or not. Progress can be delayed for a number of reasons, for example, where evidence must be collected and verified from a number of sources over a period of time, where negotiations take place, or where formal procedures have to be used. Applications to regularise the breach of planning control, or appeals to Scottish Ministers against a decision of the Council, will also affect the timescale for resolution of the case.

The Officer dealing with the case will update the complainant when a decision is made or when a case is resolved.

Outcomes

Our aim in undertaking enforcement activity is to protect or enhance the natural environment, protect or enhance the historic environment, support a fair economy, and positively resolve the problems that arise from breaches of planning control.

The Scottish Government publishes performance statistics on planning and enforcement, which can be viewed at: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Planning/Publications>

Strategic Monitoring

We do not always rely on members of the public to make an enforcement complaint or bring to our attention an alleged breach of planning control. We also undertake strategic monitoring of consents and these may trigger an enforcement file to be opened and investigated. Given the number of planning consents and geographic size of Argyll and Bute we cannot strategically monitor or review all consents. We give priority to major applications, controversial developments or those in sensitive locations.

CHAPTER 7: CORPORATE COUNCIL COMPLAINTS

An enforcement complaint is not a complaint against the Council. Argyll and Bute Council hopes that the public will be satisfied with the planning enforcement service that is provided. In providing this service it is the Council's sole aim to fully investigate enforcement complaints made to them with a view to resolving them in a consistent and even-handed manner.

The Council is committed to improving the planning enforcement service and dealing promptly with any failures. At any point in this service should any dissatisfaction be felt about the way in which an enforcement enquiry is dealt with, then it is open to any person to make a formal complaint.

The Council will consider complaints made about the way in which an enforcement enquiry is dealt with and how any investigation is carried out in terms of the service commitments. In the first instance you should discuss the matter with the Officer involved. If you are still dissatisfied then you should contact the appropriate Area Team Leader who will investigate the matter.

It should be noted that the actual outcome of an enforcement investigation cannot be the subject of a complaint, but only the way that the decision was arrived at.

If you remain dissatisfied with the way the Area Team Leader investigated your complaint, you can make your formal complaint via the Council's website <http://www.argyll-bute.gov.uk/council-and-government/complaints>

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CHAPTER 8: ARGYLL AND BUTE COUNCIL PLANNING ENFORCEMENT CONTACTS AND OTHER USEFUL INFORMATION**Enforcement Contacts**

The planning enforcement function of the Council is a decentralised service based in the main Development and Infrastructure Services Area Offices. Enforcement enquiries should be submitted to the relevant Area Office in the first instance.

Contact Details for Reporting Suspected Breaches of Planning Control:

Customer Contact Centre: 01546 605518

- | | |
|--|---|
| <ul style="list-style-type: none"> • Planning Enforcement Officer
Mid Argyll, Kintyre & Islands
1A Manse Brae
Lochgilphead
PA31 8RD
Tel no. 01546 605518
planning.maki@argyll-bute.gov.uk | <ul style="list-style-type: none"> • Planning Enforcement Officer
Oban, Lorn & The Isles
Municipal Buildings
Oban
PA34 4AW
Tel no. 01546 605518
planning.olandi@argyll-bute.gov.uk |
| <ul style="list-style-type: none"> • Area Team Leader
Helensburgh & Lomond Civic Centre
38 East Clyde Street
Helensburgh
G84 7PG
Tel no. 01546 605518
planning.handl@argyll-bute.gov.uk | <ul style="list-style-type: none"> • Area Team Leader
Bute & Cowal
Milton House
Milton Avenue
Dunoon
PA23 7DU
Tel no. 01546 605518
planning.bandc@argyll-bute.gov.uk |

Planning and Related Enforcement Legislation and Advice

Planning Enforcement powers are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 (as amended) and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road and at www.scotland-legislation.hmso.gov.uk.

The High Hedges (Scotland) Bill was passed on 28th March 2013. Below is a link to the Council online 'Question & Answers'. <http://www.argyll-bute.gov.uk/high-hedges-scotland-act>

Scottish Government policy on planning enforcement is set out in Planning Circular 10/2009: Planning Enforcement available in electronic format on the Government website at www.scotland.gov.uk/planning. Other Council departments with enforcement or regulatory powers which may overlap or compliment planning enforcement powers include:

Area Environmental Health Manager Planning,
Housing and Regulatory Services Municipal Buildings
Albany Street Oban
PA34 4AW
Tel no. 01546 605519

Network and Roads Maintenance Manager Manse Brae
Lochgilphead
PA31 8RD
Tel no. 01546 605514

Building Standards Manager Planning, Housing and
Regulatory Services, The Helensburgh and Lomond
Civic Centre, 38 East Clyde Street, Helensburgh G84
7PG
Tel: 01546 605522



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APPENDIX B

Temporary Relaxation of Town Planning Controls to Support Economic Growth 21.07.20

Please identify any service issues that require resolution with regards to the COVID 19 crisis.

Development Management:

The relaxation of lockdown and progressive implementation of the Scottish Government's road map to recovery allowing for the resumption of commercial activities in town centres gives rise to potential conflict for the Council in its regulation of activities that require planning permission where existing businesses require to expand/adapt their operations in the short term to address constraints on operation arising from social distancing requirements.

The regulations governing the planning application process are defined in a manner which seek to facilitate engagement and as such cannot readily be adapted to provide a fast-track consent process to support the urgent short-term requirements for new temporary uses of town centre land and temporary structures within the time period required by businesses in the current, extraordinary circumstances.

The Scottish Government have also recognised that the planning process is a potential constraint on the resumption of economic activity within town centres and has issued advice via their Chief Planning Officer confirming "*that the most appropriate, straightforward and efficient means of ensuring that the planning process can allow for reasonable temporary changes of use is through informally relaxing planning controls; particularly by agreeing not to take enforcement action against acceptable breaches that will allow for businesses to operate and for some normality to return.*"

It is advised that the Development Management Service welcomes the guidance provided by the Scottish Government on this matter and has sought to work proactively with other Services, including Licencing, Roads, and Environmental Health in their establishment of a 'fast track' consent process to facilitate resumption of business activity in town centres. In responding to these consultations it has however become evident that, in the absence of confirmation of the Council policy position on the implementation of local relaxation of planning control it is difficult for officers to provide clear, consistent and professionally

competent advice to businesses, consultees or complainants on the extent that planning relaxations apply or effectively sanction unauthorised development.

In order to provide Development Management Officers with a clear mandate to apply a relaxation of planning controls in the short term it is recommended that the Council adopt the following Planning Position:

*“For a temporary period up until **30th September 2020** Argyll and Bute Council as planning authority will not invite applications for planning permission or pursue planning enforcement action for development providing for the temporary change of use of outdoor areas and/or erection of temporary structures within the designated Town Centre areas of the Main Towns and Key Settlements (as defined in the adopted LDP) which are intended to provide on-street seating for existing cafes, bars, beer gardens and similar to accommodate physical distancing in relation to the resumption of operations in town centre businesses subject to the appropriate authorisations being obtained from Environmental Health, Licencing and Roads Authorities.*

Following the expiry of the defined temporary period, or any subsequently prescribed extension of this period, all temporary uses shall require to be discontinued, temporary structures removed, and the land restored to its former condition unless express planning permission has been sought and obtained in the intervening period.

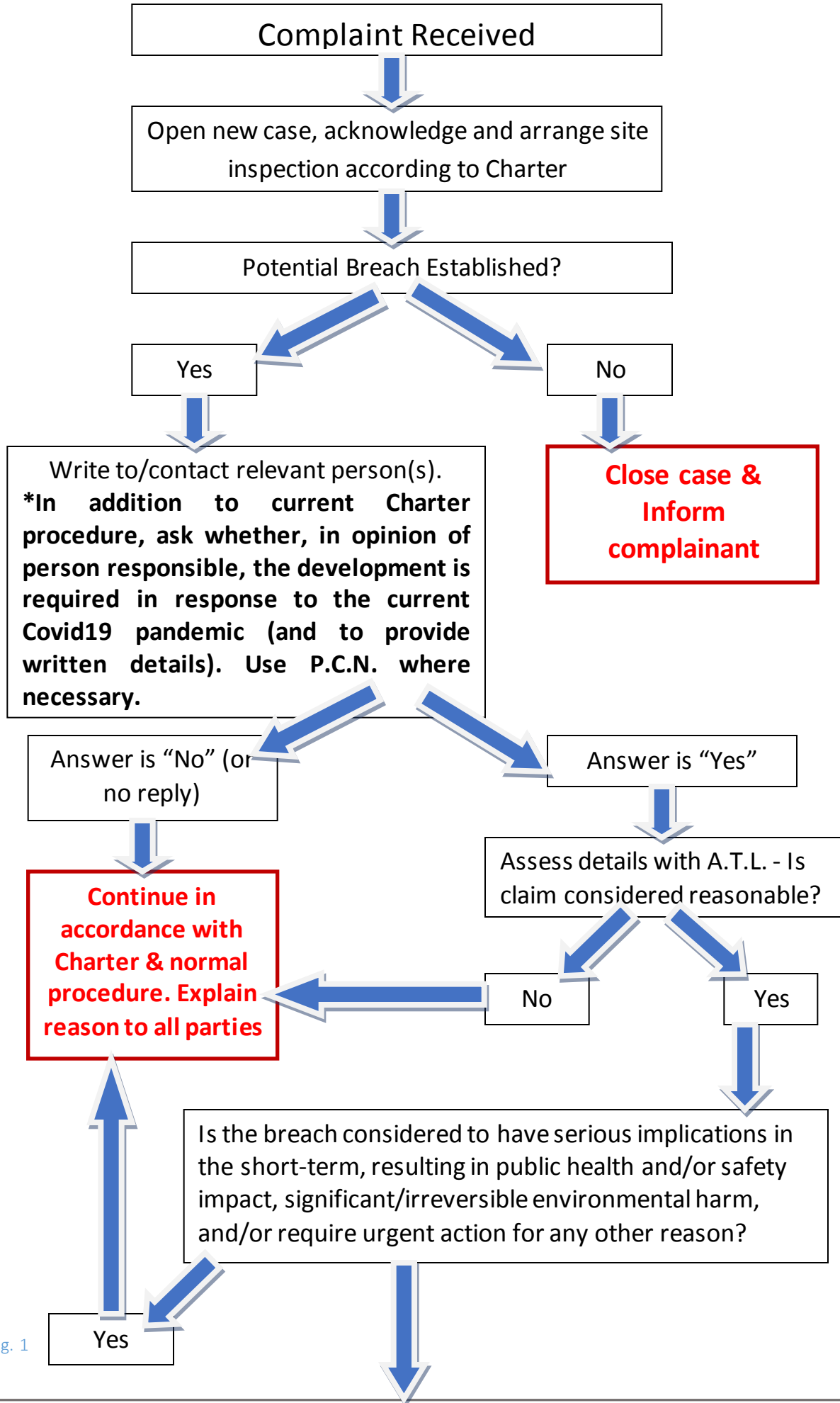
The installation of any permanent or semi-permanent structures or alterations to the public realm are not supported by these temporary measures and shall require the benefit of express planning permission in advance of works commencing.”

2 Please identify service disruptions or potential closures? - None

3 State any recommendations you have for service suspensions.

Suspension of planning enforcement until **30th September 2020** in respect of unauthorised temporary change of use of outdoor areas/temporary structures within the designated town centres of Main Towns and Key Settlements where appropriate authorisations have been obtained from Roads, Licencing and Environmental Health.

Fergus Murray – Head of Development and Economic Growth





No



Consider and agree with A.T.L. one of three potential 'good will options':

1. Agree temporary moratorium period and resume investigation/action at the end of the agreed period (unless circumstances dictate otherwise). Inform all parties of agreed temporary position.
2. Require submission of planning application (S.33A Notice); now or at end of agreed period (see 1. Above).
3. Serve formal Enforcement (or B.O.C.) Notice with appropriately extended compliance period to allow for temporary relaxation of normal Charter provision.

Communicate position to all parties. Monitor, review and continue as necessary.



If no appropriate option can be agreed upon or if communication or good will breaks down despite all reasonable efforts of planning authority, or if agreed deadlines and/or agreed actions are not met by responsible person(s)



Continue in accordance with Charter & normal procedure. Explain reason to all parties.

ARGYLL AND BUTE COUNCIL**PPSL****DEVELOPMENT AND
ECONOMIC GROWTH****23 MARCH 2022**

NATIONAL PLANNING FRAMEWORK 4 FINAL DRAFT CONSULTATION

1.0 EXECUTIVE SUMMARY

- 1.1 The [Draft Fourth National Planning Framework \(Draft NPF4\)](#) was laid in the Scottish Parliament on 10 November 2021 and is considered for 120 days. The Final Draft is expected in summer 2022.
- 1.2 As a result of the Planning (Scotland) Act 2019, the NPF4 will have enhanced status as part of the statutory development plan. The Scottish Government aim is that it guides spatial development, aligns with infrastructure investment, sets out national planning policies, designates national developments and highlights regional spatial priorities. A long-term spatial strategy for Scotland to 2045, NPF4 is intended to bring together policies and programmes to enable sustainable and inclusive growth across the country.
- 1.3 In future, proposals for planning permission will need to be determined in accordance with NPF4 as well as the LDP unless material consideration dictate otherwise. The NPF4 also sets a 10 year Minimum Housing Land Requirement for Argyll and Bute of 2150 houses.
- 1.4 The current consultation closes on the 31st March 2022. This report outlines the content of draft NPF4, and asks members to endorse proposed comments contained in Appendix 1 which will subsequently be submitted to the Scottish Government.

2.0 RECOMMENDATION:

- 2.1 It is recommended that PPSL:
- note that when approved by Scottish Government, NPF4 will become part of the Statutory Development Plan for Argyll and Bute; and
 - note the report and the link to [Draft Fourth National Planning Framework \(Draft NPF4\)](#), and
 - Approve the response in Appendix 1 for submission to Scottish Government.

ARGYLL AND BUTE COUNCIL

PPSL

DEVELOPMENT AND
ECONOMIC GROWTH

23 MARCH 2022

NATIONAL PLANNING FRAMEWORK 4 FINAL DRAFT CONSULTATION

3.0 INTRODUCTION

- 3.1 The [Draft Fourth National Planning Framework \(Draft NPF4\)](#) was laid in the Scottish Parliament on 10 November 2021 and the Parliament considers it for 120 days. The Final Draft is expected in summer 2022.
- 3.2 The current consultation, the last stage of an ongoing engagement since Autumn 2019, closes on the 31st March 2022.
- 3.3 This report outlines the content of draft NPF4 and presents comments within Appendix 1 which it seeks approval to submitted to the Scottish Government.

4.0 RECOMMENDATION

- 4.1 It is recommended that ELT:
- note that when approved by Scottish Government, NPF4 will become part of the Statutory Development Plan for Argyll and Bute; and
 - note the report and the link to [Draft Fourth National Planning Framework \(Draft NPF4\)](#), and
 - Approve the response in Appendix 1 for submission to Scottish Government.

5.0 DETAIL

- 5.1 The [Draft Fourth National Planning Framework \(Draft NPF4\)](#) was laid in the Scottish Parliament on 10 November 2021 and the Parliament considers it for 120 days. The Final Draft is expected in summer 2022, and it will be accompanied by an explanatory document setting out any changes made in response to the consultations or why changes have not been made.
- 5.2 The deadline for consultation responses is the 31st March 2022.

- 5.3 This is the final part of a consultation process which has been ongoing since Autumn 2019. The consultation has aimed to be collaborative in its engagement and has been based around the input from voluntary regional groupings of Local Authorities as a pre-cursor to the production of Regional Spatial Strategies after the NPF has been produced. Argyll and Bute chose not to join one of the regional groups but to make representation as a single Authority which overlapped other Regional Areas.
- 5.4 During the period of the engagement, officers of the Council have inputted to numerous workshops and stakeholder sessions held by Scottish Government and HOPS. In addition the Council has submitted comments to Scottish Government on the development of its thinking which was articulated in an “NPF4 Position Statement”. Most significantly, at the request of Scottish Government, the Council also produced an Indicative Regional Spatial Strategy (IRSS) which was approved by PPSL in September 2020 and submitted to Scottish Government. The IRSS submitted by Local Authorities have been used by Scottish Government to formulate the NPF4 Spatial Strategy.
- 5.5 Officers’ view is that the consultation process adopted by Scottish Government to date, although time pressured, was appropriate and proportionate with ample opportunities for participation.
- 5.6 As a result of the Planning (Scotland) Act 2019, the NPF4 will have enhanced status as part of the statutory development plan. The Scottish Government aim is that it guides spatial development, aligns with infrastructure investment, sets out national planning policies, designates national developments and highlights regional spatial priorities. A long-term spatial strategy for Scotland to 2045, NPF4 is intended to bring together policies and programmes to enable sustainable and inclusive growth across the country.
- 5.7 The first National Planning Framework for Scotland was published in 2004, and has been updated periodically since. They have been very high level spatial expressions of policy. In terms of land use planning decisions it would be reasonable to say it has had very limited impact. In terms of alignment of National Investment Programmes and delivery of investment, it is less easy to comment, but on balance it would not seem to have been a significant driver for the Scottish Government decision making.
- 5.8 NPF4, under the new Planning Act, represents a very significant departure and the NPF4 will undoubtedly have more impact. Under the new Planning Act, NPF4 becomes part of the “Development Plan” for all Local Authorities. This means several things:
- Proposals for planning permission will need to be determined in accordance with NPF4 as well as the LDP unless material consideration dictate otherwise.
 - Local Development Plans will need to be in conformity with NPF4.

- NPF4 will set a high level spatial strategy for all areas of Scotland, and Local Development Plans will need to reflect and develop this strategy.
- NPF4 sets out high level requirements which LDPs will need to articulate in detail at the local level.
- NPF4 sets Minimum Housing Land Requirements for all Local Authorities.
- NPF4 transcribes previous Scottish Planning Policy guidance into national Development Management policies which will form the basis of decision making for planning applications
- NPF4 identifies National Developments which are given support in principle.
- NPF4 content is expected to be aligned with future Scottish Government investment programmes, and it is anticipated it should thus reflect the spatial delivery of those programmes.

5.9 The NPF4's content is set out in in four main parts as follows:

Part 1: A National Spatial Strategy For Scotland:

5.10 The Plan sets out a broad high level planning strategy for Scotland. The aim is that this strategy will guide the preparation of Regional Spatial Strategies, Local Development Plans and Local Place Plans. Scotland is divided into five **Action Areas** as shown below in Diagram 1 below.

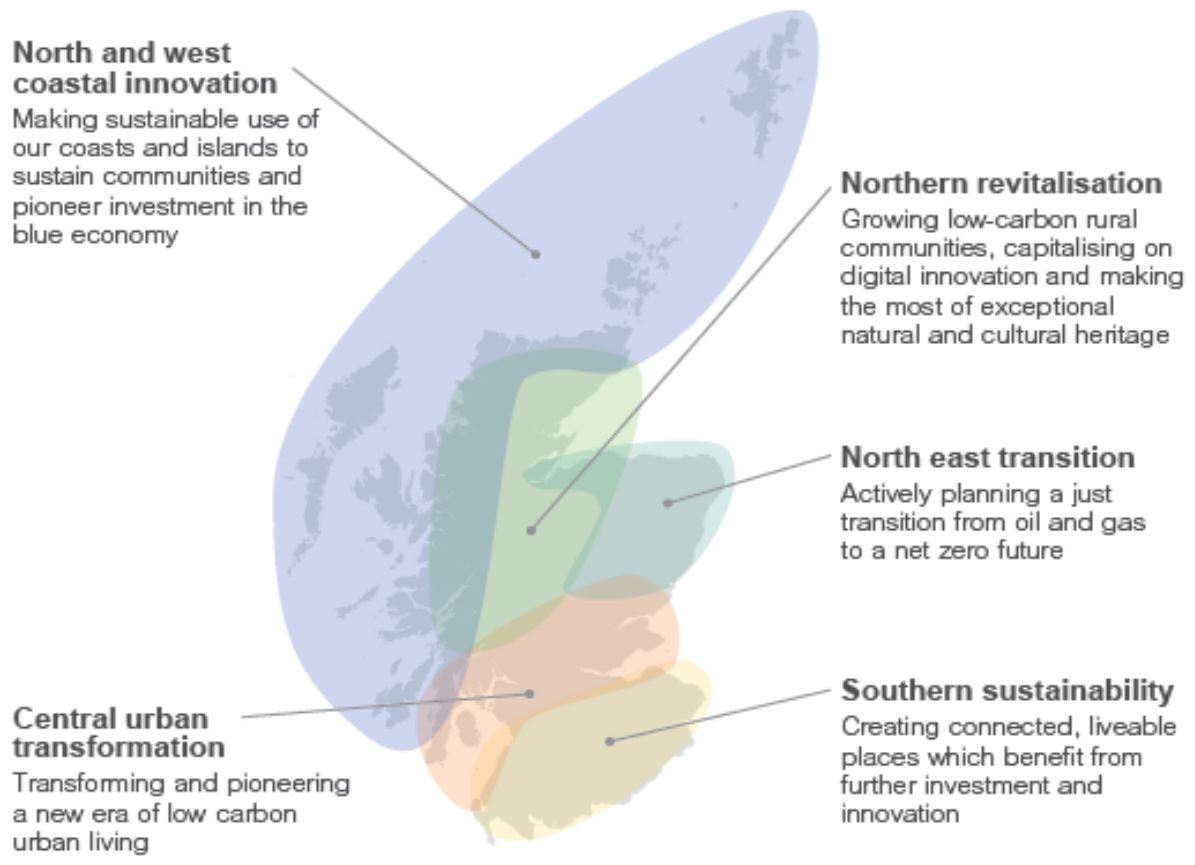


Diagram 1: Five Action Areas

- 5.11 There is strong emphasis on the drive to net zero emissions by 2045 and the need to adapt to climate change, restore biodiversity loss, improve health and wellbeing and build a well-being economy. Each part of Scotland should be planned to deliver sustainable, liveable, productive and distinctive places.
- 5.12 The NPF4 aims to create networks of 20 minute neighbourhoods; and commits to support development across Scotland, in particular to enable more people to live and remain in rural and island areas.
- 5.13 Argyll and Bute lies within three of the **Action Areas** that have been identified as shown below:

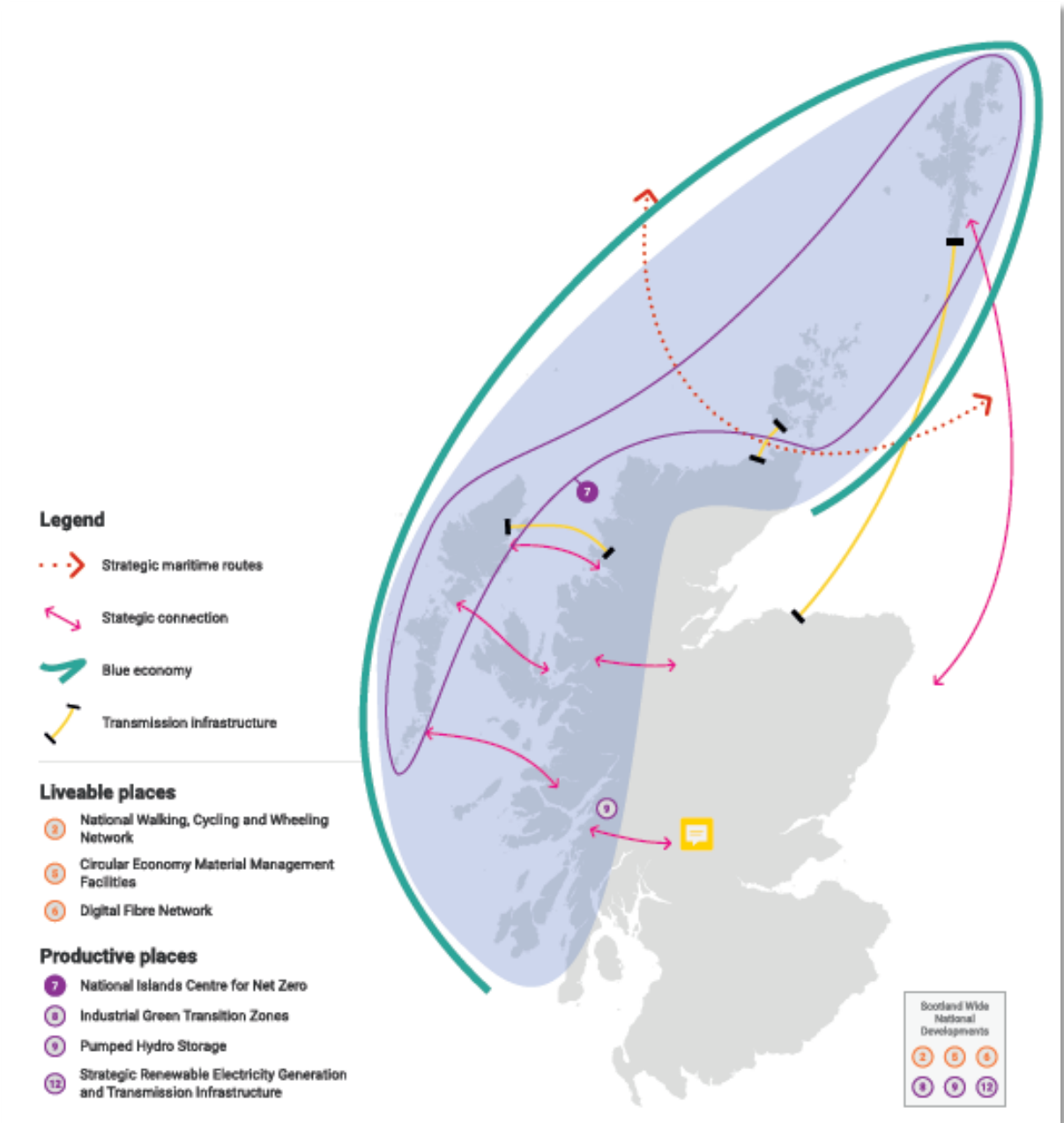


Diagram 2: North West Coastal Innovation

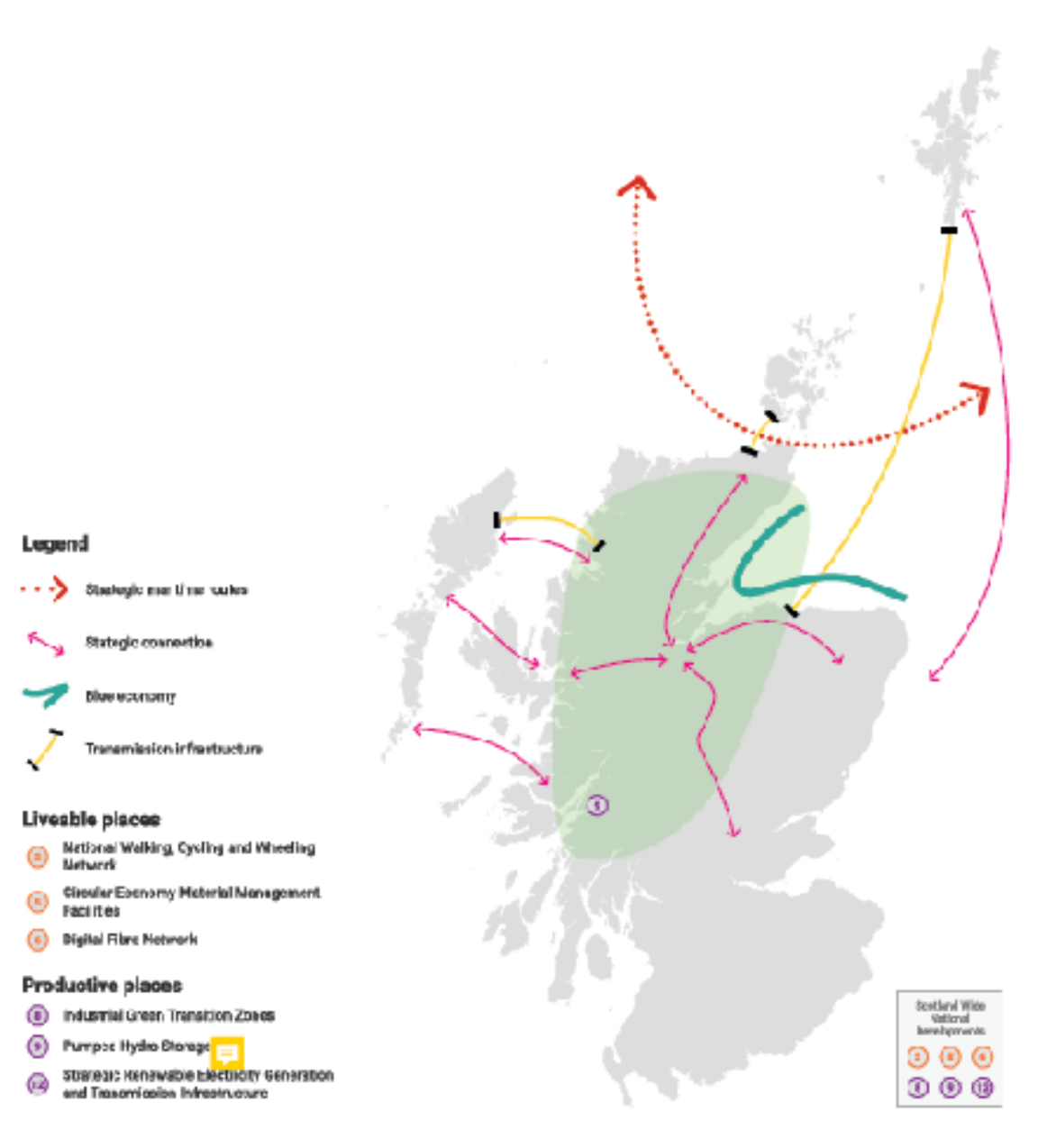


Diagram 3: Northern Revitalisation

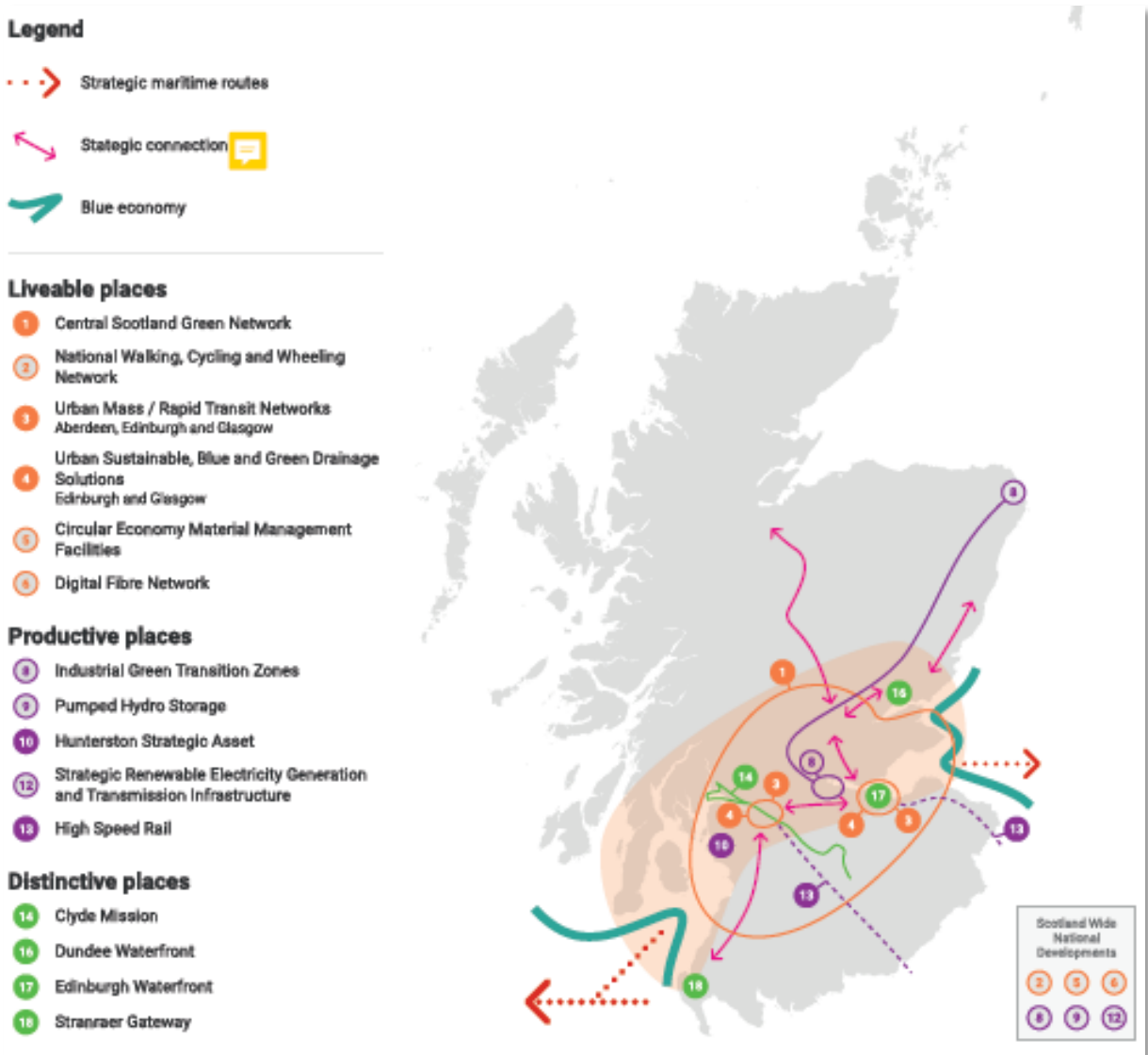


Diagram 4: Central Urban Transformation

5.14 Because these strategies are so high level it is debatable what impact they will actually have. Nevertheless, these strategies reflect the Indicative Regional Spatial Strategy which was submitted to Scottish Government and because it appears in 3 of the 5 Action Areas, Argyll and Bute has been mentioned more than would be proportionate in-terms of the number of Local Authorities. Specific mentions include:

- Cruachan and other pumped Storage;
- Clyde Mission;
- Population Growth on the Western Seaboard of Argyll;
- Growth corridor from Tobermory to Oban and on to Dalmally;
- Kintyre Way;
- Argyll Sea Kayak Trail;
- Crinan Canal;

- Argyll world renowned stunning landscapes, rich biodiversity and cultural heritage;
- Urgent need for improvements to the A83 to ensure resilience of the economy and communities of wider Argyll and Bute Council;
- Oban Airport;
- Oban town as a link to the islands;
- Tarbert, Lochgilphead and Campbeltown as important hubs for their areas;
- Oban developing as a University Town and the European Marine Science Park as a key employment and education opportunity;
- Key strategic sites for port infrastructure at Oban;
- Oban as a coastal settlement with strong links to the north; and
- Coastal communities regeneration in Dunoon & Rothesay.
- Machrihanish space port.
- Machrihanish development hub for aquaculture research.

Part 2: National Developments

- 5.15 NPF4 sets out 18 proposed national developments that support the spatial strategy and whose development is agreed in principle.
- 5.16 Within Argyll and Bute these include:
- Cruachan and other pumped storage schemes
 - Clyde Mission including all sites within 500m of the river.
- 5.17 Others that are non-site specific but could fall within Argyll and Bute include:
- Central Scotland Green Network.
 - National Walking, Cycling and Wheeling Network.
 - Circular Economy Materials management Facilities.
 - Digital Fibre Network.
 - Strategic Renewable Electricity Generation and Transmission Infrastructure

Part 3: National Planning Policy Handbook

- 5.18 This section sets out policies for the development and use of land which are to be applied in the preparation of local development plans; local place plans; masterplans and briefs; and for determining the range of planning consents. This section represents the integration of Scottish Planning Policy and is particularly important as it will set the policy framework for all decision making on individual investment and planning applications and appeals.
- 5.19 The section is divided by the four themes articulated in the strategy of: Sustainable, Liveable, Productive and Distinctive Places. It contains 35 policies. The coverage of these is generally as previously in SPP, however key introductions are:
- 20 minute neighbourhoods;
 - Stronger polices on:

- designing quality places,
- climate resilience,
- soils, biodiversity; and
- carbon emissions.

- 5.20 The conclusion of Heads of Planning (HOPS) including our representatives is that in overall terms the policy wording is too loose and imprecise and will not stand up to rigorous and forensic legal challenges, weakening the opportunity to drive change through the policy intentions. This has been confirmed with separate discussions with private developers. Consequently, NPF4 needs to be more clear, precise and unambiguous. In particular, the national policies in NPF4 require to be clearly understandable and deliverable. There are too many “coulds” and “shoulds” rather than including words and terms that direct change to be done i.e. “must” and “has to”.
- 5.21 The policies will also introduce extra Local Development Plan work, both explicitly by requiring LDPs to identify certain elements; (i.e.: to categorize all countryside areas as either accessible; intermediate or remote) and unintentionally as a result of high level policies which will require more detailed guidance to be produced in or supporting LDPs (i.e.: policies on the climate emergency have a variety of requirements in terms of minimizing emissions from development proposals but there is little detail on standards to be applied which will consequently require to be covered by other guidance).
- 5.22 Officers have produced a detailed list of specific comments on individual policies in an effort to promote clearer and more robust wording to aid deliverability of NPF4 overarching objectives. These are contained in Appendix 1 of this report.

Part 4: Delivering Our Spatial Strategy

- 5.23 The NPF4 does not set out a detailed Delivery Programme although it has stated that this will come forward as part of the final plan and that there will be further engagement with stakeholders at a later date on this issue. As it is, The Delivery Strategy is a high level strategy, and outlines:
- the need for collaborative action from the public and private sectors;
 - the need for aligning resources including existing or planned public sector investment;
 - an Infrastructure First approach and based on the Infrastructure Investment Plan; STPR2 and City Region growth deals;
 - how we will deliver this strategy. This will be developed into a standalone, live delivery programme once NPF4 has been approved and adopted;
 - Local Place Plans; and
 - Investing in the planning service.
- 5.24 The proposed Delivery Programme is instrumental to success, along with the demonstrable delivery of aligned public sector investment. Officers will seek

to engage with the proposed “Delivery Programme” consultation as it comes forward.

ANNEX B: Minimum All Tenure Housing Land Requirement

- 5.25 A significant change for the NPF4 is that it is setting housing land requirements for the whole of Scotland, at a Local Authority Area level, instead of this being done by Local Authorities themselves within their own LDPs. This was a major departure in terms of delivering a national planning strategy; and has been the cause of considerable debate particularly in city region areas where there is often extreme pressure on land supply. Within Argyll and Bute, and other rural areas, this has also been a cause for concern because of our demographic forecasts which predict falling populations. From a statistical point of view, these forecasts have made it challenging to justify our proposed growth strategies which will support reversing these trends by amongst other things increasing housing land supply. Scottish Government originally proposed a housing land requirement for Argyll and Bute that relied merely on the raw demographic forecasting without any reflection for our strategic aims. However after work on the Housing Needs and Demand Assessment and the Local Housing Strategy, an NPF4 ten year proposed minimum housing land requirement of 2,150 aligns with our own forecasts and strategic aims.

6.0 CONCLUSION

- 6.1 The draft NPF4 is a significant national document in land use planning terms because for the first time, once adopted by Scottish Government, it will become part of the Development Plan for Argyll and Bute. This means planning applications will need to be determined in accordance with its policies.
- 6.2 The draft NPF4 represents the last stage of a relatively detailed and lengthy engagement process with Local Authorities and other stakeholders. The NPF4 spatial strategy for Scotland includes some of the main elements of Argyll and Bute Strategic policy. The proposed housing land requirement for Argyll and Bute aligns well with the aims of the Local Housing Strategy. The proposed development management policies within the NPF4 could be improved to provide better clarity and precision in terms of future decision making. The NPF4 will create additional workload for the LDP team which has yet to be fully quantified with no sign of additional resource to assist with this issue.
- 6.3 The current consultation runs until the 31st March 2022. Officers have prepared detailed responses to the document which Members are requested to endorse for submission to Scottish Government.

7.0 IMPLICATIONS

7.1 Policy:

When approved by Scottish Government, NPF4 will become part of the Statutory Development Plan for Argyll and Bute, and as such planning applications will need to be determined in accordance with it. In addition

future LDPs will be expected to deliver at a local level the high level spatial strategy contained within the NPF4.

7.2 Financial

NPF4 sets out additional requirements that will need to be fulfilled in production of future LDPs. In addition, as written it is likely additional planning guidance will need to be produced to assist in the implementation and interpretation of Development Management policies within the NPF4.

7.3 Legal

When approved by Scottish Government, NPF4 will become part of the Statutory Development Plan for Argyll and Bute, and as such planning applications will need to be determined in accordance with it.

7.4 HR None.

7.5 Fairer Scotland Duty:

7.5.1 Equalities - protected characteristics

The Scottish Government document will need to demonstrate it has been prepared to promote equal opportunities and principles of inclusion and diversity.

7.5.2 Socio-economic Duty

Scottish Government assessment will be required.

7.5.3 Islands

Scottish Government islands impact assessment will be required.

7.6 Risk None

7.7 Climate Change Planning has a critical role in the delivery of a net zero Scotland and NPF4 as a National Strategy can help achieve this.

7.8 Customer Service None

Kirsty Flanagan, Executive Director with responsibility for Development and Economic Growth

Councillor David Kinniburgh Policy Lead for PPSL

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Appendix 1 – Draft NPF4 Consultation Response

APPENDIX 1 DRAFT NPF4 CONSULTATION RESPONSES

Part 1 National Spatial Strategy

Sustainable Places

Q1 Do you agree that this approach will deliver our future net zero places which will be more resilient to the impacts of climate change and support recovery of our natural environment?

It makes no mention of the retrospective challenges which must be addressed to achieve net zero, particularly reducing and electrifying energy use of our existing buildings. Without addressing that you have a significant gap. We also need to tackle embodied energy of all new build on a much more ambitious scale. The section refers to Just Transition sector plans but there is no definition of what this is. It would be helpful to define it. Is this an opportunity to recompense local areas that are seeing more of the renewals developments impacting on their areas and yet with limited direct local benefits?

National Spatial Strategy diagram key under National strategic programmes has a spelling typo: "neighbourhoods".

Liveable Places

Q2: Do you agree that this approach will deliver our future places, homes and neighbourhoods which will be better, healthier and more vibrant places to live?

The transformative change advocated will be difficult to achieve without empowering local authorities, and most effectively, planning authorities, to implement planned improvements. This would be best done by replacing sporadic competitive grant awards, with improved and ring fenced local authority funding, either through general grant or other new fiscal arrangements. The private sector is unlikely to successfully deliver transformative social and economic change without either significant legislative and fiscal incentive, or being led by public sector investment.

Productive Places

Q3: Do you agree that this approach will deliver our future places which will attract new investment, build business confidence, stimulate entrepreneurship and facilitate future ways of working – improving economic, social and environmental wellbeing?

See answer to Q2. Again the most likely success would come from significant public interventions and investment which has the best potential to achieve these aims and to stimulate the private sector. Notwithstanding that, the last sentence could specifically refer to the role of planning obligations.

Distinctive Places

Q4: Do you agree that this approach will deliver our future places which will be distinctive, safe and pleasant, easy to move around, welcoming, nature-positive and resource efficient?

Q5: Do you agree that the spatial strategy will deliver future places that overall are sustainable, liveable, productive and distinctive?

This approach is very high level and over-arching. We support its aims, although in itself it will not deliver them. It is the underpinning policies which are of more importance, and the alignment of public sector investment in a way which helps to deliver these aims as articulated in answers above.

There is a need in the document for consistent wording. In the fourth paragraph, the wording "value, enhance, conserve and celebrate" does not align with the second paragraph on this same page ("value, enjoy, protect and enhance") or Policy 28 which seeks to "protect and enhance". They should be amended to be consistent.

In the last sentence, there is a need to accelerate the production of Regional Marine Plans if they are to be relied on in delivering a robust policy framework.

Spatial Principles For Scotland

Q6: Do you agree that these spatial principles will enable the right choices to be made about where development should be located?

Support the recognition that no single policy on its own will deliver the aims, a holistic approach is needed. The 6 spatial principles in themselves are a reasonable set of aspirations reflecting the current challenges the country faces. However, it is not clear how they are to be used in decision making. NPF4 lacks any real ambition for rural Scotland to be a driver of change through delivering green economic growth and net zero. There remains a significant concern that there is over emphasis on urban issues and solutions at the expense of recognised rural issues, particularly local living in 20 minute neighbourhoods which must be pragmatically applied taking account of its local context. The meaning of "Urban and rural synergy" should be further explained as this is a critically important aspect for Argyll and Bute and its relationship with the Central Belt. A just transition is a sentiment we would support but when most renewable energy developments are of a scale that requires them to be determined nationally, it is imperative that those involved with that decision making ensure there are appropriate local benefits and mitigations or there is a significant risk of alienating the local populations which should be benefiting from new investments.

Action areas for Scotland 2045

Q7: Do you agree that these spatial strategy action areas provide a strong basis to take

forward regional priority actions?

It is virtually impossible to come up with a national strategy which says everything about everywhere and deciding what to include and what not, is not something that has a right and wrong answer.

The spatial strategy action areas reflect the national engagement which was undertaken by Scottish Government with Local Authorities, and particularly the input which flowed from indicative regional spatial strategies. Argyll and Bute is shown, partially, within three of the Action Areas and this reflects the discussions council Officer's were involved with.

We agree that the Strategy Action Areas form a sensible basis to take forward regional priority actions. We agree with the areas of overlap which reflect the combined inter-relationships that different areas have, and the simple boundaries which also reflect the fact that no exact boundary between areas is logical. Perhaps this should be explicitly explained in the text.

North and west coastal innovation Action Area

Q8: Do you agree with this summary of challenges and opportunities for this action area?

Q9: What are your views on these strategic actions for this action area?

Agree the section gives a reasonable summary, although not everything is covered, it is acknowledged at a national level not everything can be included in the plan. The strategic approach outlined is covering the main pertinent issues, but we are not sure that "strategic actions" stand out very clearly. These should perhaps be highlighted, and we assume these would then be Scottish Government actions as it's their plan. Would they then go into the Delivery Programme.

Specific comments:

On page 12, the end of the first para should be extended "*..outcomes and for it to capitalise on this with local benefits.*"

Kennacraig should be included in the list of key centres with lifeline links on p12 (ferries to Islay, Jura, Colonsay).

It is difficult to see why South Kintyre would not lie within the North and west coastal innovation Area as opposed to the Central urban transformation, or at least in the overlap?

Page 14 Diagram, transmission infrastructure to Islay which will need to be upgraded to facilitate offshore renewables. (Is that correct?)

Action 1 Create Carbon Neural coastal and island communities. 5th para. 3rd sentence regarding homes that meet diverse community needs, would benefit from addition at the end of the sentence "...and to attract economically active new population to the area."

6th para regarding reversing de-population is focused on reintroducing people to previously inhabited areas. In practice new population growth may be achieved in new previously uninhabited areas. Suggest qualifying the people to be "reintroduced" as "economically active", as this is what is required to create sustainable communities.

Action 2 Support the Blue and Wellbeing Economies. The second sentence isn't very clear, does it mean development of downstream activities related to marine activity will increase competition for marine space and resources. If so why? Suggest clarifying the sentence.

In 3rd para. Include Port Askaig, Islay as a Key strategic site for investment associated with port infrastructure to support offshore renewables.

Last para. P18, should refer also to improved grid connection for Islay to support renewables.

Northern revitalisation Action Area

Q10: Do you agree with this summary of challenges and opportunities for this action area?

Q11: What are your views on these strategic actions for this action area?

Agree the section gives a reasonable summary.

Welcome inclusion of pumped storage at Cruachan, and Oban strategic connection westwards. Would suggest thematic inclusion of strategic connections to the central belt on the west coast as well as the east coast, ie: A82, A83, A85. There is no mention of the potential to increase local industrial utilisation of the increasing clean green energy production instead of transmitting it all to the central belt. This could have a significant impact of tackling rural de-population.

Specific comments:

6. Stimulate green prosperity

The 5th para. Of this section refers to the activity of key ports and their range of uses. Oban is identified as a major port / hub for leisure / aquaculture/fishing/ferry and cruise activity and has the potential to support offshore renewables development on the west coast. It would sensibly be included in the list of ports.

8. Strengthen resilience and decarbonise connectivity

Welcome the recognition of urgent need to improve the A83 for the resilience of wider Argyll and Bute. Would hope to see a timetable for delivery in the Delivery Programme when it is produced and recognising the urgency. Improving the A83 also goes beyond the issue with the Rest and Be Thankful it includes the whole route which is a lifeline link that requires investment to be safer and more resilient to climate change.

Welcome inclusion of Oban Airport, but suggest it is also identified as a hub for island communities given it serves the islands of Colonsay, Coll, Tiree and Islay.

In second paragraph what about role of timber movement by sea which is a major issue in rural areas.

Central urban transformation Action Area

Q14: Do you agree with this summary of challenges and opportunities for this action area?

Q15: What are your views on these strategic actions for this action area?

Agree the section gives a reasonable summary.

Welcome inclusion of Clyde Mission that includes Dunoon and Helensburgh which have their own challenges and opportunities for sustainable economic growth.

Specific Comments:

16. Rediscover urban coasts and waterfronts

Support mention of regeneration in coastal communities such as Dunoon and Rothesay, but suggest adding “and Helensburgh which has significant employment opportunities close by. Regeneration of these areas is supported by Argyll and Bute Rural Growth Deal”

Reference to accede to the European Union refers only to impact on eastern ports. The potential impact would be significant in terms of movements southwards to England as there would be no free movement, and westwards to Ireland if Scotland were an EU bridge. It is questionable if this currently has a place in the NPF.

19. Grow a wellbeing economy

Section states Ayrshire Growth Deal is aligning with Clyde Mission. This is a difficult reference to understand why North Ayrshire is referenced here given they are not part of the Clyde Mission. Argyll and Bute on the other hand is a key part of the Clyde Mission working alongside the Glasgow City Deal partners and needs to be referenced as such given the inclusion of Helensburgh and Dunoon..

Part 2 National Developments

Q19: Do you think that any of the classes of development described in the Statements of Need should be changed or additional classes added in order to deliver the national development described?

Q20: Is the level of information in the Statements of Need enough for communities, applicants and planning authorities to clearly decide when a proposal should be handled as a national development?

These questions regarding need are confusing. The assumption from reading p44 is that the assessment of need has been carried out and agreed during the production of NPF4 and that is why there then follows an agreement in principle of the proposed National Development. In that case it is difficult to see how an assessment of need will be required? If the intention of the need section is other than to justify its inclusion within the NPF4 then this should be clarified.

Specific comments:

It is not clear what "national development handling procedures" are? Does this refer to how a Local authority should deal with an application for a national development, or is it a list of things the promoters of a development should consider? The list of bullets in the left hand column of p44 is perhaps the procedure? but if so it should explicitly say that this is the case.

If there is an agreement in principle for National Developments, how will this apply to thematically identified non-site specific National Developments, for example pumped storage schemes?

6. Digital Fibre Network

Does Green data centre need defining?

9. Pumped Hydro Storage

Support inclusion of Ben Cruachan and the potential for other pumped storage schemes including a proposed scheme south of Loch Awe adjacent to Inveraray with a potential capacity of 1.4GW.

In the Designation and Classes of Development, does criterion b) need to be extended at the end of the sentence to say “..related to the pumped storage development.” Otherwise it would apply to all electricity generating structures.

More specific requirement should be mentioned of the need to create local economic/community benefits and employment arising from such developments which have the potential to have significant impacts on local infrastructure and the quality of life of local communities.

14. Clyde Mission

Support identification of this as a National Development, and its mapping to include western edges of Clyde.

Under Designation and classes of development, criterion a) assume mixed use “could” include residential, not “must” include which is how it reads currently.

As the policy is written, any “major” development identified in the list of classes and within 500m of the Clyde would be a National Development and enjoy a presumption in favour of its principle. Clarity is required about what the intention is?

Q21: Do you think there are other developments, not already considered in supporting documents, that should be considered for national development status?

NPF4 does not recognise the scale of investment planned in rural Scotland including Argyll and Bute to deliver a green recovery and unlock the potential of our collective rural economy. In particular the potential scale of growth in green energy is not recognised and its potential to unlock new industries such as the space industry, on shore aquaculture, data centres, adding value to products in the food and drink industry and helping drive growth in tourism. This can be clearly identified in the lack of national developments identified in Argyll and Bute and in the wider Highlands and Islands Region.

In Argyll and Bute in addition to Cruachan there is a case for HMNB Clyde and the development of the Maritime Change Programme to be recognised as a National Development that is regarded as integral to the ambitions of the Clyde Mission and reversing population decline in Argyll and Bute together with West Dunbartonshire.

In addition a case can also be made for the life/marine science cluster at SAMs, a key part of the Argyll and Bute Rural Growth Deal, at Dunbeg/Oban that continues to grow and assist the development of the important aquaculture and marine focussed industries. SAMS also lies at the heart of the Tobermory-Oban-Dalmally Growth Corridor and the North Lorn Economic Zone and helps drive the continued growth of Oban a major port on the west coast of Scotland.

Also the inclusion of Machrihanish a substantial employment zone located close to major sources of green energy with the potential to be a spaceport, a major site for on shore aquaculture expansion, a data centre location and food and drink expansion related to the Campbeltown whisky region that is expanding to meet global demand.

Part 3 Sustainable Places (Universal Policies)

General comments on all policies:

An overall sense-check of the draft policies to ensure that any potential conflicts or questions over precedence can be ironed out would be beneficial, for example, it is noted that there appears to be an unqualified support for the principle of development across various different, and potentially conflicting, policy themes. The general caveat on Page 3 of Draft NPF4 should be repeated at the beginning of Part 3. In addition, careful consideration needs to be given to the fact that most policies explain what will be supported, but they do not say what is not appropriate. Unless there is an overall caveat that things not supported by policy are inappropriate, or individual policies are redrafted to identify what is not appropriate, there is a potential policy vacuum which is very likely to be used by developers/agents to promote inappropriate things not identified in the NPF4 with the potential to undermine future capacity for development we need to meet national priorities. Suggest inserting in How to Use This Document at end of Part 3 sentence "...proposals which are not consistent with the policy framework of the plan will not be supported.." or similar wording.

- Many draft policies include a mix of instructions for the preparation of Local Development Plans and more specific planning policies. It is felt that the former should not be included within the specific policy and instead sit in the policy introduction text.
- It is noted that frequent use of a bold typeface is evident throughout the draft policies; officers are unsure of the relevance of the words highlighted and contend this emboldening should be removed in the final NPF4 to avoid user confusion.
- The majority of draft policies adopt the use of 'should' in terms of what the policy is trying to achieve. This significantly weakens and causes ambiguity over whether the policy must be complied with and as such, we should seek for this wording to be 'tightened up' in the final NPF4.
- Policies should not recite the law as several do, as this creates inconsistency in terms of the policy approach as there are many places where they do not. In particular this loose and inconsistent use of policy language could falsely imply differing levels of importance. It is strongly suggested all quotes of law and statute removed from policies of the NPF4 final version.

Q22: Do you agree that addressing climate change and nature recovery should be the primary guiding principles for all our plans and planning decisions?

It should be the primary but not over-riding principle, there are many other interests (economic and social) which may conflict and need to be balanced to identify the best overall outcome for a particular community. There could also be unforeseen consequences of this one size fits all policy approach in dealing with climate change in terms of helping to prevent it, and/or dealing with the consequences of climate change (mitigation), given this is a global challenge and not just a national challenge. For example, a complete prohibition of development in existing communities impacted by 1 in 200 flood events will have huge consequences for these communities a number of which exist in Argyll and Bute. Instead, there may be a need to employ instead various mitigation measures in areas such as these where development already exists with considerable embedded energy costs, public and private investment.

Q23: Do you agree with this policy approach? (Policy 1 Plan-led approach to sustainable development)

It is not obvious or realistic that an LDP can genuinely contribute to all of the 17 UN goals some of which clearly relate to inter-country and global issues. The translation of these to National Outcomes makes sense and seems to more directly relate to LDPs. There is nothing wrong with the UN goals but by having policy worded like this there is potential to create complexity, un-intended consequences and additional workload.

Is this wording needed as a policy? Is it not better as reference in the text, particularly as it is simply repeating legislative requirements.

Q24: Do you agree that this policy will ensure the planning system takes account of the need to address the climate emergency? (Policy 2: Climate emergency)

In general needs to be more specific about what and how to assess against and what standards would help.

Criterion a) Reference to Global Climate Emergency is quite vague and it would be better to refer to some enacted Scottish Legislation.

Criterion b) the decarbonisation pathways appear to be designed for industry and may not apply to all types of development, suggest finishing the criterion after “..lifecycle.”

Criterion c) “significant emissions” should be defined. Does “whole-life assessment” mean consideration of embodied energy. If so we need to know what standard is to be used? It should be noted that RICS provides one. Also, who defines what other proposals should be considered in establishing a combined effect? i.e. How wide a net to cast? Who establishes what the minimum level of profit will be considered viable? Whose opinion will ultimately determine what is the long-term public interest or not?

Criterion b) what scale does this apply to? all householder developments for example as this appears to be onerous?

Q25: Do you agree that this policy will ensure that the planning system takes account of the need to address the nature crisis? (Policy 3: Nature crisis)

Criterion d) it is not clear why applications for fish or shellfish development are excluded?

Criterion e) last sentence would be clearer if it began “Local Development Plan proposals....”

Q26: Do you agree that this policy effectively addresses the need for planning to respect, protect and fulfil human rights, seek to eliminate discrimination and promote equality? (Policy 4: Human rights and equality)

It is not clear why these need to be a policy in a National Planning document concerned with land use as they are covered elsewhere by legislation.

Q27: Do you agree that planning policy should support community wealth building, and does this policy deliver this? (Policy 5: Community wealth building)

Argyll and Bute supports the policy in principle but should it not either in policy or glossary define “community wealth building” and its objectives? Why not local development?

Q28: Do you agree that this policy will enable the planning system to promote design, quality and place? (Policy 6: Design, quality and place)

Criterion a) Starting the paragraph by suggesting that proposals “should be designed to a high quality” does not actually really set out anything measurable. It would help to set out the way in which successful design is achieved by starting the paragraph with the need to understand the character and sense of place (and also aspects such as urban grain, urban form historic development etc.), and then going on to talk about how the design and its scale, massing, detailing and materials should respond to this to achieve a high quality design.

Criterion b) The policy seems to imply use of "design guidance adopted by planning authorities **or** statutory consultees" This could include Community Councils and we are not sure that would be the intention. Would it not be better to say Key Agencies? In planning terms we really only "adopt" the development plan. It would it be clearer and more precise to say "approved" not adopted, especially as we will no longer have Supplementary Guidance.

Criterion d) What is poorly designed? Suggest rewording criteria to: "poorly designed" does not set out anything measurable. Rephrase as something like "Development proposals that are not consistent with the six qualities of place and that have not followed an analytical and responsive design process should not be supported".

Criterion e), some bad neighbour developments (e.g. waste disposal, waste water treatment) are required and identifying suitable location and mitigation are required.

The Six Qualities of a Successful Place would be better referenced to PAN68 design statements for wording that can be applied in terms of analysis and interpretation of an area.

It would be useful to refer here to re-use of buildings in terms of embodied energy and how this can be more sustainable than a new building.

Q29: Do you agree that this policy sufficiently addresses the need to support local living? (Policy 7: Local living)

Generally this is a sensible policy for urban areas, but it remains difficult to see how it can be sensibly applied in rural and remote areas where travelling distances for routine basic services is generally more than 20 minutes. The policy says it can be adjusted to include varying geographical scales including rural and island areas. Argyll and Bute is aware and very much involved in work to explore how this principle can be adapted to rural areas, but it is likely there will need to be specific guidance produced to assist with this interpretation and the NPF should set out the intention to produce it, if it is not to explain within the text.

Argyll and Bute maintain that whilst the aim of the principle is good in terms of reducing the need to travel, the use of the term 20 minutes in a policy is unhelpful when applied at a National level.

Criterion a) typo. "s" required on the end of "neighbourhood"

For clarity it is suggested that deleting "by bringing together relevant policies in this NPF" as it doesn't add anything, all policies of the NPF will apply together and balanced as appropriate. If necessary a specific statement should be clearly added to NPF somewhere to make sure that is the case.

Criterion b) It is not clear what the intention is here? Should the criterion start with "Only Development proposals.....should be supported". Also it is assumed this is not meant to override other parts of the plan in terms of principle, i.e.: should be supported where consistent with the other policies. Again, it may be there is a need for a statement somewhere in the NPF that all policies are considered together. How does this sit with the Town Centre first approach.

Q30: Do you agree that this policy ensures that we make best use of existing infrastructure and take an infrastructure-first approach to planning? (Policy 8: Infrastructure First)

The approach set out is a good one.

Criterion c) If infrastructure is identified in LDPs then the development which needs to use that infrastructure should also be identified, and that is where the contributions should come from. Other non-related development should not be contributing. This criterion should be worded more tightly.

Criterion d) delete last sentence, this is set out in legislation and applies to all policies and conditions.

Q31: Do you agree that this policy meets the aims of supporting the delivery of high quality, sustainable homes that meet the needs of people throughout their lives? (Policy 9: Quality homes)

Criterion a) For clarity, is this to be expressed as an area (Hectares), or as currently done, land to deliver x number of houses. We assume the latter (x number of houses) but the policy implies the former?

Criterion b) for clarity, suggest inserting "to meet" after "should be established" in the first sentence.

Suggest in second sentence replace "Representing when land will be..." with "Representing when land is expected to be..." This is because we cannot dictate when land comes forward for development.

In the fourth sentence, replace "...should be brought forward..." with "...should be allowed to come forward early.."

Criterion c) Strongly support the principle of tailored approach to housing for rural and island areas. This is crucial to delivery in Argyll and Bute where a significant amount of housing supply comes from windfalls.

Criterion d): This is a repetition of policy 6 and isn't required if the 6 qualities are to be applied to all development.

Criterion e) what will be a statement of community benefit. There is a risk that this statement leads to confusion with planning obligations. Suggest it is worded "statement of community impact" or similar. In essence this is normally already covered within a Design and Impact Statement required for major applications.

Criterion g) suggest "protected land" is defined. Suggest insert "..adequately.." before "..mitigate.." in first bullet. Last bullet, it is not clear what the intent of the last sentence is or its need. The policy is clearly set out with relevant criteria and surely the assessment will be objective.

Criterion i) first bullet, suggest replacing "..delivery programme.." with "..Housing Land Audit.."

Criterion i) Fourth bullet: Suggest there is a need for greater clarity on the meaning of "policy on rural places". Is this referring to development in the countryside as defined by LDPs If so suggest replacing "rural places" with "countryside development within LDPs" or adding a glossary definition of rural places to say the same. In A&B windfall development makes a significant contribution to housing land supply as long as it complies to our "rural or countryside policies", and this is likely true of other remote rural areas. Without its contribution we would struggle to tackle reversing de-population especially on the islands.

Criterion i) fifth bullet: define "small site".

Criterion i) sixth bullet: We are not clear what a Local Authority supported "affordable housing plan" is? Is this the Strategic Housing Investment Plan, something else specific, or just a general description. Given the importance of the policy suggest it is more precise or has a definition. In addition. The SHIP often identifies non-geographically specific proposals, ie the intention to deliver in a particular area of need and this would gain support from this criterion. It should only apply to specific sites identified in the LHS/SHIP.

Criterion j) The last two bullets shouldn't apply in the same way as the first two. As written all householder development would need to be providing adaptations for health conditions and changing climate. We assume this is not the intent. If the intention is to give greater support than otherwise to proposals for health and climate related adaptations, then replacing "and" with "or" after the second and third criteria will achieve that. That being said we don't feel that those two aims would override the first two criteria about neighbourhood amenity so it is possible they should be deleted entirely.

Q32: Do you agree that this policy will reduce the need to travel unsustainably, decarbonise our transport system and promote active travel choices? (Policy 10: Sustainable transport)

Criterion a): Correct typo by adding "travel" after "sustainable" in the first sentence.

Criterion c): First sentence, suggest there is a need to define what is "..significant..."

Criterion f) Suggest adding to end of first sentence "..unless supported by specific Local development Plan proposals for the junction." These proposals would have already been consulted on with Transport Scotland and agreed in principle. This is essential in rural areas where significant areas of possible development land, even of a small scale, can only be accessed from trunk roads. In addition flexibility should be allowed within growth areas identified in LDPs.

Criterion g): First sentence is unclear in its meaning and suggest it is reworded.

Criterion h): We have proposals for leisure and tourism particularly in remote rural areas which will not be accessible in less than 400m to transport networks, and will be default generate traffic if they are to be viable. This criterion should be removed, or qualified for rural areas.

Criterion i) This criterion will not apply to all development proposals and suggest inserting "Where appropriate..." at the front of the first sentence before "Development.."

Criterion l) Typo, third sentence insert "a" before "..range.."

Q33: Do you agree that this policy will help us achieve zero emissions from heating and cooling our buildings and adapt to changing temperatures? (Policy 11: Heat and cooling)

Policy heavily focused on heat networks which will have limited impact in remote rural areas. Fabric first, on-site generation and storage, and improved siting and design have potential to achieve a greater impact and should be included.

Criterion b) It is not clear what "including retrofit where appropriate" means.

Criterion d) Is there a definition of what the planning system will classify as "low or zero emissions heating"? Is it possible to achieve and maintain this by condition? Does this only apply to new build proposals or would it apply to changes of use?

Criterion g) As almost all domestic houses have mainline networked electricity this criterion would apply to almost all houses even in remote rural areas. Is that the intention? What about in areas that are not smoke control areas?

Q34: Do you agree that this policy will help to make our places greener, healthier, and more resilient to climate change by supporting and enhancing blue and green infrastructure and providing good quality local opportunities for play and sport? (Policy 12: Blue and green infrastructure, play and sport)

Criterion b) In most cases this will be carried out by developers and may not be within Local Authority gift to deliver. Suggest inserting after "Local Development Plans should.." "seek to" and or replace "identify" with "facilitate". In the last sentence suggest adding "safe" before "accessible".

Criterion g) This introduces a risk of community groups submitting applications for open space on "under-used" land they don't own in order to block future development. What is under-used. Vacant allocated sites are underused often for some time until they are developed and would be vulnerable to this apparent presumption in favour.

Criterion l) long-term stewardship is also required for play space and should be included.

Q35: Do you agree that this policy will help to ensure places are resilient to future flood risk and make efficient and sustainable use of water resources? (Policy 13: Sustainable flood risk and water Management)

Criterion b) what is "essential infrastructure" for the purposes of this policy.

Criterion g) this should state that private water supply will only be acceptable where a public water supply is not or could not be made available. This is the circumstance which makes it acceptable, but it is not an “exceptional” case in rural areas.

Q36: Do you agree that this policy will ensure places support health, wellbeing and safety, and strengthen the resilience of communities? (Policies 14 and 15: Health, wellbeing and

Safety)

The preamble to the policy refers to promotion of active lifestyles but neither policy is promoting this.

Criterion b) what would Significant adverse health effects be? Who has the skills to assess that? What would health impact assessments entail, should there not be some guidance / definition?

Criterion d) What about other amenity considerations such as smell, noise and vibration?

Q37: Do you agree that this policy ensures places support new and expanded businesses and investment, stimulate entrepreneurship and promote alternative ways of working in order to achieve a green (recovery and build a wellbeing economy? Policy 16: Land and premises for business and employment)

The policy doesn't safeguard industrial and business land, it merely promotes economic development.

Preamble to the policy refers to “good green jobs”. This is somewhat emotive, will all green jobs be good, will they all be well paid? What does it mean in the context of a National Planning document? Suggest removing “good”

Policy should define what “employment uses” are in terms of the policy.

Criterion b) Define Net Economic benefit and how it should be assessed?

Criterion d) what “area” does the policy mean, and what will be the “primary business function”.

Q38: Do you agree that this policy will help to inspire people to visit Scotland, and support sustainable tourism which benefits local people and is consistent with our net-zero and nature commitments? (Policy 17: Sustainable tourism)

Criterion b) suggest adding "and where they comply with other policies of the plan"

Criterion c) Only seems to apply in areas where there are existing adverse impacts, but tourist facilities can create new adverse impacts.

Welcome criterion e) Does the first bullet mean impact singularly or cumulatively?

Criterion f) would appear to have the potential to reduce vitality in tourism-related facilities, where one viable use might easily change to another viable use but this would be prevented by this criterion. Suggest re-wording.

Q39: Do you agree that this policy supports our places to reflect and facilitate enjoyment of, and investment in, our collective culture and creativity? (Policy 18: Culture and creativity)

Support policy.

Q40: Do you agree that this policy will ensure our places support continued expansion of low-carbon and net zero energy technologies as a key contributor to net zero emissions by 2045? (Policy 19: Green energy)

Criterion a) It is not clear what this means given we don't have localised transmission networks. Assume it means maximise an area's potential for "generation" from renewables not its "utilisation of them". If so suggest inserting for clarity. In addition it is not in the LDP's gift to deliver this.

Criterion d) & e) There is no test of what is "unacceptable" or how that balanced judgement would be made.

Criterion e) & f) may also need EIA and LVIA.

Criterion f) Would they be supported even on SAC/SPA/SSSI?

Criterion g) What does this really mean? We can't foresee the eventual end size of turbine blades, and other unforeseen advances so how can we assess if a site is suitable in perpetuity. Or does this mean it should be acceptable as consented in perpetuity?

Criterion h) There is no detail about decarbonisation strategies, and particularly what they might be expected to achieve in terms of "appropriate abatement".

Criterion j) There is nothing about environmental issues of landscape and nature, only aviation? Is this because it is assumed to be covered by other policies?

Criterion k) Support first bullet regarding local and community socio-economic benefit and suggest this is given greater prominence in the policy. Suggest this is a separate criterion from the other bullets and it replaces "must take into account" with "must provide for local and socio-economic benefit".

The meaning of the second bullet is not clear in criterion k).

There is no cross reference to the National Developments which identifies renewables generation thematically and brings with it a presumption in favour of the principle?

Q41: Do you agree that this policy will help our places to be more resource efficient, and to be supported by services and facilities that help to achieve a circular economy? (Policy 20: Zero waste).

The aim of the policy is supported, but it is not clear, particularly criterion b) how the planning system can require or monitor such things.

Criterion c) Why does this not apply to all scales of development, particularly re-using materials, minimising demolition. However how can the planning system enforce re-use of materials unless they are re-used on that particular project?

Criterion e) Covers local amenity issues, but does not cover wider environmental impacts particularly the natural environment.

Criterion f) Should add the caveat that this is subject to needs and demand assessment for the industrial/business/storage uses. There are some places reserved for one particular use which we may need to preserve.

Q42: Do you agree that this policy will support investment in aquaculture and minimise its potential impacts on the environment? (Policy 21: Aquaculture)

Policy 21: Aquaculture generally fits with the aquaculture policy needs for Argyll and Bute Planning Authority, but would require further detail to determine planning applications. The policy must be clear in stating what new criteria will be used to assess future aquaculture proposals and any changes in practices to reflect industry needs. The way the Policy is currently written is sufficient as a strategic high level document, but we consider as a planning authority dealing with aquaculture planning applications on a daily basis, further criteria should be introduced. Criteria should include, or make provision for:

- Guidance for new forms of development that have fewer environmental impacts such as semi-closed pen, Integrated Multi-Tropic Aquaculture (IMTA), Recirculating Aquaculture Systems (RAS), wrasse and lumpfish hatchery developments, and finfish feed development;
- On-shore, shore-side and off-shore developments;
- Designated sites, habitats and species for nature conservation, (including Priority Marine Features, wild migratory salmonids, and European Protected Species); and provide a biodiversity enhancement guide/toolkit for aquaculture proposals.

Should the above detail not be included in Policy 21, the planning authority will formulate its own policy to address these issues in their LDP.

Seaweed farming is an emerging form of aquaculture that is considered a potential growth sector that will have positive effects in terms of carbon capture and community benefits including wealth building. Whilst at present it is not under planning control, it would be beneficial to recognise its potential positive effects and would be useful to be referred to in Policy 21, should it come under planning control. As an example, in Argyll there is a growing seaweed sector that utilises mixed species, such as shellfish and seaweed Integrated multi-trophic aquaculture (IMTA). In terms of carbon capture, mixed species such as IMTA can offset carbon emissions. Policy 21 and the planning and licensing system needs to support all conceivable aquaculture scenarios.

In criterion b) In order to safeguard migratory fish species, it should be further noted that SEPA will be responsible for incorporating a risk-based spatial tool to manage wild fish interactions between wild salmonids and sea lice from marine finfish farms on the northwest and west coast. Sea trout interactions must also be incorporated into the risk-based spatial tool. It would not be appropriate for planning authorities to continue managing the risk to sea trout through Environmental Management Plans.

In criterion c) development proposals should also be supported where they comply with any local development plan associated technical notes, local Integrated Coastal Zone Management plans and spatial guidance.

Criterion d) should include a point for development proposals to adhere to existing fish farm consolidation and rationalisation policy in the event of existing fish farm infrastructure becoming redundant.

Q43: Do you agree that this policy will support the sustainable management of resources and minimise the impacts of extraction of minerals on communities and the environment? (Policy 22: Minerals)

Criterion a) clarify if this is a minimum or maximum landbank. There is a lack of resources to maintain and monitor relevant information to achieve fulfil this criterion, and a National Database and monitoring exercise would assist.

Criterion c) should merely state that such proposals will not be supported. It doesn't need to refer to Scottish Government.

The policy as drafted covers aggregates but no other, more specialist minerals and stone used for construction, which also need to be captured and supported in principle.

Criterion d) As minerals are a finite resource, their sustainable extraction is in some sense impossible. Suggest tightening the wording of the first sentence.

In criterion d) last bullet, proposals for restoration should be focussed on biodiversity enhancement, including where appropriate capitalising on any valuable habitats that have been created through the operation of the scheme such as shelter plantations or wetlands.

Q44: Do you agree that this policy ensures all of our places will be digitally connected? (Policy 23: Digital infrastructure)

Support policy.

Q45: Do you agree that these policies will ensure Scotland's places will support low-carbon urban living? (Policies 24 to 27: Distinctive places)

In the policy preamble, third sentence, it would be better to use the 6 qualities of successful place than introduce more terminology. In the same sentence, for consistency with Policy 28, add "protect and" before "enhance".

Policy 24, Criterion a) identifying networks implies some linkage, which in many remote rural areas will not really exist as it does in denser urban areas. Suggest removal or qualification.

Policy 25 Criterion d) Suggest defining scale of neighbourhood shopping.

Policy 27 Criterion d), first bullet should refer to retention of historic shop frontages and protection of wider historic environment.

Q46: Do you agree that this policy will protect and enhance our historic environment, and support the reuse of redundant or neglected historic buildings? (Policy 28: Historic assets and places)

At the end of the preamble add something about embodied energy in order to assist resistance of historic environment demolition.

The policy would benefit from a standardisation of wording/language and to remove ambiguity.

Policy should refer to local Historic Environment Records (HER)

Criterion a) There is no need for LDPs to identify things that are recorded elsewhere. This does not assist in the quick production of plans.

Criterion b) detailed assessment should be within a Design Statement and this should be referenced here. Managing Changes Guidance Note refers to all criterion of the policy so should be mentioned in a distinct way which makes that clear.

Criterion c) confusingly worded and does not refer to Managing Change Guidance which it should. Suggest re-word "...a building or its setting must only be supported in exceptional circumstances where it has been fully demonstrated that the building meets one of the stringent key test in Managing Change Guidance Notes." Or words to similar effect.

Criterion d) should refer to HES guidance on understanding the definition and extent of setting.

Criterion e) is too restrictive and should clarify that suitable and sensitive contemporary design can be allowed. It should also include the word "detailing" in terms of proposals as often proposals fail to take cognisance of historic detailing e.g. slenderness of window astragals, depth of fascia, size and positioning of dormers, proportions of windows, which are key to successful responsive design. There is also no mention of the contribution that trees and green spaces might make to a conservation area

Criterion f) is confusing and in some cases will make it too difficult for planners to refuse such an application i.e. what are "reasonable efforts"; "reasonable cost". It would be clearer to state that if the building makes a positive contribution to the character of the area then the tests for demolition of a listed building should be followed.

As worded the criterion states the same thing twice in different words: "if the building is of little townscape value" is confusing duplication of the earlier part of the paragraph which requires that it makes a positive contribution to the character.

Criterion g) Change "especially" to "for example" so that the policy is not defining what contributing features might be.

Criterion o) add "significant" before "adverse impacts on" as the current wording would prevent otherwise acceptable development. The criterion is confusing in that it is not clear if it is covering buildings or change to archaeological features. The wording should be clarified or an additional criterion created.

Q47: Do you agree that this policy will increase the density of our settlements, restore nature and promote local living by limiting urban expansion and using the land around our towns and cities wisely? (Policy 29: Urban edges and the green belt).

Criterion b) add "including farm diversification" after "agriculture".

Criterion b) penultimate bullet: add to end of bullet "including fully justified and suitable enabling development"

Criterion c) third bullet, add "," after "materials" to make it clear that all of the list must contribute to harmony with the visual character of the green belt.

Q48: Do you agree that this policy will help to proactively enable the reuse of vacant and derelict land and buildings? (Policy 30: Vacant and derelict land)

Support policy.

Q49: Do you agree that this policy will ensure that rural places can be vibrant and sustainable? (Policy 31: Rural places).

It is not clear what a rural place is in terms of the application of the policy. Is it the countryside as defined within development plans generally outwith settlement boundaries, or is it areas (including their settlements) of the country that are relatively remote. Without clarity on this it will be difficult for people to apply these policies consistently and as intended.

Criterion a): It would be helpful to have “accessible”, “intermediate” and “remote” defined. As alluded above it would be helpful to know for example, would a settlement within a remote rural area be considered accessible, or would it be part of the larger remote area?

Criterion b) what is the definition of a previously inhabited area and what is the intention of the criterion? It is likely population growth within remote rural areas will mostly be in or adjacent settlements and this will be more sustainable. Is it intended this would take precedence over areas like NSA, SPA etc. ...? If not it should clarify.

Criterion c): it is not clear which sub-criteria apply mutually or exclusively. Suggest the first three sub-criteria either require "and" or "or" or they should be subsumed into the criteria c) heading if they apply to everything.

Criterion d): Where is this meant to apply geographically? Is it the same as criterion c) (i.e. rural areas and if so what are they) or is it more generally?

Criterion e) this criterion is open ended, in that it doesn't say only these things are acceptable, or list what isn't acceptable. Should have “or” after each bullet.

Criterion g) would this apply inside or outside settlement boundaries, or both?

It is not clear what policy approach is intended to apply to “intermediate” areas as prescribed by criterion a)?

Q50: Do you agree that this policy will protect and restore natural places? (Policy 32: Natural places).

What are “regionally” valued natural assets? A&B is the second largest authority and these are referred to as Local. Who would determine “regionally” valued assets?

Criterion i.) suggest in last bullet point, inserting “acceptably” before “minimises”.

Q51: Do you agree that this policy protects carbon rich soils and supports the preservation and restoration of peatlands? (Policy 33: Peat and carbon rich soils)

Again what is “regionally” and who would designate them”? Also, how does our EU withdrawal and transition arrangements effect reference to “internationally” valued soils?

Criterion c) needs to define what is meant by “peatland”, ie,. Is it category 1 and 2, deep peat, or all peat.

Where reference is made to peatland management plans, this also should define what identification on site of “peat” means.

Q52: Do you agree that this policy will expand woodland cover and protect existing woodland? (Policy 34: Trees, woodland and forestry).

Criterion a) It is not clear what is meant by identify, but to map this would be beyond our resources and severely impact on our ability to produce an LDP in the proposed timeframes. It is appropriate to have a policy framework which protects without actually identifying all relevant woodland. The second sentence of criterion a) is unclear. How are the LDP and FWS "associated"? Planning cannot manage woodland felling if there is no associated development. This is why all of these elements go in the FWS which needs to be prepared in conjunction with Scottish Forestry and other partners. The document “The Right Tree in the Right Place” needs to be refreshed as it still refers to Supplementary Guidance throughout.

Criterion b) first bullet, should allow for loss of ancient woodland where the woodland is not compromised or benefit outweighs the impact.

Criterion c): The first sentence is too restrictive. Compensatory planting should be funded by the developer and demonstrate how it benefits the community impacted by the lost trees.

Criterion e) the criterion implies if trees are planted, developments will be supported.

There is no mention of TPOs and trees in Conservation Areas.

Q53: Do you agree that this policy will help our coastal areas adapt to climate change and support the sustainable development of coastal communities? Policy 35: Coasts

Criterion b) define coastal location.

Criterion c) last sentence, not sure what the aim is. Suggest replacing “a very short lifespan” with “the minimum period necessary for the operation required” or words to that effect.

Criterion d) bullet points, should they have “and” after them so they all apply?

Part 4 Delivering Our Spatial Strategy

Q54: Do you agree with our proposed priorities for the delivery of the spatial strategy?

Q55: Do you have any other comments on the delivery of the spatial strategy?

On page 113 under title, Development Plan Policy and Regional Spatial Strategies, there is reference to Scotland’s “regions”, but what are these? It is Local Authorities working together not regions.

In the following paragraph add after “City Region Growth Deals” “Rural Growth Deals”.

Q56: Do you agree that the development measures identified will contribute to each of the outcomes identified in Section 3A(3)(c) of the Town and Country Planning (Scotland) Act 2007

C) It is not clear that the proposed NPF4 content will increase population in rural areas. It has the potential to assist Local Authorities to facilitate development which may support population increase, but it is investment of capital in jobs, transport and economic opportunities which will actually increase population levels. This requires Scottish Government investment and implementation of other policy including fiscal policy, to directly align with the aims of the NPF4.



Q57: Do you agree with the Minimum All-Tenure Housing Land Requirement (MATHLR) numbers identified above?

Support the proposed numbers, which align with Argyll & Bute HNDA

ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES
AND LICENSING

DEVELOPMENT AND
ECONOMIC GROWTH

23rd MARCH 2022

**LOCAL DEVELOPMENT PLANNING – REGULATIONS AND GUIDANCE
CONSULTATION**

1.0 EXECUTIVE SUMMARY

- 1.1 The aim of this report is to advise the PPSL of the Scottish [Government Local Development Planning Regulations & Guidance Consultation](#) and seek approval for the proposed response to this consultation (**See Appendix 1**). The response is due by 31st March 2022.
- 1.2 The regulations and guidance being consulted on are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019.
- 1.3 There is a statutory duty for the planning authority to prepare and update local development plan(s) for its area. The current Adopted Argyll and Bute Local Development Plan 2015 will remain in place until the adoption of Local Development Plan 2, which is currently at Examination. The preparation of Local Development Plan 3 will be governed by the new regulations and guidance.
- 1.4 The regulations and guidance raise issues regarding; the balance between flexibility provided by guidance versus robustness provided by regulation; consideration of islands and remote rural areas; and detailed issues in terms of LDP production requirements. This consultation highlights the enhanced corporate role of the LDP and the issue of additional resources required to prepare LDP3.

1.5 RECOMMENDATION:

It is recommended that the PPSL:

- i) note this report and the implications, including financial for the planning service and wider council.
- ii) approve the response to the Scottish Government in **Appendix 1**.

ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES
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LOCAL DEVELOPMENT PLANNING – REGULATIONS AND GUIDANCE CONSULTATION

2.0 INTRODUCTION

- 2.1 The Scottish Government is consulting on [Local Development Planning Regulations & Guidance](#). The proposed regulations and guidance are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019. The proposed response to this consultation is set out in **Appendix 1**. The response should be submitted by the 31st March 2022.
- 2.2 There is a statutory duty for the planning authority to prepare and update local development plan(s) (LDP) for its area. The current Adopted Argyll and Bute LDP 2015 will remain in place until the adoption of LDP2, which is currently at Examination. The preparation of LDP3 will be governed by the new regulations and guidance. A diagram of the new LDP process is shown in Section C, Annex C of the Consultation.
- 2.3 This consultation does not cover all aspects of Local Development Plan regulation and guidance. Further consultations will follow on the omitted aspects, such as amending LDPs.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the PPSL:
- i) note this report and the implications of the proposed regulations and guidance, including financial for the planning service and wider council.
 - ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

4.0 DETAIL

- 4.1 The consultation is split into 4 sections. Part A is the introduction; Part B the proposed Development Plan Regulations; Part C Draft Guidance on Local Development Planning, and Part D the Interim Impact Assessments.

- 4.2 Further consultations are to follow including on Open Space Audit and Strategy and Play Space Assessment (at this Committee), Effective Community Engagement, Gypsies and Travellers – definition, LDP Modification and Regional Spatial Strategies. Separate guidance will be published on a common approach to Housing Land Audits.
- 4.3 In general, the regulations and guidance are clear and should support the preparation of the next LDP in the context of NPF4. Given the cross references to NPF4 which is currently only a draft document, there may be changes to NPF4 which result in consequential changes to the proposed regulations and guidance. Issues are raised regarding the balance between flexibility provided by guidance versus robustness provided by regulation, consideration of islands and remote rural areas and detailed issues in terms of requirements. This consultation highlights the enhanced corporate role of the LDP and the issue of additional resources required to prepare LDP3.

PART A - Introduction

- 4.4 The Adopted Local Development Plan and Proposed Local Development Plan 2 were prepared in accordance with regulations related to the Town and Country Planning (Scotland) Act, 1997, as amended by the Planning etc. (Scotland) Act, 2006 and by Scottish Government Planning Circular 6/2013. The Scottish Government are proposing new regulations and guidance for the new Planning (Scotland) Act 2019 (The Act) to direct the preparation of the new LDP. The guidance (Part C) is proposed to not take the form of a circular but to be a “live” document capable of evolving as the new planning system is implemented. The guidance is to be applied in a proportionate and place based way by planning authorities.
- 4.5 The advantage is this allows for maximum flexibility and resilience in the guidance. The disadvantages are that i) the development plan process is often subject to challenge and, whilst flexibility has some advantages, it is important that the process is robust; ii) using changing guidance rather than regulation is liable to be more open to challenge; iii). it is unclear what consultation there would be on any review of the guidance; iv) potential for changes in the guidance during an LDP process, which may result in confusion; and a lack of clarity on the status of the guidance. There are key parts of the process where regulation is preferable to guidance in order to have as robust a process as possible to avoid legal challenge and additional expense. **See Appendix 1 Question 1.**

PART B - Regulations

- 4.6 Much of the existing regulations have remained unchanged with amendments where there is a new duty or the process has changed. Changes for the LDP process and content were brought forward by the Act and include:
- taking into account and have regard to NPF4, Local Outcome Improvement Plans, Regional Spatial Strategies and Local Place Plans;
 - policies for water refill stations and public conveniences;
 - have regard to the desirability of preserving disused railways,
 - take into account people seeking self-build housing; and
 - contain targets for meeting housing needs.

Other regulations have been taken into account such as consolidation of the hazardous substances regulations. These do not raise any significant issues. **See Appendix 1 Questions 4 and 5.**

- 4.7 Emerging and enlarging issues are noted relating to climate change, community planning and health. The consultation asks if additional information is needed to address these issues. However, it is considered that the proposed process involving the Evidence Report, enhanced integration with community planning including a shared vision related to the Local Outcome Improvement Plan and other assessments that integrate with the LDP process all provide sufficient information. Additional information may be sought based on local requirements rather than regulation. **See Appendix 1 Question 6.**
- 4.8 The Evidence Report is a new stage in the LDP process requiring the gathering and analysis of a significant amount of supporting information to enable the preparation of the LDP. The Evidence Report goes through a Gatecheck with an assessment by a Scottish Government appointed Reporter. Areas of dispute are examined. The cost of this assessment is borne by the planning authority. Plan preparation can only proceed once the Gatecheck is passed. Once the Gatecheck is passed it should not be necessary for these issues to be revisited at the Examination of the LDP.
- 4.9 The consultation proposes that the Evidence Report requirements are dealt with through guidance. However, it is considered that whilst some elements may be adequately dealt with by the requirements of the Act and the Development Plan Scheme process, the minimum requirements would benefit from a level of regulation as opposed to guidance, in order to ensure the process is robust and less open to legal challenge. **See Appendix 1 Question 7.** Given the importance placed on this stage the guidance notes that the Evidence Report is required to go to full Council for approval prior to submission to Scottish Ministers and that a corporate approach is sought in its preparation. Although the guidance itself raises no significant issues, it is considered that regulation is the more appropriate place for elements of this. **See Appendix 1 Section C Question 19 and Question 20**
- 4.10 The regulations for the Evidence Report Assessment are proposed to be the same for costs, procedures and assessment currently in place for the Examination. It should be noted that the planning authority will now be responsible for the cost of the Evidence Report Assessment as well as the Examination. The publication of the Proposed Plan submitted for Examination and subsequent modification process is proposed to continue in the same manner. This raises no significant issues. **Appendix 1 Question 9.**
- 4.11 There is now a different approach to modifications prior to submission for Examination, gives scope for the planning authority to produce a Modification Report to accompany the submitted proposed plan, taking account of the representations without preparing a modified Proposed Plan. The proposed regulations and guidance deal with this welcomed part of the process. The process and regulations for amendment of local development plans during the plan period will be consulted on at a later date. **Appendix 1 Question 10 and Section C Question 21**

- 4.12 Development Plan Schemes set out the timetable for LDP preparation and participation. The Act brought in a new requirements in terms of the DPS, which are detailed in the regulations and guidance and have resource implications. The diagram in Annex C would benefit from additional detail in terms of estimated time scales (as currently shown in Circular 6/2013) to assist with programming. Appendix 1 Question 11 and Part C Question 15
- 4.13 Delivery Programmes (DP) are to replace the Action Programme to aid in the delivery of the policies and proposals in the LDP. These are now to be corporate level documents, given equal weight with the LDP, contain more information, have a specific duties for the head of the planning authority's paid service (Chief Planner), alignment with wider authority budgets and require full Council approval. The regulations are amended to take these changes into account. The regulations and guidance (Part C) raise no significant issues in terms of process, however, the resource implication and requirements of the DP should be noted. **Appendix 1 Question 12 (Part B), Question 17 (Part C)**

PART C - Draft Guidance on Local Development Planning

- 4.14 The draft guidance is split into 3 sections covering the aims for the new LDP, process and thematic guidance based on the themes in NPF4. It is noted that this is a "live" document and will be subject to change. It would be useful for planning authorities to be involved in any change process. Changes may lead to significant impacts on plans part way through the preparation process, including resource and cost implications. It is therefore important to have an appropriate balance of regulation to guidance in order to maintain a robust process for plan preparation.
- 4.15 A place-based approach is expected with a clear spatial strategy. A corporate level approach is stressed throughout the guidance with the Local Outcome Improvement Plan providing the shared vision, council wide level integration in the process with approval for key stages required at full Council and a significant role for the Chief Planner. Wider engagement in the process is promoted with communities encouraged to prepare local place plans. Minor issues are noted in relation to the aims and general guidance on LDPs, including Development Plan Schemes. **See Appendix 1 Question 15**
- 4.16 Local Place Plans were brought forward through the Act. The regulations and a circular regarding LPPs are now in place. Registered LPPs require to be taken into account in the preparation of the LDP. There is also a requirement in the legislation to demonstrate in the Evidence Report what assistance has been given by the local authority to local communities in preparation of LPPs. The guidance Paragraph 91 notes "*...it is expected that this would not necessarily depend on local authority support but can extend to wider programmes*". The resource implications for remote rural and island councils and for dispersed communities is liable to be more significant than for urban areas and a note to this would be welcomed in the guidance. **See Appendix 1 Question 18**
- 4.17 The Proposed Plan is to be place based with the guidance seeking an emphasis on maps, site briefs and masterplans. In light of the corporate role of the plan the guidance proposes approval by full Council with no delegation permitted. It should be noted that currently all key stages of the LDP process go through full Council but that Council meets on average 5 times a year. In addition, the consultation process has been extended to 12 weeks minimum with no cap. Previously this

was 6 with a cap at 12 weeks. Both of these have implications for the programming of the LDP process. The role of the Chief Planning Officer in relation to the plan fulfilling its intended outcomes is noted. The guidance raises some detailed issues in relation to mapping in a remote rural and island area, LDP process programming and managing expectations. **See Appendix 1 Question 21**

- 4.18 The Examination process remains broadly the same. Matters dealt with as points of principle at the Gatecheck stage should not in general be revisited at the Examination. If the Reporter is not satisfied on the sufficiency of allocated land to meet the Housing Land Requirement a new Proposed Plan may be required. The Reporter may also require an amendment to the plan. This process will be subject to future consultation. The cost of the Examination remains the responsibility of the planning authority. The guidance raises no significant issues. **Appendix 1 Question 22**
- 4.19 In terms of the Evidence Report, the minimum evidence requirements would benefit from being in regulation rather than guidance in order to make the process more robust and avoid legal challenge. There is lack of clarity on remote rural and island issues, which may increase the scope for dispute within the process. There is a lack of clarity within the guidance over the specific requirements for supporting information. The additional supporting evidence required includes Play Space Assessments, evidence of support given to communities in respect of Local Place Plans, Town centre audits and strategies, Forestry and Woodland Strategy, Heat Mapping, 20 minute neighbourhoods, blue and green infrastructure audits, strategic flood risk assessment, nature and distribution of poor air quality, business land audit, the range of cultural venues and facilities, information on the aquaculture industry, minerals monitoring, identify gaps in digital coverage, retail study, place standard assessment, identification of types of rural area, review of Local Landscape Areas and review of Local Nature Conservation Sites. **See Appendix 1 Question 24, 25, 26 and 27**
- 4.20 In terms of the Proposed Plan there are detailed issues relating to mapping requirements. The guidance outlines new requirements of this stage such as an understanding of the emissions likely to be generated by the plan's proposals, the potential for negative emissions technologies, heat mapping (noting the new Local Heat and Energy Efficiency Strategy requirements), identification of potential charging hubs and taking into account where the local authority can make their own suitable property available to Mobile Network Operators and Wireless Infrastructure Providers. There are detailed issues relating to clarity of wording. There are also detailed issues relating to the appropriate document for setting out infrastructure requirements. See Appendix 1 Question 28, 29 and 30.

PART D – Interim Impact Assessments

- 4.21 This section contains the range of interim impact assessments on the proposed regulations and guidance. This includes a Business and Regulatory Impact Assessment (BRIA), Equalities Impact Assessment (EQIA), Fairer Scotland Duty Assessment, Island Communities Impact Assessment and a Strategic Environmental Assessment (SEA). The questions relating to Part D are contained in Part A Q2 and Q3.

- 4.22 The BRIA in terms of impact upon the Council notes that *“The new processes will have significant impacts on local authority teams involved in the LDP process and how they take this work forward. The proposals stem from recent legislative changes that were intended to strengthen LDPs, reducing the time spent on producing plans and giving them a greater focus on place and delivery”*. The timeframe for the current LDP process was estimated at 31 months. The new process timeframe is estimated at 36-48 months, given the additional requirements. However, the lifespan of a plan is increased from 5 to 10 years, reducing the frequency of review. The Plan may be subject to amendment during the 10 year period, however, this matter will be subject to a subsequent consultation.
- 4.23 The BRIA notes that *“the changes made to development planning in the Planning Bill were estimated to deliver potential saving to planning authorities collectively, of between £21.42m to £31.5m over a ten year period.”* It is noted in contrast, that the Royal Town Planning Institute estimated the changes of the Act would bring additional costs of £12,138,880 to £59,263,685 over a ten year period.
- 4.24 The BRIA also sets out impact on communities and notes that the extent of impact on communities will be *“dependent on their willingness and need to become involved in these processes”*. This omits a significant point in terms of community capacity to become engaged and raises the question of support for capacity building within communities.
- 4.25 The EQIA, Child Rights and Wellbeing Impact Assessment, Fairer Scotland Duty Assessment and Strategic Environmental Assessment raise no significant issues.
- 4.26 Island Communities Impact Assessment. The timescales for plan preparation were noted and that the logistics of site visits and the small size of island authority planning teams may have an impact.
- 4.27 It is noted that the preparation of the next Local Development Plan will need to be informed by the appropriate impact assessments, including Strategic Environmental Assessment, Habitat Regulation Appraisal, Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Assessment. Guidance is in place for some of these assessments e.g. SEA, HRA, Island Communities but there needs to be an informed and robust approach to all the assessments, including emerging assessments, such as Children’s Rights and Well Being Assessments.

5.0 CONCLUSION

- 5.1 The consultation on regulations and guidance for Local Development Plan preparation is welcomed, giving the Council an opportunity for engagement in the move to the new planning system. It is considered that there are some issues relating to the appropriate balance between regulation and guidance, in particular relating to the Evidence Report Stage. There are also issues related to the handling of remote rural and island areas. The Act brought in a significant number of new duties, which have been detailed in the regulation and guidance. This

highlights the significant resource issue in relation to the preparation of the next Local Development Plan.

6.0 IMPLICATIONS

6.1 Policy

Once approved the regulations and guidance will govern the preparation and delivery of the next Local Development Plan. The corporate level role of the Local Development Plan, including approval route and how it integrates with other Council plans, strategies and programmes has been enhanced and emphasised.

6.2 Financial

The new process for preparation of the Local Development Plan, which is a statutory duty, involves some savings and some additional costs. It is estimated that there will be a net additional cost to the Council from the new duties.

6.3 Legal

There is a statutory duty to prepare and update a Local Development Plan. This will need to be in accordance with the regulations and guidance once approved.

6.4 HR

None as a result of this consultation. However, the proposed regulations highlight the resource requirements to deliver the next local development plan.

6.5 Fairer Scotland Duty:

6.5.1 Equalities - protected characteristics

6.5.2 Socio-economic Duty

6.5.3 Islands

The above issues are assessed in Part D - the Interim Assessment Report. Comments on these assessments are included in the consultation response.

6.6 Climate Change

This is assessed in Part D – the interim assessment report Strategic Environmental Assessment screening.

6.7 Risk

None as a result of this consultation. However, there are associated risk factors to note as follows:

If the balance between regulation and guidance does not deliver a robust process there may be an increased chance of legal challenge in the LDP process;

The guidance requires a significant amount of information at the Evidence stage and content at the proposed plan stage. Failure to resource this may result in failure to deliver an LDP timeously.

6.8 Customer Service

None in relation to the consultation. The proposed regulations and guidance will result in changes to the Local Development Plan process aimed at improving engagement of the public at large and other stakeholders.

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Councillor Kinniburgh Policy Lead for PPSL

25th February 2022

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APPENDICES

Appendix 1 Proposed Response

Appendix 2 Background Papers

Appendix 1 Proposed Response

PART A Introduction

Question 1

Do you agree with the principle that regulations be kept to the minimum necessary and that more detail be provided in guidance and kept updated?

Yes / No / No View

Please explain why you agree or disagree.

In principle, a minimal approach to regulation should assist with a more localised approach to delivery of the new planning act. It should enable the planning authority to deliver development plans across a range of situations from urban to remote rural to islands. A more flexible approach to guidance should enable adaptations as the new planning process is implemented.

However, some elements that are proposed to be dealt with by guidance would be more appropriately dealt with by regulation in order to ensure the system is more robust and less open to legal challenge. These elements should be contained within the regulations and be prescriptive. This applies in particular to the Evidence Report stage.

In addition, it is unclear what mechanism there would be for consultation on any review of the guidance. There is the potential for changes in the guidance during an LDP process to result in confusion and undermine the process. This may have resource implications.

Question 2

i) Do you have any views on the content of the interim assessments?

Yes / No

Please explain your views

Although the BRIA notes that *“The new processes will have significant impacts on local authority teams involved in the LDP process and how they take this work forward.”* It still refers to the initial assessment of costs undertaken at the Bill stage, which indicate a net saving in preparation of the LDP. Given that there have been further developments in terms of the Act, proposed NPF4 and other regulations it would be useful to update this assessment for a more accurate picture.

The BRIA in terms of impact on communities notes that the extent of impact on communities will be *“dependent on their willingness and need to become involved in these processes”*. This omits a significant point in terms of community capacity to become engaged and raises questions regarding support for capacity building within communities.

Island Communities Impact Assessment – the potential additional timescales for plan preparation and impacts of the logistics of site visits given the small size of island authority planning teams was noted. This impact will apply across the various new responsibilities and needs to be given full recognition at the Evidence Report and Gateway Check stage.

ii) Do you have or can you direct us to any information that would assist in finalising these assessments?

Yes / No

Please provide or direct us to the information

BRIA - It is noted that the Royal Town Planning Institute estimated the changes of the Act would bring additional costs of £12,138,880 to £59,263,685 over a ten year period.

Question 3

i) Do you have any views on the Fairer Scotland Duty and Strategic Environmental Assessment screening documents?

Yes / **No**

Please explain your views

ii) If you consider that full assessments are required, please suggest any information sources that could help inform these assessments.

PART B - The proposed Development Plan Regulations

Question 4

Do you agree with the proposals for regulations relating to the form and content of LDPs?

Yes / No / No View

Please explain why you agree or disagree.

No significant issues.

Question 5

Do you agree with the proposals for regulations relating to the preparation and monitoring of LDPs?

Yes / No / No View

Please explain why you agree or disagree

The changes reflect necessary updates.

Question 6

Do you have views on additional information and considerations to have regard to when preparing and monitoring LDPs?

Yes / No / No View

Please explain your views.

The Evidence Report and associated assessments that support the plan making process are considered to be both sufficient and effective in taking account of the growing issues related to climate change, community planning and health. The shared vision with the Local Outcome Improvement Plan, corporate working, taking account of Local Place Plans and enhanced community engagement should help deliver on shared community planning objectives. Strategic Environmental Assessment is well placed to cover climate change issues. The Fairer Scotland Duty seeks to tackle socio-economic disadvantage and reduce the inequalities that are associated with being disadvantaged, including outcomes of health, housing, education or opportunities to work or train. Additional information should not be a requirement but may be tailored to local circumstances.

Question 7

Do you agree with the proposals for regulations relating to the Evidence Report?

Yes / **No** / No View

Please explain why you agree or disagree

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose.

Question 8

Do you agree with the proposals for regulations relating to the preparation and publication of the LDP?

Yes / No / No View

Please explain why you agree or disagree.

Update and substance of current process retained.

Question 9

Do you agree with the proposals for regulations relating to the examination of the LDP?

Yes / No / No View

Please explain why you agree or disagree.

Update only.

Question 10

Are there matters you wish to highlight relating to amendment of the LDP, which may have bearing on the proposals for regulations being consulted on in this document?

Yes / No / No View

Please explain your view.

It is seen as positive to consult on this issue at a later date when issues relating to the preparation of the LDP are more fully understood and evidenced, including resource and timescale.

Question 11

Do you agree with the proposals for regulations relating to Development Plan Schemes?

Yes / No / No View

Please explain why you agree or disagree.

Appropriate level of regulation proposed.

Question 12

Do you agree with the proposals for regulations relating to Delivery Programmes?

Yes / No / No View

Please explain why you agree or disagree.

Appropriate level of necessary regulation.

Question 13

Do you agree with the proposals for regulations relating to the meaning of ‘key agency’?

Yes / No / No View

Please explain why you agree or disagree.

This is a factual update. It should however be noted that the Crofters Commission was renamed the Crofting Commission and that this should also be updated throughout the regulations and guidance.

Question 14

Do you agree with the proposals for regulations relating to transitional provisions?

Yes / No / No View

Please explain why you agree or disagree.

Brings current guidance into regulation, which is welcomed.

PART C - Draft Guidance on Local Development Planning

Question 15

Do you agree with the general guidance on Local Development Plans?

Yes / No / No View

Please explain why you agree or disagree.

Minor issues:

Paragraph 11 it would be useful to note diagrams as well maps, site briefs and masterplans. This ties in with the regulations and shows the importance of indicative and non-map based information.

Paragraph 22 states “*Where they have been prepared, the community’s proposals are able to be incorporated into the LDP.*” This should read “*be taken into account in the preparation of*” to align with the Act and circular. The use of “incorporated” is misleading as other material considerations may dictate otherwise at the time of LDP preparation or Examination.

Paragraph 27 bullet one put the word “*sustainable*” before “*development*” to clearly indicate that development should consider climate change and support the circular economy.

Paragraph 27 bullet two only refers to site briefs and masterplans which does not take into account the differing situation in the remote rural and on islands. Remote rural areas and islands tend to have a higher reliance on windfall and fewer allocated sites than urban areas. The approach to sparsely populated areas with small settlements may be best depicted through spatial strategies on maps or diagrams. This may help promote a more inclusive approach for these communities.

Paragraph 43 This does not state who can prepare “*local guidance*” but it should be the role of the planning authority to determine what is a material consideration.

Paragraph 53/Annex C Given the significant number of new and enhanced requirements in the LDP preparation process it would be informative if the Scottish Government could indicate a timeframe next to the relevant sections of plan preparation shown in Annex C, as currently indicated in Circular 6/2013. This would be a valuable aid to programme management and assist in the preparation of the Development Plan Scheme.

Paragraph 47 Reference to Crofters Commission should be amended to Crofting Commission.

Question 16

Do you agree with the guidance on Development Plan Schemes?

Yes / No / No View

Please explain why you agree or disagree.

However, it is noted that the preparation of the DPS will be guided by Annex C, which would benefit from additional information. Given the significant number of new and enhanced requirements in the LDP preparation process it would be informative if the Scottish Government could indicate a timeframe next to the relevant sections of plan preparation shown in Annex C, as currently indicated in Circular 6/2013. This would be a valuable aid to programme management and assist in the preparation of the Development Plan Scheme.

Question 17

Do you agree with the guidance on the Delivery Programme?

Yes / No / No View

Please explain why you agree or disagree.

Whilst the guidance supports the process it raises issues in terms of the programme management of the LDP process. There is a significant resource requirement associated with the Delivery Programme that will require a corporate approach and buy in from external partners and stakeholders in order to deliver the LDP.

Preparation of the DP will need to be integrated with the preparation of the LDP and will need to be taken into account in the timetabling of LDP preparation. Should Annex C be amended to contain a timetable the time requirements related to integrating the preparation of the DP need to be considered.

Question 18

Do you agree with the guidance on Local Place Plans?

Yes / No / No View

Please explain why you agree or disagree.

The guidance reflects the legislation, however, there are resource implications and practicalities for remote rural and island communities and local authorities given the scale and nature of the area that are liable to be very different to urban areas.

Emphasis of this in the guidance would be welcomed.

Question 19

Do you agree with the guidance on the Evidence Report?

Yes / No / No View

Please explain why you agree or disagree.

Whilst the guidance itself does not raise any significant issues it is considered that elements of this should be contained within regulation. The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust

as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose.

Question 20

Do you agree with the guidance on the Gate Check?

Yes / **No** / No View

Please explain why you agree or disagree.

Whilst the guidance itself does not raise any significant issues given the importance of this stage an element of regulation is considered necessary to provide a robust process which minimises the potential for legal challenge.

Question 21

Do you agree with the guidance on the Proposed Plan?

Yes / No / No View

Please explain why you agree or disagree.

In general the guidance on the Proposed Plan is welcomed, however there are a number of detailed issues as follows:

Paragraph 140 *“..being able to find what is relevant to a particular place in one area of the plan.”* Whilst thematic policies are dealt with in the NPF this guidance indicates a number of thematic issues that should be indicated in the LDP. In remote rural and island areas with sparse and dispersed populations in many small settlements and with a significant range of environmental designations in these circumstances including all thematic mapping on a single place based map for each settlement may be cartographically challenging. This paragraph should acknowledge it may not be possible to map everything for dispersed rural settlements in one place, in particular thematic information and that indicative diagrams may be appropriate.

Paragraph 144 The requirement to gain approval at full Council matches the current procedures of this authority. However, it should noted that making this a requirement may have implications for LDP programming.

Paragraph 145 The extension to 12 weeks is welcomed. However, there is no cap as in the previous guidance. It may be useful to introduce a reasonable maximum in order to manage expectations at this stage and promote efficient programming and delivery of the process.

Paragraph 147 Guidance on the Modification Report is welcomed.

Question 22

Do you agree with the guidance on Local Development Plan Examinations?

Yes / No / No View

Please explain why you agree or disagree.

This raises no significant issues.

Paragraph 180 Spelling *“issued”* to *“issues”*

Question 23

Do you agree with the guidance on Adoption and Delivery?

Yes / No / No View

Please explain why you agree or disagree.
This guidance raises no significant issues.

Question 24

Do you agree with the proposed guidance on the Evidence Report in relation to the section on Sustainable Places (paragraphs 240 – 247)?

Yes / **No** / No View

Please explain why you agree or disagree.

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose. Figure 6 is noted as an indicative list and yet all the following paragraphs state that the Evidence Report “should” deal with these matters, implying a requirement. The guidance lacks clarity.

Question 25

Do you agree with the proposed guidance on the Evidence Report in relation to the section on Liveable Places (paragraphs 248 – 283)?

Yes / **No** / No View

Please explain why you agree or disagree.

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose. Figure 6 is noted as an indicative list and yet all the following paragraphs state that the Evidence Report “*should*” deal with these matters, implying a requirement. The guidance lacks clarity, in particular in relation to remote rural and island issues.

Paragraph 250 “...*where there are gaps in provision to help identify areas not currently well-served as 20 minute neighbourhoods.*” Does “*areas*” mean settlements. In the remote rural context there will be significant areas that do not have facilities. Although the guidance acknowledges a different approach may be needed in remote rural and island areas it is unclear how the guidance applies and

significant variation in interpretation is possible over what is required. This may lead to more areas of dispute due to the lack of clarity. It is considered there is a lack of rural consideration within this element of guidance.

Paragraph 255 – In terms of private supplied networks it should be noted that there may be limited data, it may be commercially sensitive and there may be no obligation to provide this data.

The range of data that “*should*” be collated and analysed is significant. This needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

Question 26

Do you agree with the proposed guidance on the Evidence Report in relation to the section on Productive Places (paragraphs 284 – 296)?

Yes / No / No View

Please explain why you agree or disagree.

The range of data that “*should*” be collated and analysed is significant. Clarity is needed on whether this is a requirement or subject to local consideration. Regulation is required for minimum evidence requirements rather than leaving this to guidance as this would be more robust and less open to legal challenge. Some of the data may be commercially sensitive e.g. aquaculture or not readily available. This needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

Question 27

Do you agree with the proposed guidance on the Evidence Report in relation to the section on Distinctive Places (paragraphs 297 – 310)?

Yes / No / No View

Please explain why you agree or disagree.

The range of data that “*should*” be collated and analysed is significant. Clarity is needed on whether this is a requirement or subject to local consideration. Regulation is required for minimum evidence requirements rather than leaving this to guidance as this would be more robust and less open to legal challenge. The level of data required needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

Paragraph 303 – This does not provide sufficient guidance on the aims or methodology related to identification of rural areas. The wording does not align with that proposed in NPF4 (see separate response on this issue).

Question 28

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Sustainable Places (paragraphs 317 – 328)?

Yes / No / No View

Please explain why you agree or disagree.

Paragraph 313 Whilst thematic policies are dealt with in the NPF this guidance indicates a number of thematic issues that should be indicated in the LDP. In remote

rural and island areas with sparse and dispersed populations in many small settlements and with a significant range of environmental designations in these circumstances including all thematic mapping on a single place based map for each settlement may be cartographically challenging. This paragraph should acknowledge it may not be possible to map everything for dispersed rural settlements in one place, in particular thematic information and that indicative diagrams may be appropriate.

Paragraph 325 – It is unclear if the reference to “*buffer zones*” excludes consideration of the impact of development on an adjacent environmental resource such as an NSA.

Question 29

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Liveable Places (paragraphs 329 – 400)?

Yes / No / No View

Please explain why you agree or disagree.

Figure 12 Identify section bullet point 2 and Paragraph 332 This needs clarifying for remote rural and island areas. The word “areas” could refer to large tracts of sparsely inhabited countryside where it would generally be inappropriate to identify such facilities.

Paragraph 339 The plan is for a 10 year period. Even with site investigation the full infrastructure requirements may not be known and may emerge during the lifetime of the plan. Given that the Delivery Programme is proposed to be of similar weight to the LDP, with corporate level approval, this may be the more appropriate vehicle for local site infrastructure requirements where a more frequent update and simpler process applies. Strategic level infrastructure requirements, including with multi agency/partnership delivery requirements may be more appropriately identified within the Local Development Plan, keeping the document focussed on the key issues with detail passed to the Delivery Programme. This division could be made clear in the guidance. Paragraph 340 – Some detail may be more appropriately dealt with in the Delivery Programme, enabling the Local Development Plan to be more concise. This should be made clear.

Paragraph 342 The role of windfall is particularly important in remote rural and island areas. This could be noted in this paragraph.

Paragraph 344 This should make clear if this is from the date of adoption.

Paragraph 348 Site Briefs and Masterplans should be shown in the Delivery Programme, where they can be more readily updated, rather than in the Proposed Plan, which is for a 10 year period.

Paragraph 376 This does not fully consider the remote rural and island situation. The current Argyll and Bute LDP allows for low/no car parking in its Main Town centres not all of which are classed as urban.

Question 30

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Productive Places (paragraphs 401 – 424)?

Yes / No / No View

Please explain why you agree or disagree.

In general yes but Figure 13 8th bullet “...and takes into account...” should include “*environmental constraints*” to cover these issues. It is noted that Regional Marine Plans are not yet in place for all areas.

Question 31

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Distinctive Places (paragraphs 425 – 466)?

Yes / No / No View

Please explain why you agree or disagree.

Paragraph 439 Some of this resource falls within the remit of HES who would update as and when required. The LDP will be in place for 10 years. It is not considered necessarily to map all listed buildings and Scheduled Monuments in the Development Plan when these are readily available in an up to date format at source. Moving forward in the digital age this information can be made available in an up to date format in an integrated manner, potentially through use of storymap etc.. Displaying out of date information that is potentially cartographically challenging for areas such as Argyll and Bute (significant land area and historic environment resource) is not considered to be useful to users of the plan.

Paragraph 464 It is requested that *The Right Tree in the Right Place* be updated to reflect the latest planning guidance and Scottish Forestry Strategy.

Question 32

Do you agree with the proposed thematic guidance on the Delivery Programme (paragraphs 467 – 482)?

Yes / No / No View

Please explain why you agree or disagree.

Some guidance that relates to the Proposed Plan may be better dealt with in this section. See comments above.

Appendix 2 Background papers

- 1 [Local Development Planning Regulations & Guidance Consultation: Part A Introduction](#)
- 2 [Local Development Planning Regulations & Guidance Consultation: Part B Proposals for Development Planning Regulations](#)
- 3 [Local Development Planning Regulations & Guidance Consultation: Part C Draft Guidance on Local Development Planning](#)
- 4 [Local Development Planning Regulations & Guidance Consultation: Part D Interim Impact Assessments](#)

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ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES
AND LICENSING

DEVELOPMENT AND ECONOMIC GROWTH

23rd MARCH 2022

**SCOTTISH GOVERNMENT CONSULTATION: OPEN SPACE STRATEGIES AND
PLAY SUFFICIENCY ASSESSMENTS REGULATIONS**

1.0 EXECUTIVE SUMMARY

- 1.1 The aim of this report is to advise the PPSL of the Scottish Government [Consultation on Open Space Strategies and Play Sufficiency Assessments Regulations \(www.gov.scot\)](http://www.gov.scot) and seek approval for the proposed response to this consultation (See **Appendix 1**). The response is due by 31st March 2022.
- 1.2 The regulations being consulted on are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019.
- 1.3 There is now a statutory duty for the planning authority to prepare and publish an Open Space Strategy, and to assess the sufficiency of play opportunities in their area for children through a Play Sufficiency Assessment and the proposed regulations relate to a range of detailed aspects regarding these. Both the Open Space Strategy and Play Sufficiency Assessment will form part of the evidence base for the preparation of the next Local Development Plan.
- 1.4 The proposed regulations raise issues relating to resources required to carry out the requirements, their applicability to remote rural and island locations, the need for proportionality and flexibility within the regulations, the need for the Council to adopt a corporate approach, potential time impact on preparation of the next Local Development Plan and other issues detailed in the report.

RECOMMENDATIONS

It is recommended that the PPSL:

- i) note this report and the implications of the proposed regulations, including financial for the planning service and wider council.

ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES
AND LICENSING

DEVELOPMENT AND ECONOMIC GROWTH

23rd MARCH 2022

**SCOTTISH GOVERNMENT CONSULTATION: OPEN SPACE STRATEGIES AND
PLAY SUFFICIENCY ASSESSMENTS REGULATIONS**

2.0 INTRODUCTION

2.1 The Scottish Government is consulting on [Open Space Strategies and Play Sufficiency Assessments Regulations](#). The proposed regulations are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019. The proposed response to this consultation is set out in **Appendix 1**. The response should be submitted by the 31st March 2022.

2.2 There is now a statutory duty for the planning authority to prepare and publish an Open Space Strategy, and to assess the sufficiency of play opportunities in their area for children through a Play Sufficiency Assessment and the proposed regulations relate to a range of detailed aspects regarding these. Both the Open Space Strategy and Play Sufficiency Assessment will form part of the evidence base for the preparation of the next Local Development Plan.

3.0 RECOMMENDATIONS

3.1 It is recommended that the PPSL:

- i) note this report and the implications of the proposed regulations, including financial for the planning service and wider council.
- ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

4.0 DETAIL

4.1 The consultation is split into 2 sections; Open Space Strategies and Play Sufficiency Assessments. The Scottish Government consultation paper acknowledges that these are two distinct duties but recognises that there is

crossover which has provided basis for a joint approach in the preparation of the regulations and for them to seek, where possible, an alignment of requirements.

4.2 The consultation paper sets out that the estimated average cost per planning authority of preparing an Open Space Strategy and Play Sufficiency Assessment is estimated to be £28,125. Given the remote rural and island make up of Argyll and Bute the cost will likely be higher than this with the potential for it to be significantly higher. Concerns regarding resource implications are set out in the draft Council response at **Appendix 1** and are summarised within this report.

4.3 Other key elements from the proposed consultation response to the Open Space Strategies and Play Sufficiency Assessment regulations are set out below.

OPEN SPACE STRATEGIES

4.4 The regulations provide definitions of certain terminology. There are concerns regarding the definition of “open space” and “green space” (see responses to question 1 at **Appendix 1**).

4.5 The regulations require the undertaking of an open space audit and the preparation of an Open Space Strategy and they embed an outcomes based approach to these.

4.6 The regulations require that the open space audit provides a statement regarding the accessibility, quality and quantity for the totality of the open spaces for the Council area and each of its localities. Locality level consideration is also required within the assessment of current and future provision.

4.7 The definition of localities is set out to mean that contained within Community Empowerment legislation which, in summary, would be either electoral wards or areas defined by the Community Planning Partnership containing no more than 30,000 people. There are concerns regarding the effectiveness of this approach and resources that would be required given the geographic scale of localities within in Argyll and Bute. Flexibility within the regulations is suggested to allow local authorities to define which areas should be covered by locality statements (see responses to questions 5a, 5b, and 7a at **Appendix 1**).

4.8 The regulations at several points require consideration or identification of green infrastructure and green networks. There are concerns regarding the inclusion of such requirements as the open space audit is only required to assess the defined open spaces and not wider green infrastructure and green networks. To do so would require additional resource (see responses to question 5a, 7a, 8b and 8c at **Appendix 1**).

4.9 The regulations set out a requirement for two successive weeks of newspaper advertisements for consultation on the published Open Space Strategy. This is considered to be excessive given the potential costs of placing advertisements in the five newspapers covering Argyll and Bute and by comparison that the requirement for the Proposed Local Development Plan is only one week (see response to question 9 at **Appendix 1**).

- 4.10 Information from the open space audit and Open Space Strategy will form part of the Evidence Report for the next Local Development Plan. The resource implications for the Council, of carrying out an audit and producing a strategy in sufficient detail that forms a credible evidence base for the next Local Development Plan is potentially significant, especially given the remote rural and island location of many communities.
- 4.11 The undertaking of an open space audit and production of the related Open Space Strategy along with the required consultation and engagement will require close working across Council departments and will also likely involve coordination with Loch Lomond and the Trossachs National Park Authority. This will have resource implications for the Council.

PLAY SUFFICIENCY ASSESSMENT

- 4.12 The Play Sufficiency Assessment regulations provide definitions of certain terminology. There is a minor suggested amendment to the “Open Space” definition and also concerns regarding the definition of “locality” for largely the same reasons as set out in paragraph 4.7 above (see response to question 12 at **Appendix 1**).
- 4.13 The regulations set out that planning authorities should map the locations of two categories of play space; those specifically for play and those within areas of open space and not specifically for play. Whilst there are no objections in principle, guidance will be of importance to help define the identification of spaces not specifically for play in order that there is consistency within and across planning authorities and resources are managed appropriately. Planning authorities and national park authorities will need to work in partnership given that the national park authority will need to carry out its own Play Sufficiency Assessment but likely require information contained in the open space audit which will be carried out by the council and therefore this might present resource implications (see response to question 13 at **Appendix 1**).
- 4.14 The regulations set out that the Play Sufficiency Assessment must include statements regarding the quality, quantity and accessibility of play opportunities for each locality and for the planning authority area. Whilst there are no objections to the principal of these three criteria there are potentially significant resource implications given the number of play spaces in remote rural and island locations and given the depth of analysis that might be suggested through further guidance and the level of expertise that might be required. It will be important for any guidance to reflect the need for a proportionate assessment. For largely the same reasons as set out in paragraph 4.7 above there are concerns regarding the production of these statements at locality level (see response to questions 15a and 15b at **Appendix 1**).
- 4.15 The Play Sufficiency Assessment will form part of the Evidence Report for the next Local Development Plan. Whilst the regulations are not significantly detailed or prescriptive in relation to the actual content of the assessment, a range of accompanying guidance has also been suggested within the consultation paper.

From the commentary contained in the consultation paper, this guidance has the potential to contain significant levels of detail that the Play Sufficiency Assessment could undertake. Like the Open Space Strategy there are potentially significant resource implications for the Council, for producing a Play Sufficiency Assessment that forms a credible evidence base for the next Local Development Plan, especially given the remote rural and island location of many communities. This has been noted within the consultation response with particular reference to the proportionally greater resource implications given the remote rural and island situation.

- 4.16 Like the Open Space Strategy the Play Sufficiency Assessment will likely require cross departmental working within the Council and potentially with wider partners such as Registered Social Landlords (where they maintain play space) in order to draw on expertise and experience particularly relating to assessing the formal play areas and equipment within them, this again will have potential resource implications.

5.0 CONCLUSION

- 5.1 The requirement to produce an Open Space Strategy and Play Sufficiency Assessment have already been set out through The Planning (Scotland) Act 2019 and the proposed regulations provide detail as to how these should be carried out. Both will support the future Local Development Plan process by contributing towards the Evidence Report. The consultation response raises a number of concerns with the regulations, seeks greater flexibility and sets out potential resource issues.
- 5.2 The production of an Open Space Strategy and Play Sufficiency Assessment that help provide a credible evidence base for the next Local Development Plan will potentially pose resource issues for the Council, given the nature of what will be required by the regulations and might be suggested through additional guidance. There will be a need for a corporate approach for the production of both the Open Space Strategy and Play Sufficiency Assessment.

6.0 IMPLICATIONS

6.1 Policy

This is a consultation. Once in place, these regulations will provide detail as to how the Open Space Strategy and Play Sufficiency Assessment are produced. Both the Open Space Strategy and Play Sufficiency Assessment will influence future Local Development Plan policy.

6.2 Financial

There is a resource implication to carrying out both the Open Space Strategy and Play Sufficiency Assessment especially in light of the level of detail potentially required in order to provide a credible evidence base for the next Local Development Plan.

6.3 Legal

There is a statutory duty to prepare and publish an Open Space Strategy and Play Sufficiency Assessment. These will need to be in accordance with the regulations once finalised.

6.4 HR

None as a result of this consultation

6.5 Fairer Scotland Duty:

6.5.1 Equalities - protected characteristics

6.5.2 Socio-economic Duty

6.5.3 Islands

The Scottish Government has carried out a range of impact assessments for the regulations including the Fairer Scotland Duty and Island Communities Impact Assessment the conclusions of which can be found in [Impact Assessment](#) report. Concerns remain regarding the impact for islands and remote rural locations and these are set out in the Councils response (**Appendix 1**).

6.6 Climate Change

None as a result of this consultation. The Strategic Environmental Assessment screening document produced by the Scottish Government as part of the [Impact Assessment](#) report concluded that the legislation would have no or minimal environmental effects once implemented.

6.7 Risk

There is a risk that without sufficient resource to carry out the requirements, the Open Space Strategy and Play Sufficiency Assessment will not provide the evidence required for the production of the next Local Development Plan.

6.8 Customer Service

None as a result of this consultation.

Kirsty Flanagan, Executive Director with responsibility for Development and Economic Growth

Councillor David Kinniburgh Policy Lead for PPSL

1st March 2022

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APPENDICES

Appendix 1 Proposed Response

Appendix 1 Proposed Response

Consultation Question 1

a) Do you agree with the idea of promoting an outcomes-based approach through the OSS Regulations? Yes/No/No View Any Comments

Yes – promoting an outcomes based approach will help align the strategy outcomes with place making outcomes. There are some concerns however which have been set out through responses to the relevant questions.

b) Do you agree with the suggested outcomes? Yes/No/No View Any Comments

Yes

Consultation Question 2 Do you agree with the proposed definition of

a) 'open space' Yes/No/No View Any Comments

No – The term “civic areas” should be defined separately rather than within the paragraph. This would align it with term “green space” which is also mentioned in the paragraph but has its own separate definition.

b) 'green space' Yes/No/No View Any Comments

No – Excluding agricultural and horticultural land from the definition potentially limits the scope of the open space audit as it would exclude areas that provide important aesthetic value such as preserving the character and setting of settlements and their immediate surroundings where that land also happens to be agricultural or horticultural by definition. There are examples in Argyll and Bute where Local Development Plan identified Open Space Protection Areas fulfil this function but are agricultural land. This land may not necessarily be protected from development by other development plan policies, especially where it is poorer quality agricultural land, and as such the identification as Open Space Protection Areas can be an important tool in protecting these areas from potentially damaging development. If the regulations exclude these areas from the scope of the audit then it may prove difficult to sustain their inclusion within the development plan. Therefore the regulations should allow for flexibility to include agricultural or horticultural land within the scope of the audit and strategy.

It would be helpful for the definition to include allotments and community food growing land to provide clarity that these areas fall within the functions of green space.

It would be helpful for the definition to include beaches which can provide important green space functions in terms of recreation, amenity or aesthetics.

c) 'green infrastructure' Yes/No/No View Any Comments

Yes

d) 'green networks' Yes/No/No View Any Comments

Yes

e) 'ecosystem services' Yes/No/No View Any Comments

Yes

Consultation Question 3 Do you agree with proposed thresholds for open space audits in Draft Regulation 4(2)? Yes/No/No View Any Comments

Yes – 0.2ha represents a proportionate size and the express allowance of smaller areas is helpful in order to provide flexibility within the audit.

Consultation Question 4 a) Do you agree with suggested information to include about each open space (location, size and type)? Yes/No/No View Any Comments

Yes

b) Do you agree with Regulation 4(5) on the other information planning authorities may include in the audit? Yes/No/No View Any Comments

Yes – the other aspects are reasonable, however from the Island Communities Impact Assessment it appears that the regulations setting these aspects out as a ‘may’ is in relation to providing flexibility for island authorities in how they carry out the audit. However, whilst flexibility is welcomed for island and remote rural situations the regulation setting out that these matters ‘may’ be included does not fully accord with the later regulations that require locality based statements relating to quality and accessibility which would need the assessment of some of these ‘may’ matters e.g. accessibility. Given that some of these matters would therefore appear to be de facto required to fulfil the overall regulations this negatively impacts on the flexibility for island and remote rural situations.

The intention to provide guidance is welcomed but it should be noted that the depth of information that could be included within any assessment of each matter will be affected by the number of open spaces identified within the audit, their location and the available resource and it would be helpful for any guidance to reflect this. This would especially be the case for remote rural and island locations where the time and cost resource of accessing all identified opens spaces would be proportionately greater than more urban situations.

Consultation Question 5

a) Do you agree with suggested approach to require locality level place based information? Yes/No/No View Any Comments

No – The “The Community Planning (Locality Planning) (Scotland) Regulations 2016” set out that:

For the purposes of section 9(2) of the Community Empowerment (Scotland) Act 2015 a locality must be—

(a) an electoral ward within the meaning given by section 1 of the Local Governance (Scotland) Act 2004(1); or

(b) an area within the area of the local authority with a population which does not exceed 30,000.

For predominantly remote rural and island authorities the production of statements at either of these locality levels, whilst possible, would have limited value as localities in many cases would cover larger rural areas where there is not a single neighbourhood but instead a number of smaller separate settlements.

In Argyll and Bute there are four localities identified in relation to Local Outcome Improvement Plans and these cover significant geographical areas that, in 3 of the cases, cover both islands and mainland areas and all contain many settlements.

Argyll and Bute is covered by 11 electoral wards, the majority of which cover significant rural areas with some covering both island and mainland locations. For example, the electoral ward of Oban South and the Isles covers part (but not all) of the town of Oban as well as islands including Mull, Coll and Tiree.

Almost 25% of the population of Argyll and Bute live in settlements of less than 1000 people or outwith a settlement entirely. In many smaller rural settlements there may not be readily identifiable open space sites but rather, access to the wider countryside, forestry land or shore side locations.

Paragraph 45 of the consultation paper sets out that the basis for including a statement regarding quality, quantity and accessibility on a locality basis is to help ensure local authorities have information on the amount and quality of open space within local neighbourhoods and Paragraph 43 sets out that the localised approach will help support 20 minute neighbourhoods. However for Argyll and Bute the identified locality (be it the four Local Outcome Improvement Plan Areas or the 11 electoral wards) would include a potentially significant number of separate neighbourhoods of varying scale and nature.

A statement aggregated to a locality level for significant parts of Argyll and Bute would not likely provide a meaningful insight at a 'neighbourhood' scale. Taking the above Oban South and the Isles electoral ward as an example, statistical information such as accessibility would be skewed by the significant difference between settlements such as Oban and the smaller ones found across the islands. In addition, in terms of providing meaningful analysis for the whole of Oban it would be limited by the town, which carries a strong identity, being split across two electoral wards and therefore potentially two locality statements.

It would appear that the 'locality' approach would more suit the more urban areas where localities maybe smaller geographically and more densely populated and where the links to 20 minute neighbourhoods can be more readily made.

The adopted Argyll and Bute Local Development Plan identifies 272 Open Space Protection Areas of which 99 are related to "Villages and Minor Settlements". Given the stated concerns regarding the value of statements at locality level there are related concerns regarding the depth of information required for them and significant time and cost resources of physically assessing of all the open spaces which will be spread across the rural areas of both the mainland and the islands. This relates back to the assertion that many smaller rural settlements will have access to the surrounding countryside/forests/shore sides.

The concept of reporting at a neighbourhood level is supported however for remote rural and island authorities this needs to be more flexible and proportionate than the proposed regulations. If locality statements are to be required then local authorities need to be able to define the localities for the purpose of the audit and these should not necessarily be required to cover their entire geographic area. Allowing local authorities the flexibility to determine where it is appropriate to provide such statements will potentially provide a more meaningful insight into provision at a local level. This would allow local authorities to target such statements to areas where the most meaningful information could be ascertained. A more locally appropriate and proportionate

response to reporting on the areas containing more dispersed and smaller settlements could be adopted where considered appropriate by the local authority.

It is important that the audit and related strategy produce meaningful analysis and be able to positively impact on identified outcomes. To this end greater flexibility in the regulations is of significant importance.

Local authorities are well placed to understand their individual situations and be able to put in place an auditing and reporting process that targets valuable resources appropriately to producing the information in a proportionate yet equitable way for their residents. A too rigid requirement of tightly defined localities risks spending valuable resources producing information and statements that will result in less meaningful outcomes.

The consultation paper sets out the estimated average cost per planning authority of preparing an Open Space Strategy and Play Sufficiency Assessment is estimated to be £28,125. Given the remote rural and island make up of Argyll and Bute the cost will likely be higher than this with the potential for it to be significantly higher. This reiterates the need for a flexible and proportionate response for predominantly rural and island based authorities so that available budget can be most effectively utilised.

The consultation paper states “Draft Regulation 4(6) requires that audits include statements covering the accessibility, quality and quantity for the totality of open spaces **and green networks** in their area.” The actual proposed regulations at 4(6) and 4(7) do not mention green networks for either the local authority area or localities which is at odds with the consultation paper.

If it is the intention for regulations 4(6) and/or 4(7) to require the statements to include green networks (and associated green infrastructure) then this is not considered practicable. In the draft regulations the definition of green networks is “connected areas of green infrastructure and open space, that together form an integrated and multi-functional network.” The definition of green infrastructure is “features or spaces within the natural and built environments that provide a range of ecosystem services.” By these definitions green infrastructure and green networks include not only open spaces as defined by the regulations but other features and spaces that will not form part of the open space audit. It is therefore difficult for any such statement to appraise green networks (and associated green infrastructure) when the Open Space Audit will not include all of the information that would be needed. It would be beyond the scope of and not practicable for an Open Space Audit to record and assess all such green infrastructure needed to then assess all green networks. This would especially be the case in remote rural and island situations where the time and cost resource implications would be disproportionately high.

b) Do you agree with the three high level aspects that should be covered in these statements ‘accessibility’, ‘quantity’ and ‘quality’? Yes/No/No View Any Comments

Yes – Notwithstanding the concerns set out in the response to question 5a, the stated high level aspects raise no significant concerns. However, without the ability to define localities and the extents they cover for the purposes of the audit the ability to make meaningful statements regarding these aspects would be reduced. For example, with regards to accessibility the suggested approach of measuring access to identified open space within a 5 minute walk will potentially be less meaningful to dispersed rural communities especially those where people would maybe not expect to have such access to a formal space. These communities may have wider countryside access rather than formal, identifiable open space but this might not necessarily be reflected in a locality statement that aggregates to a wide geographic area.

The potential to provide guidance is welcomed but it should be noted that without the aforementioned ability to set localities the depth of analysis that could be undertaken for each aspect would be affected by the number of open spaces identified, their location and the available resource to assess them and any guidance should reflect this. This would especially be the case for remote rural and island locations where the time and cost resource of accessing all identified open spaces would be proportionately greater than more urban situations.

Any guidance should be realistic and proportionate as to potential methods of assessing and reporting 'accessibility', 'quantity' and 'quality'.

Consultation Question 6

Do you agree with the list of consultees for the open space audit? Yes/No/No View Any Comments

Yes - The regulations not specifying the actual consultation methods is welcomed as it provides the flexibility to determine them at local level.

Consultation Question 7

Do you agree with the Assessment of Current and Future Requirements should,

a) have regard to how open spaces and green networks in their area are contributing to the outcomes? Yes/No/No View Any Comments

No – The regulations set out “In assessing current and future requirements, the planning authority is to have regard to how green infrastructure, open space and green networks are contributing to the outcomes listed in regulation 3(2)...”

In the draft regulations the definition of green networks is “connected areas of green infrastructure and open space, that together form an integrated and multi-functional network.” The definition of green infrastructure is “features or spaces within the natural and built environments that provide a range of ecosystem services.” By these definitions green infrastructure and green networks include not only open spaces as defined by the regulations but other features and spaces that will not form part of the open space audit. It is therefore difficult for any such assessments to have regard to green infrastructure and green networks and their contribution to outcomes when the Open Space Audit will not include all of the information that would be needed. It would be beyond the scope of and not practicable for an Open Space Audit to record and assess all such green infrastructure needed to then assess all green networks. This would especially be the case in remote rural and island situations where the time and cost resource implications would be disproportionately high.

Whilst it is recognised that the 2019 Act includes the requirement that open space strategies “set out a strategic framework of the planning authority's policies and proposals as to the development, maintenance and use of green infrastructure in their district, including open spaces and green networks.” there are significant resource concerns to specifically requiring consideration the contribution of green infrastructure and green networks in relation to current and future requirements given the additional resource implications in potentially making a meaningful identification and assessment of these.

In addition to these concerns, the regulations also seek that that this regard is taken at a locality level.

The “The Community Planning (Locality Planning) (Scotland) Regulations 2016” set out that:

For the purposes of section 9(2) of the Community Empowerment (Scotland) Act 2015 a locality must be –

(a) an electoral ward within the meaning given by section 1 of the Local Governance (Scotland) Act 2004(1); or

(b) an area within the area of the local authority with a population which does not exceed 30,000.

For predominantly remote rural and Island authorities the assessment of contributions to outcomes at either of these locality levels, whilst possible, would have limited value as localities in many cases would cover larger rural areas where there is not a single neighbourhood but instead a number of smaller separate settlements.

In Argyll and Bute there are four localities identified in relation to Local Outcome Improvement Plans and these cover significant geographical areas that in 3 of the cases cover both islands and mainland areas and all contain many settlements.

Argyll and Bute is covered by 11 electoral wards, the majority of which cover significant rural areas with some covering both island and mainland locations. For example, the electoral ward of Oban South and the Isles covers part (but not all) of the town of Oban as well as islands including Mull, Coll and Tiree.

Almost 25% of the population of Argyll and Bute live in settlements of less than 1000 people or outwith a settlement entirely. In many smaller rural settlements there may not be readily identifiable open space sites but rather, access to the wider countryside, forestry land or shore side locations.

Assessing contributions to outcomes aggregated to a locality level for significant parts of Argyll and Bute would not likely provide a meaningful insight at a 'neighbourhood' scale. Taking the above Oban South and the Isles electoral ward as an example, the significant difference between settlements such as Oban and the smaller ones found across the islands would potentially make such considerations harder to make. In addition, in terms of providing meaningful analysis for the whole of Oban it would be limited by the town, which carries a strong identity, being split across two electoral wards and therefore two localities.

It would appear that the 'locality' approach would more suit the more urban areas where localities may be smaller geographically and more densely populated and where the links to 20 minute neighbourhoods would be more relevant.

If regard is to be required at locality level then local authorities need to be able to define the localities for the purpose of the audit and strategy and these should not necessarily have to cover their entire geographic area. Allowing local authorities the flexibility to determine this will potentially provide a more meaningful insight into provision at a local level. This would allow local authorities to target the analysis to areas where the most meaningful information could be ascertained. A more locally appropriate and proportionate response to reporting on the areas containing more dispersed and smaller settlements could be adopted where considered appropriate by the local authority.

b) be informed by engagement with the groups set out? Yes/No/No View Any Comments

Yes – Notwithstanding the concerns set out in the answer to question 7a any assessment should be informed by engagement. The regulations not specifying the actual consultation methods is welcomed as it provides the flexibility to determine them at local level.

Consultation Question 8

Do you agree Open Space Strategies should

a) include a statement setting out how they contribute to the outcomes? Yes/No/No View Any Comments

Yes

b) identify strategic green networks? Yes/No/No View

No – In the draft regulations the definition of green networks is “connected areas of green infrastructure and open space, that together form an integrated and multi-functional network.” The definition of green infrastructure is “features or spaces within the natural and built environments that provide a range of ecosystem services.” By these definitions green infrastructure and green networks include not only open spaces as defined by the regulations but other features and spaces that will not form part of the open space audit. It is therefore not practicable for an Open Space Strategy to identify strategic green networks when the Open Space Audit will not include all of the information that would be needed. It would be beyond the scope of and not practicable for an Open Space Audit to record and assess all such green infrastructure needed to then identify strategic green networks. This would especially be the case in remote rural and island situations where the time and cost resource implications would be disproportionately high.

Whilst it is recognised that the 2019 Act includes the requirement that open space strategies “set out a strategic framework of the planning authority's policies and proposals as to the development, maintenance and use of green infrastructure in their district, including open spaces and green networks.” there are significant resource concerns regarding an actual requirement in the regulations to specifically identify strategic green networks.

c) identify how green networks may be enhanced? Yes/No/No View

No – for the reasons set out in answer 8b, 7a and 5a the Open Space Audit and Open Space Strategy should not be required to identify Green Networks and then subsequently identify how they can be enhanced.

Consultation Question 9 Do you agree with the proposed consultation requirements on draft Open Space Strategies? Yes/No/No View Any Comments

No - The requirement for press advertisements for two consecutive weeks is considered to be excessive. Argyll and Bute being a geographically large rural authority is covered by 5 local newspapers. Given that the Open Space Strategy would cover the whole of the Council area advertisements would likely need to be placed in a range of newspapers across the area. This could potentially represent a significant proportion of the estimated cost to carry out the audit and strategy.

As stated within the consultation paper, planning authorities can use a range of innovative techniques, tailored to local circumstances, to engage with people from an early stage. As such the requirement for two successive weeks of advertisements are not considered necessary.

It is also noted that the current and proposed Local Development Plan Regulations, do not require two successive weeks of newspaper advertisements for the consultation on the Proposed Plan. The requirement for two successive weeks is therefore disproportionate and inconsistent in comparison to what is being proposed for Local Development Plans.

Whilst there is no objection to requirement for advertisement in one or more newspapers, the regulations should be amended to remove the requirement for this to be for two successive weeks.

Consultation Question 10 Do you agree with the proposed publication requirements for the OSS? Yes/No/No View Any Comments

Yes

Consultation Question 11 Do you agree the Regulations should set a 10 year minimum review period for updating open space audits and strategies? Yes/No/No View Any Comments

Yes

Play space

Consultation Question 12 Do you agree with the proposed definitions?

Children

Yes

Localities

No – The “The Community Planning (Locality Planning) (Scotland) Regulations 2016” set out that:

For the purposes of section 9(2) of the Community Empowerment (Scotland) Act 2015 a locality must be—

(a) an electoral ward within the meaning given by section 1 of the Local Governance (Scotland) Act 2004(1); or

(b) an area within the area of the local authority with a population which does not exceed 30,000.

For predominantly remote rural and Island authorities the use of either of these locality levels, whilst possible, would have limited value as localities in many cases would cover larger rural areas where there is not a single neighbourhood but instead a number of smaller separate settlements.

In Argyll and Bute there are four localities identified in relation to Local Outcome Improvement Plans and these cover significant geographical areas that in 3 of the cases cover both islands and mainland areas and all contain many settlements.

Argyll and Bute is covered by 11 electoral wards, the majority of which cover significant rural areas with some covering both island and mainland locations. For example, the electoral ward of Oban South and the Isles covers part (but not all) of the town of Oban as well as islands including Mull, Coll and Tiree.

The regulations should provide flexibility for the Planning Authority to determine the definition of locality for the purposes of the Play Sufficiency Assessment.

Providing flexibility within the regulations to allow the Council to define the localities for the purpose of the Play Sufficiency Assessment will potentially provide a more meaningful insight into provision at a local level. This could allow local authorities to target reporting to areas where the most meaningful information could be ascertained whilst a more locally appropriate and proportionate response to reporting on the areas containing more dispersed and smaller settlements could be adopted where considered appropriate by the local authority.

Open Space –

No – The term “civic areas” should be defined separately rather than within the paragraph. This would align it with term “green space” which is also mentioned in the paragraph but has its own separate definition.

Play spaces

Yes

**Consultation Question 13 Do you agree planning authorities should map the locations of the two categories of play spaces, and how they are described in draft Regulations 3(2)(a) and (b)?
Yes/No/No View**

Yes – The identification of areas of open space not specifically for play will be particularly subjective as it would potentially be wide ranging in its meaning. Given the broad definition of play spread across the age groups (as set out in the consultation paper), many areas could be identified as having opportunity for play even where there is any lack evidence of play occurring at the point of assessment. There is the potential for the value of the Play Sufficiency Assessment to become distorted by over or under reporting of the spaces not specifically for play. Guidance surrounding this would be particularly important to help provide consistency within the assessments within and also across the local planning authorities and ensure that resources can be managed in a proportionate way.

It should be noted that partnership working will be required between National Park Planning Authorities and Council Planning Authorities as the Councils will likely carry out the Open Space Audit and Strategy within National Park Areas but the National Park authorities will still be responsible for their own Play Sufficiency Assessment. There may be greater resource implications for these planning authorities relating to establishing and implementing partnership working and there may also be implications regarding timing where it may prove difficult for National Park Authority to carry out its Play Sufficiency Assessment where it is waiting on information from a particular Council’s Open Space Audit. This issue will be amplified where there are significant differences in plan preparation timetables.

Consultation Question 14 Do you agree with the proposed requirement to assess play opportunities in respect of their suitability by age groups? Yes/No/No View Any Comments

Yes – With regards to the production of guidance, consideration could be given if there is an actual need for separate categories for 12-15 and 16-17 as in the “Types of Play by Age Groups – indicative tool” included in the consultation paper there appear to be no differences between these groups. Whilst it is acknowledged that this is an early stage tool it suggests that there is scope for the groups to be merged.

Whilst the age group assessment is a likely to provide valuable data it does present an additional resource implication in terms of site assessments as this will take more time to assess properly. Assessors may not have prior knowledge or experience to identify which formal play equipment is more suited to the different age groups, therefore guidance relating to the suitability of different formal play equipment for the different age groups will be of importance to help with the efficiency and accuracy of the assessment.

Consultation Question 15

a) Do you agree with the proposed three aspects of assessment – ‘accessibility’, ‘quantity’ and ‘quality’? Yes/No/No View Any Comments and;

Yes – Whilst the three assessment criteria will likely add value to the in assessment of provision, the resource implications of carrying out such detailed assessments alongside the Open Space Audit assessments are potentially significant. Given the geographic spread of Argyll and Bute, there will be many play spaces on island locations and within remote rural locations. This combined with the depth of analysis that will be potentially be suggested through guidance would potentially have disproportionate impact on the cost and time resources required and the ability to produce the Play Space Sufficiency assessment within a realistic timeframe.

It will be important for any guidance to reflect the need for a proportionate assessment.

Aspects that might impact on resources include;

Quality - Assessing quality may well require a level of expertise in terms of demonstrating fitness for purpose, or assessing the quality or play values or the standard of maintenance. There may not be sufficient resource to carry out feedback surveys or usage monitoring for all identified play spaces. As such there are resource concerns regarding the ability to make an equitable and comprehensive assessment of all play spaces within the area.

Quantity - Quantitative assessments may help provide useful statistical data and raises less resource concerns. However the potential desire for the collection of survey data regarding frequency of usage does raise such concerns.

Accessibility – the range of potential assessment criteria raises resource concerns surrounding the ability to make a comprehensive assessment of each space, especially in remote rural and island situations. Whilst some assessment could be carried by desk based GIS means this still carries a potential resource implication.

The three assessment criteria are potentially harder to apply to areas where the primary function is not for play as, by their nature, the play opportunities will be more opportunistic and ad hoc and as such assessments such as fitness for purpose might be less meaningful. The reflection of this within guidance will be important.

b) to provide them in written statements in respect of the totality of the local authority area and at each locality level? Yes/No/No View Any Comments

No – The “The Community Planning (Locality Planning) (Scotland) Regulations 2016” set out that:

For the purposes of section 9(2) of the Community Empowerment (Scotland) Act 2015 a locality must be—

(a) an electoral ward within the meaning given by section 1 of the Local Governance (Scotland) Act 2004(1); or

(b) an area within the area of the local authority with a population which does not exceed 30,000.

For predominantly remote rural and Island authorities the production of statements at either of these locality levels, whilst feasible, would have limited value as localities in many cases would cover larger rural areas where there is not a single neighbourhood but instead a number of smaller separate settlements.

In Argyll and Bute there are four localities identified in relation to Local Outcome Improvement Plans and these cover significant geographical areas that in 3 of the cases cover both islands and mainland areas and all contain many settlements.

Argyll and Bute is covered by 11 electoral wards, the majority of which cover significant rural areas with some covering both island and mainland locations. For example, the electoral ward of Oban South and the Isles covers part (but not all) of the town of Oban as well as islands including Mull, Coll and Tiree.

Paragraph 91 of the consultation paper sets out that the basis for including a statement regarding quality, quantity and accessibility on a locality basis is to help ensure local authorities have a picture of the sufficiency at neighbourhood scale and that the localised approach will help support 20 minute neighbourhoods. However for Argyll and Bute the identified locality (be it the four Local Outcome Improvement Plan Areas or the 11 electoral wards) would include a potentially significant number of separate neighbourhoods of varying scale and nature.

A statement aggregated to a locality level for significant parts of Argyll and Bute would not likely provide a meaningful insight at a 'neighbourhood' scale. Taking the above Oban South and the Isles electoral ward as an example, statistical information such as accessibility would be skewed by the significant difference between settlements such as Oban and the smaller ones found across the islands. In addition, in terms of providing meaningful analysis for the whole of Oban it would be limited by the town, which carries a strong identity, being split across two electoral wards and therefore potentially two locality statements.

It would appear that the 'locality' approach would more suit the more urban areas where localities maybe smaller geographically and more densely populated and where the links to 20 minute neighbourhoods would be more relevant.

The concept of reporting at a neighbourhood level is supported however for remote rural and island authorities this needs to be more flexible and proportionate than the proposed regulations. If locality statements are to be required then local authorities need to be able to define the localities for the purpose of the Play Sufficiency Assessment and these should not necessarily have to cover their entire geographic area. Allowing local authorities the flexibility to determine where it is appropriate to provide such statements will potentially provide a more meaningful insight into provision at a local level. This would allow local authorities to target such statements to areas where the most meaningful information could be ascertained. A more locally appropriate and proportionate response to reporting on the areas containing more dispersed and smaller settlements could be adopted where considered appropriate by the local authority.

Local authorities are well placed to understand their individual situations and be able to put in place a reporting process that targets valuable resources appropriately to producing the information in a proportionate yet equitable way for their residents. A too rigid requirement of tightly defined localities risks spending valuable resources producing information and statements that will result in less meaningful outcomes.

In order to provide statements at locality level the regulations should provide flexibility to allow the local authority to define the localities for the purpose of the Play Sufficiency Assessment.

The consultation paper sets out the estimated average cost per planning authority of preparing an Open Space Strategy and Play Sufficiency Assessment is estimated to be £28,125. Given the remote rural and island make up of Argyll and Bute the cost will likely be higher than this with the potential

for it to be significantly higher. This reiterates the need for a flexible and proportionate response for predominantly rural and island based authorities so that available budget can be most effectively utilised.

Consultation Question 16

a) Do you agree to the requirement to consult as part of the process of carrying out the play sufficiency assessment? Yes/No/No View Any Comments

Yes

b) Do you agree with the proposed list of consultees on play sufficiency assessments? Yes/No/No View Any Comments

Yes – The regulations not specifying the actual consultation methods is welcomed as it provides the flexibility to determine them at local level.

Consultation Question 17 Do you agree with the publication requirement for play sufficiency assessments? Yes/No/No View

Yes

ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES
AND LICENSING COMMITTEE

DEVELOPMENT AND ECONOMIC
GROWTH

23rd March 2022

DEVELOPMENT PLAN SCHEME UPDATE – LOCAL DEVELOPMENT PLAN 2

1.0 EXECUTIVE SUMMARY

1.1 The main purposes of this report are to:-

- Seek PPSL Committee approval of the attached updated Development Plan Scheme (DPS), including its associated Participation Statement. See Appendix 1.
- Obtain authority to publish the approved updated DPS and submit it to the Scottish Ministers.

1.2 The first Argyll and Bute Local Development Plan was adopted in March 2015. The process of planning for its review and replacement began in January 2016 with the preparation of the first Development Plan Scheme (DPS), as agreed at [Council \(item 14\)](#). The DPS is the timetable for preparing the replacement Local Development Plan 2 (LDP2), which advises how and when stakeholders and the public can become engaged in the process. There is a duty to prepare a revised DPS at least annually.

1.3 The Proposed Local Development Plan 2 is now at Examination. This revised Development Plan Scheme sets out the anticipated timetable and actions during the Examination and for the following adoption process.

1.4 Key points to note are:-

- There has been reprogramming of the adoption date to February 2023, however, until the new Local Development Plan is adopted, the current Local Development Plan's statutory status remains. Planning applications will be dealt with as normal;
- There is a generous and more than adequate existing housing land supply within LDP1 to last until the adoption of LDP2.
- Although the Planning (Scotland) Act 2019 is now in place, interim procedures advise that the preparation of this LDP2 is required to be completed under the Planning etc. (Scotland) Act 2006. Other interim guidance has been issued to amend and support the LDP procedures to take account of Covid-19 related challenges.

1.5 It is recommended that the PPSL:-

- i) Notes the contents of this report;
- ii) Approves the updated **Development Plan Scheme (DPS)** attached in Appendix 1 of this report for publication and submission to the Scottish Ministers.

ARGYLL AND BUTE COUNCIL

**PLANNING, PROTECTIVE SERVICES
AND LICENSING COMMITTEE**

**DEVELOPMENT AND ECONOMIC
GROWTH**

23rd March 2022

DEVELOPMENT PLAN SCHEME UPDATE – LOCAL DEVELOPMENT PLAN 2

2.0 INTRODUCTION

2.1 The Planning Etc. (Scotland) Act 2006 requires each Planning Authority to prepare and keep up to date a Local Development Plan (LDP). This means the authority should aim to prepare a new plan within 5 years of Adoption of the current plan. Until the new Local Development Plan is adopted, the current Local Development Plan's statutory status remains, including any associated Supplementary Guidance. The current LDP was adopted in March 2015.

2.2 The LDP process involves a number of statutory stages and significant engagement with communities, developers, key agencies, councillors and other stakeholders. The Development Plan Scheme (DPS) sets out the timetable and engagement process for Local Development Plan 2 and is required to be updated at least annually to reflect changes in timescale etc. This appendix to this report contains the updated DPS.

3.0 RECOMMENDATIONS

3.1 It is recommended that the PPSL:-

- i) Notes the contents of this report;
- ii) Approves the updated **Development Plan Scheme (DPS)** attached in Appendix 1 of this report for publication and submission to the Scottish Ministers.

4.0 DETAIL

- 4.1 The Planning Etc. (Scotland) Act 2006 requires each Planning Authority to prepare a Local Development Plan (LDP) at least every 5 years. The existing approved September 2020 DPS programmed the Adoption to February 2022. There has been slippage in the programme and it is now anticipated that the new Local Development Plan 2 will be adopted by the spring of 2023. There has been no other substantive change to the DPS other than the time revision, as the main consultation phases are complete. The next phase is the Examination and is run by the DPEA and independent Reporter. This generally takes 9 months. Issues that impacted on the timetable for delivery of the plan over the last year were as follows:-
- Impact of Covid 19;
 - Scottish Government engagement re National Planning Framework 4 and new Local Development Plan regulations;
 - Diminished staff resource.
- 4.2 It should be noted that until the new Local Development Plan is adopted, the current Local Development Plan's statutory status remains, including that of the associated Supplementary Guidance. The current LDPs made plans for ten years from adoption, so until 2025, and are still considered to be robust. The LDP contains an effective land supply with the latest [Housing Land Audit](#) showing an effective supply of 2890 units or 9.6 years supply as at 1 April 2020 in relation to the Proposed Local Development Plan 2 five year Housing Land Requirement of 1500 units. This takes us to 2031 well beyond the proposed adoption date of LDP2. The proposed growth areas of Tobermory – Dalmally and Helensburgh and Lomond have sufficient supply available to take us beyond the adoption of LDP2. Planning applications will continue to be processed as normal during the delay period, being assessed against the Adopted LDP.
- 4.3 Section 20B of the Planning Etc. (Scotland) Act 2006 requires each Planning Authority to prepare a **Development Plan Scheme (DPS)** at least annually. The exact requirements for the content and process of the LDP and associated DPS are set out in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 and the Coronavirus (Scotland) Act 2020.
- 4.4 The DPS sets out the Council's programme for preparing and reviewing the LDP and what is likely to be involved at each stage. The DPS includes a Participation Statement, which details when, how and with whom consultation on the LDP will take place, and the Council's proposals for public involvement in the plan preparation process. The proposed updated Development Plan Scheme is set out in Appendix 1 to this report.

4.5 Once the updated DPS has been approved by PPSL it is required to be published electronically and 2 copies submitted to the Scottish Ministers. The Scottish Government has acknowledged the impact on Local Development Plan preparation and through the Coronavirus (Scotland) Act 2020 makes provision for the DPS documents to be made available for inspection by electronic means rather than at an office or library. Therefore, in addition to publication on line a Newsletter will be sent electronically to LDP2 contacts to advise of the revision. There is no requirement to consult on the content of the DPS.

4.6 Since the last update of the DPS the following actions have been undertaken in the LDP2 process:-

- Published the updated DPS September 2020;
- Prepared Schedule 4 summaries for Examination;
- Prepared all background papers for Examination.

4.7 The governance arrangements, that support the delivery of LDP2 are set out in the DPS and were approved by Council in January 2016.

- The key stages of i) the submission of the plan for Examination (this includes the Council's response to any outstanding objections); and ii) decision to Adopt, can go directly to full Council;
- Preparatory and sub stages such as subsequent Development Plan Scheme revisions go to Planning, Protective Services and Licensing Committee only.

5.0 CONCLUSION

5.1 Engagement in the preparation of the LDP2 is an important part of the Development Plan process. The updated DPS continues to set out a clear agenda for the LDP2 process and the associated public engagement as it progresses through Examination and to Adoption.

6.0 IMPLICATIONS

6.1 Policy

None - The DPS is a timetable and participation statement.

6.2 Financial

None - Within the Development Policy budget

6.3 Legal

There is a statutory duty to approve at least annually, publish and submit to the Scottish Ministers a Development Plan Scheme.

6.4 HR

None

6.5 Fairer Scotland Duty: See below

6.5.1 Equalities - protected characteristics – See below

6.5.2 Socio-economic Duty – See below

6.5.3 Islands - See below

The Development Plan Scheme shows how the Local Development Plan engagement process will be handled to meet with statutory requirements and encourage engagement from all. An Equality and Socio-Economic Impact Assessment (EqSEIA) has been prepared as part of the LDP2 process.

6.6 Climate Change

The DPS is a document that timetables the LDP process and engagement in that process. Publication and engagement includes on line methods, which help reduce resource consumption and travel. The LDP takes account of climate change issues related to land use and physical development.

6.7 Risk

The LDP2 process is now programmed up to February 2023. Any further reduction in resource levels may impact further on the timetable set out in the DPS for delivery of the LDP2. Similarly any increased demand on the service over and above that committed in the DPS could also result in the failure to meet with the new anticipated Adoption date shown in the DPS.

6.8 Customer Service

The Development Plan Scheme sets out how our customers can get involved in the Local Development Plan process.

Kirsty Flanagan

Executive Director with responsibility for Development and Economic Growth

Policy Lead David Kinniburgh

28/01/2022

For further information contact: Sybil Johnson 01546 604301

APPENDICES

Appendix 1 Argyll and Bute Local Development Plan 2: Development Plan Scheme:
March 2022

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Argyll and Bute Local Development Plan 2 Development Plan Scheme March 2022



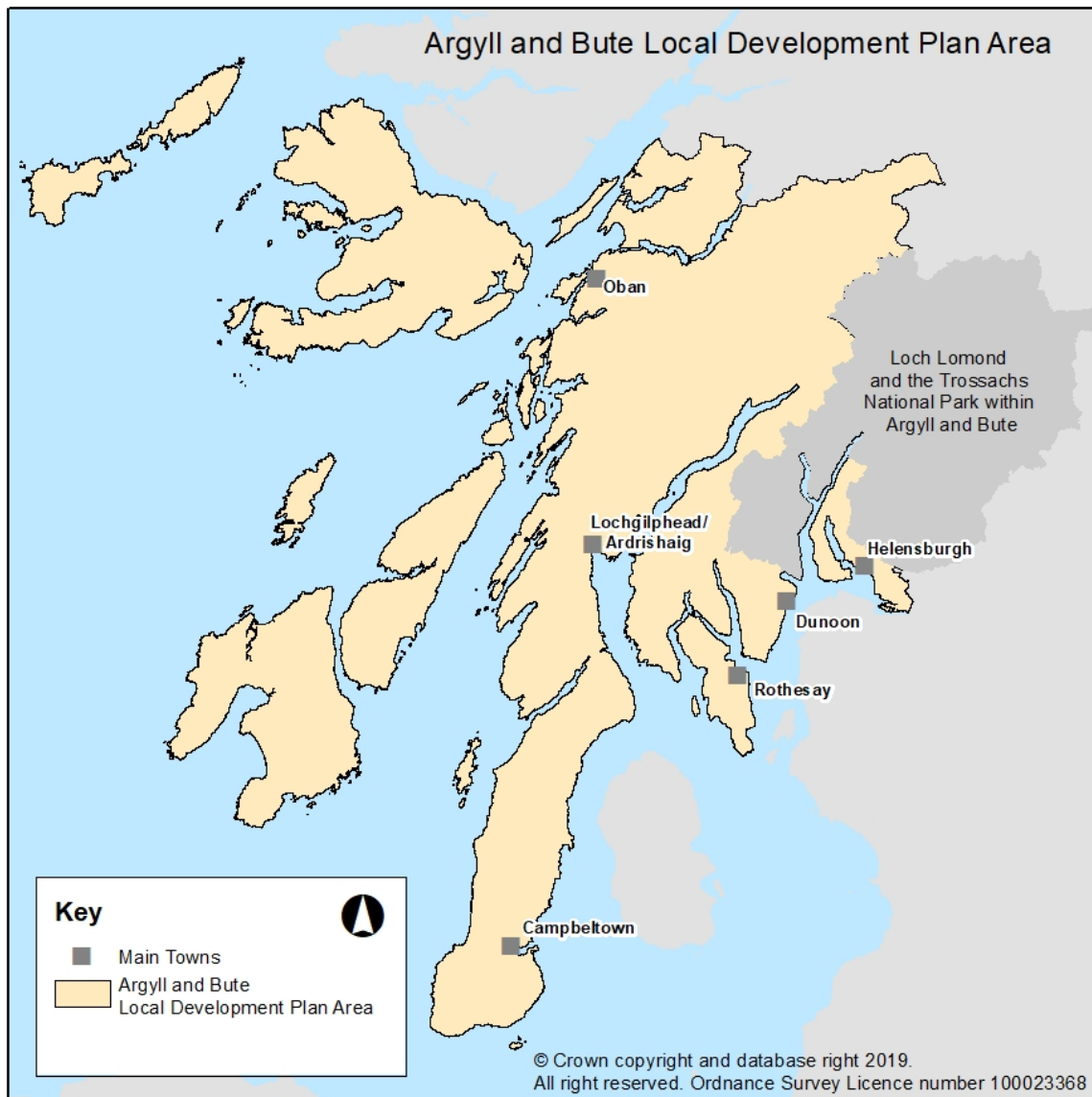
*Planadh, Taigheadas is Seirbheisean Riaghlaidh
Chomhairle Earra-Ghàidheal is Bhòid*



Argyll and Bute Local Development Plan 2 : Development Plan Scheme

- 1 What is a Development Plan?
- 2 What is a Development Plan Scheme?
- 3 How do we prepare a Local Development Plan?
- 4 Where we are now in the process?
- 5 The Next Steps
- 6 Participation Statement : how you can get involved
- 7 Impact Assessment of the Local Development Plan
- 8 How to keep up to date

Appendix 1: Local Development Plan 2 preparation - indicative timescales



- 1.1 This section sets out what a local development plan is and why we need to update it. Argyll and Bute Council, as the planning authority for its area (excluding the Loch Lomond and the Trossachs National Park), has a statutory duty to prepare **development plans** for guiding land use and development for up to ten years ahead. Development Plans can be Strategic or Local dependent on the area covered. In Argyll and Bute we are required to produce a **Local Development Plan**. It is a requirement that the development plans are kept up to date and so, the Adopted Local Development Plan (LDP) is being reviewed to prepare Local Development Plan 2.
- 1.2 To guide land use local development plans contain a “Vision” which sets out a future ideal for the area in terms of places and how we would like to see it develop. A strategy sets out how this vision can be achieved. The strategy is supported through allocations and policies. Sites are allocated for specific uses such as housing or industry to provide a sufficient supply of effective land for the plan period. The LDP also contains policies to promote sustainable development that helps us achieve the vision. The policies also help us safeguard resources, including landscape, built heritage and nature.
- 1.3 The Council adopted its current statutory plan to guide development in March 2015 – the **Argyll and Bute Local Development Plan** (Adopted March 2015). Supplementary Guidance, which provides additional detail has also been prepared and sits alongside the Local Development Plan. Together these documents make up the statutory Development Plan. Since March 2015 the Local Development Plan has been the basis for providing advice on planning proposals, for guiding decision making on planning applications and for ensuring that the right development happens in the right place.
- 1.4 We need to keep the plan up to date to reflect changing circumstances as land is developed and new issues arise or other factors change. There is a requirement to review the current adopted LDP and prepare a new one within 5 years of adoption (Planning etc. (Scotland) Act 2006. A new planning act (Planning (Scotland) Act 2019) has been put in place since we started preparing the new Local Development Plan 2 (LDP2). But the preparation of this LDP2 is required to be completed under the process set out in the 2006 Act.
- 1.5 The aim is that this new plan (Local Development Plan 2) should be concise, focused on areas of change, involve the community at an early stage and enable delivery of development. Until the new Local Development Plan 2 is adopted, the current Local Development Plan’s statutory status remains. Ministers expect LDPs to focus on their specific main proposals for the period up to year 10 from adoption.

2 | What is a Development Plan Scheme?

- 2.1 **A Development Plan Scheme (DPS)** tells you about the preparation of a Development Plan.
- 2.2 Whether you are a resident, landowner, developer, community representative, agent or public body your input into the process is vital. The Development Plan Scheme aims to provide you with an easy to use guide as to when, where and how you can engage in the preparation process for the development plan.
- 2.3 This Development Plan Scheme (DPS) covers the preparation process for the **Argyll and Bute Local Development Plan 2 (LDP2)**. LDP2 covers the whole of Argyll and Bute except for the area in the Loch Lomond and the Trossachs National Park, which is a separate planning authority. This Development Plan Scheme (DPS) has been prepared to provide our communities and partners with information on our progress in updating the Argyll and Bute Local Development Plan (adopted March 2015). The Local Development Plan is the main way for showing where new development should and should not take place and for determining planning applications.
- 2.4 The DPS includes a timetable of when we intend to reach key stages in the process of preparing our new Local Development Plan 2 (LDP2), which will eventually replace our current adopted Local Development Plan, and also includes a Participation Statement explaining how we will engage with our communities and stakeholders. The DPS outlines:
- ◆ Why we are preparing a Local Development Plan;
 - ◆ What the process involves;
 - ◆ Who should be involved;
 - ◆ When we will undertake the stages of preparation.
- 2.5 We will update the DPS on at least an annual basis to reflect the progress of Plan preparation. This is the sixth update since the Development Plan Scheme was prepared in January 2016 for the preparation of the Argyll and Bute Local Development Plan 2. This DPS replaces the one published in September 2020.

3 | How do we prepare a Local Development Plan?

- 3.1 There is a wide range of factors that need to be taken into consideration in the preparation of a new Local Development Plan. The main ones are set out below.

National Planning context

- 3.2 Local Development Plans are influenced by a number of statutory requirements with the main Acts being the Town and Country Planning (Scotland Act) 1997 and the Planning etc. (Scotland) Act 2006. At the national level, the Scottish Government has prepared a National Planning Framework (NPF3) and Scottish Planning Policy (SPP) which provide the national policies and priorities for major new development. These will both be replaced in due course by National Planning Framework 4, which will become a statutory part of the Development Plan for this area. During the preparation of LDP2 the statutory planning framework has changed with the introduction of the Planning (Scotland) Act 2019. This contains a number of changes, including to the development plan process. Interim procedures are now in place, which direct plans that have reached the later stages of the process to continue under the rules set out in the 2006 Act and associated regulations. The Argyll and Bute Local Development Plan 2 is at the later stages of preparation and so will continue to be developed in line with the 2006 Act.

Argyll and Bute Outcome Improvement Plan

- 3.3 Local Development Plans are also influenced by a range of other plans, strategies and policies, in particular for Argyll and Bute, the [Outcome Improvement Plan](#) (formerly Single Outcome Agreement) is viewed as the overarching governing document. This is prepared jointly by the Council and the other Community Planning partners and establishes the overarching policies and actions for the management of Argyll and Bute. It has an outcome focused approach and ensures that the Community Planning Partnership's aims are delivered in an integrated manner and aligned with Scottish Government outcomes.
- 3.4 The policies and actions with development and land use implications of the Outcome Improvement Plan are reflected in the Local Development Plan (LDP). The Action Programme that has to accompany the LDP sets out how the Council proposes to implement the plan. These documents together are the drivers for change and action in Argyll and Bute and by keeping the documents updated we are able to respond to changing circumstances within the area and its communities.

Local Authority and its Partners

- 3.5 Argyll and Bute Council has the statutory responsibility for planning in the Council area, excluding the Loch Lomond and the Trossachs National Park where the Park Authority controls the planning function. It is important that all the relevant services within the Council (for example Economic Development, Roads and Amenity Services and Education) are fully engaged in the plan preparation as they are integral to the delivery of the LDP2 strategy and aims. LDP2 will also be influenced by the priorities of other stakeholders as set out in their own strategies and programmes. The stakeholders include key agencies, which the Regulations have identified as Nature Scot; Scottish Environment Protection Agency; Scottish Water; Scottish Enterprise; Highland and Islands Enterprise; Regional Transport Partnerships; Crofting Commission; and Health Boards. The Government also require the following bodies to have the same level of involvement in the development plan process: Historic Environment Scotland; Transport Scotland; Scottish Forestry; Marine Scotland and any Regional Marine Planning Partnerships. Neighbouring authorities are also

3 | How do we prepare a Local Development Plan?

consulted throughout the LDP2 process.

Our Communities

- 3.6 The input of local communities is very important. The aspirations of local communities are communicated in a number of ways, including through formal documents such as Community Plans and via their community councils. The priorities for communities influence the outcomes of the planning process. It is also important that individuals are able to be involved in shaping the future of our area.

Development Sector

- 3.7 Developers, landowners, businesses and investors are all important to this process. Through land that they own or finance they are looking to invest or businesses which they wish to grow or set up in the area. These interests are critical to realising the vision identified in the Local Development Plan.

Stages

- 3.8 The Local Development Plan process has a number of key stages as set out below:-

Evidence Gathering – includes reviewing current policies, site assessment
Pre-Engagement - call for sites and early engagement with communities and other stakeholders.
Main Issues Report (MIR) – This is the first formal consultation. This focusses on the key areas of change since the last Local Development Plan was prepared. A range of options are presented and comments sought. A Monitoring Report accompanies the MIR. A draft Strategic Environmental Assessment Environmental Report also accompanies the MIR to demonstrate the environmental effects of the proposals. This is the main engagement phase of the plan process and helps the Council come to a view on what should be in the plan.
Proposed Local Development Plan 2 – having considered the comments on the MIR the Council then prepare and consult on the proposed Local Development Plan 2. The proposed Local Development Plan 2 represents the “settled view” of the Council. This is in two parts i) Written Statement with a strategic vision for the area and policies and proposals to help deliver this vision ii) Proposals Maps which show where the allocations and other designations are. This consultation includes notification. It is accompanied by a draft Action Programme, a revised Strategic Environmental Assessment, a Habitat Regulation Appraisal record and a draft Equality and Socio-Economic Impact Assessment.
Examination – If the Council receives valid objections to the Proposed Local Development Plan 2 that are not resolved they will be sent to the Scottish Ministers. An Examination would then be conducted by a Scottish Government appointed Reporter into the unresolved objections and a report produced with recommendations.
Adoption of Local Development Plan 2 - The Council then modifies the plan as necessary, submits it to the Scottish Ministers and advertises its intention to Adopt the plan. The plan may be adopted after 28 days unless the Scottish Ministers direct otherwise.
Action Programme - this sets out how the policies and proposals are to be delivered. It must be published by the Council within three months of adoption of Local Development Plan 2 and is to be reviewed every two years.

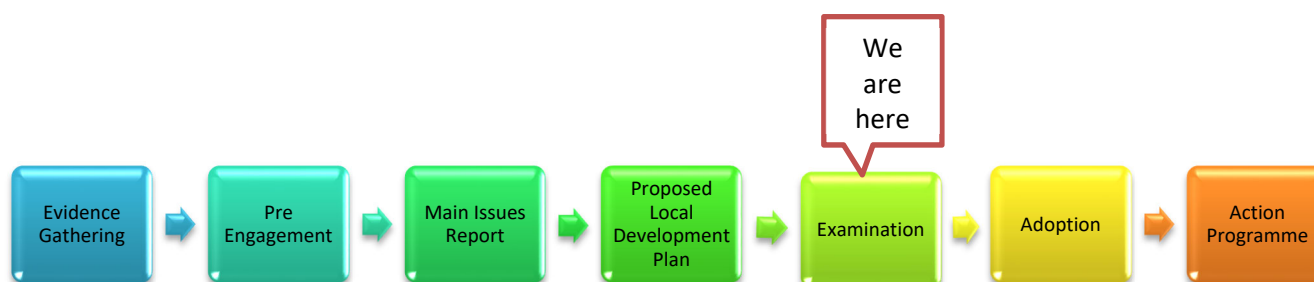
Governance

- 3.9 The preparation of Local Development Plan 2 is governed by a statutory process, the key stages of which are set out in this Development Plan Scheme. [Circular 6/2013](#) describes the development planning system in Scotland under which the PLDP2 is being prepared, and explains the legislative process in more detail. The Council, as the planning authority, controls the overarching corporate management of the Local Development Plan. This is dealt with at key stages through the Council's committee procedures and at Strategic Management Team meetings. A Project Board is responsible for providing overall direction to the delivery of Local Development Plan 2. This consists of the Development and Infrastructure Departmental Management Team plus the Head of service from Community Services. The project manager is responsible for the day to day management of the delivery of the plan and team. A communications team will meet regularly throughout the LDP2 process to ensure communications are as effective as possible. The Proposed LDP2 was approved by Full Council.

4 | Where are we now in the process?

- 4.1 The Local Development Plan was adopted in March 2015 and was followed by the publication of the Action Programme in June 2015. We then needed to think about preparing the new plan – Local Development Plan 2. The first step was **evidence gathering** to help us prepare Local Development Plan 2 (LDP2). We started this with an assessment of our current sites to retest their effectiveness. We also started gathering information, including a “*Call for Sites*” and got involved with communities through *Charrettes* (intensive planning sessions with the community and other stakeholders) for Tiree, Crinan Corridor and Rothesay, all of which will help inform LDP2.
- 4.2 During 2017 we moved into the pre Main Issues Report engagement phase. During this phase we assessed the sites proposed during the Call for Sites and sought further information on these from the Key Agencies. We engaged with the public and other stakeholders through the *Call for Ideas* and *Place Standard Tool* public consultation. In addition we held Community Council sessions and a Councillor Workshop.
- 4.3 Gathering these views helped us prepare the Main Issues Report, which shows options to address the key areas of change in the area. The Council’s preferred option was shown and questions asked about that option. Engagement included consultation for 8 weeks, including Community Council meetings, public drop in events, publicity – including social media, use of an interactive Storymap and an on line form. At the same time we also published a Monitoring Report, a draft Environmental Report for the Strategic Environmental Assessment and a draft Equalities Impact Assessment.
- 4.5 During 2018 we assessed the consultation responses we received during the Main Issues Report consultation. This included officer assessment, a Councillor workshop and further engagement with Key Agencies and stakeholders on specific issues.
- 4.6 The Proposed Plan was drawn up during 2019 (PLDP2). This was approved as the Council’s “settled view” and was published for consultation for a 10 week period starting in November 2019 and closing in January 2020.
- 4.7 All the representations submitted to the planning authority have been considered. There are unresolved representations and therefore a request was made to the Scottish Government for an **Examination** of the unresolved issues in January 2022. This is an independent process carried out by Scottish Government appointed Reporters.
- 4.8 See the diagram below for where we are now in the process.

Development Plan Process



- 5.1 The Examination into Proposed Local Development Plan 2 is now underway. Examinations usually take around 9 months. During the Examination we will make copies of the submitted plan available in an office of the planning authority, in public libraries and also publish it on line. However, if Covid-19 restrictions are still in place at this time the Coronavirus (Scotland) Act 2020 allows for development plan engagement to be conducted on line. Therefore public libraries and an office of the planning authority may not be required to hold copies, dependent on the circumstances. But we will have online information available throughout.
- 5.2 The Scottish Government has produced a useful [guidance note](#) for those who have submitted representations as part of the Local Development Plan process. Please note you do not need to take any action unless you receive a request from the Reporter. Your representation is your evidence and the planning authority has forwarded all unresolved representations to the DPEA to be taken into account during the Examination. The Reporter(s) will look at the Schedule 4s (summaries of the issues), copies of the unresolved representations, the Environmental Report, the proposed Action Programme, the Monitoring Statement and the Participation Statement current when the Proposed Plan was published. The Examination looks at the written submissions but the Reporter(s) may also ask for further written information, hearings or inquiry sessions.
- 5.3 The Reporter will issue their conclusions and recommendations at the end of the Examination. The recommendations are largely binding on the planning authority. There are only specific defined circumstances when an authority may depart from the recommendations. The Reporter will publish the Report and notify all parties who made an unresolved representation of this.
- 5.4 Within 3 months of receiving the Examination Report the planning authority should publish the modifications and the plan they propose to **adopt**. We will also publish a notice in one or more local newspapers, make copies of the plan available for inspection and notify everyone who has made a representation. Please note this is not a further consultation. 28 days after this the authority may adopt the plan, unless directed not to by the Scottish Ministers. We will notify everyone who has made a representation of the Adoption. The Action Programme, which sets out how we will implement the plan has to be finalised within 3 months of Adoption of the plan.

6.1 Community engagement is important in the planning process and has influenced the current plans policies and proposals in the Proposed Local Development Plan 2.

6.2 At key stages we have consulted:

- ◆ stakeholders/key agencies in the public sector (such as key government agencies,
- ◆ the neighbouring local authorities and Loch Lomond and the Trossachs National Park, statutory bodies, and non-governmental organisations;
- ◆ the private sector (such as business interests, landowners and developers);
- ◆ the local community including residents, Community Councils, community representatives, community organisations and other interested bodies.

6.3 Although we are now past the key engagement phases and there is no automatic opportunity for parties to expand on their representations we will keep people informed of progress as we move through the Examination and then Adoption of the plan.

Keeping you informed

- ◆ Provide information through our website – www.argyll-bute.gov.uk/ldp2, social media, email and newsletter updates
- ◆ Provide information to Community Councils, Council offices* and local libraries*
- ◆ Placing statutory adverts in local newspapers and publicising key stages with the media
- ◆ Maintain the Online interactive mapping of the Proposed Local Development Plan in the accessible Storymap format.
- ◆ Staff available to answer questions or provide information via telephone and email
- ◆ Notify those who made representations on the Proposed Local Development Plan when we propose to adopt the plan and when we adopt the plan.
- ◆ We have set up and will maintain a mailing list of people who we contact via email/post to update on the Plan progress. If you would like to be added to this please let us know (find out how to contact us in section 8).

*The Coronavirus (Scotland) Act 2020 permits consultation to be conducted on line only removing the requirement for documents to be held by public libraries and in a Council Office.

6.4 Appendix 1 sets out in greater detail the stages we will go through and the estimated timescales for engagement and consultation. It provides a detailed breakdown of the Local Development Plan process, indicative timescales and the opportunity for engagement including any statutory periods of consultation.

- 7.1 As we progress through the Local Development Plan process we will make information on the Strategic Environmental Assessment, Habitats Regulations Appraisal and the Equality and Socio-Economic Impact Assessment available on line at www.argyll-bute.gov.uk/ldp2

Strategic Environmental Assessment

- 7.2 The Environmental Assessment (Scotland) Act 2005 requires us to carry out a Strategic Environmental Assessment of the Local Development Plan. This is a process for identifying and assessing the environmental effects of proposed strategies, plans and programmes so that these are taken into account before they are approved or adopted. It is a vital tool which places environmental considerations at the heart of decision-making process and ensures that alternatives are fully and transparently regarded before final decisions are taken.

- 7.3 We have consulted with Scottish Natural Heritage, Historic Environment Scotland and the Scottish Environmental Protection Agency in preparing our Strategic Environmental Assessment. This end result of this is an Environmental Report.

Habitats Regulations Appraisal

- 7.4 We have produced a new Habitats Regulations Appraisal of the potential impacts of the proposed Local Development Plan on European Sites. This has been submitted to Scottish Ministers alongside the proposed Local Development Plan 2. There are a number of designated 'Natura' sites within Argyll and Bute and so any emerging plans and policies have been considered with regards to potential adverse impacts on these protected sites and species.

Equality and Socio-Economic Impact Assessment

- 7.5 Under the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 we have undertaken an Equality and Socio-Economic Impact Assessment (EqSEIA) of proposed policies and practices. In addition to the nine protected characteristics covered by the Equality Act 2010, the EqSEIA takes into account the Fairer Scotland Duty and the Islands (Scotland) Act 2018.

8 | How to keep up to date

- 8.1 You can keep up to date, access information on the Local Development Plan and contact the Argyll and Bute Council Local Development Plan Team as set out below.

[Follow Local Development Plan progress](#)

On the Council web site at www.argyll-bute.gov.uk/ldp2



And on **Twitter** at:
[@ABC_Planning](#) or
[@argyllandbute](#)



On **Facebook**

Hard copies of consultations will be made available during advertised consultation periods in local libraries and at the council office, Manse Brae, Lochgilphead, subject to the impacts of Covid-19 (Coronavirus (Scotland) Act 2020) where documents may only be available on line.

Ask a question:

Email: ldp@argyll-bute.gov.uk

Tel: 01546 604158

Activities	Stakeholders	Engagement Techniques	Communication Techniques	Indicative Timescale
Publish Development Plan Scheme – REVIEW AT LEAST ANNUALLY				
Pre Main Issues Report – STAGE COMPLETED				
Main Issues Report – STAGE COMPLETED				
Proposed Local Development Plan – STAGE COMPLETED				
Examination Submission - STAGE COMPLETED				
Examination				
Examination – Administrative Check Period(DPEA) Statutory notice Publication		Information Publicity	Updates on dedicated Council web page , newsletter, direct emails and social media Submission Notice in local newspaper (s) Publish Proposed Local Development Plan as submitted on Council website Copies available in public libraries* and Development Policy Office* (Manse Brae, Lochgilphead) Direct Mail to Scottish Ministers	1 month administration February 2022
Examination of proposed plan; Reporters Report issued	Scottish Government Reporter(s) Council Unresolved representations to PLDP2	Examination by written submissions/in public – Reporters remit – including requests for information.	Maintain dedicated Council web page	8 months Examination March 2022 –October 2022
Post Examination - Consider reporters recommendations; Prepare modifications Publish Modifications and	Council Representees on PLDP2 Scottish Government	Council process. Information Publicity	Updates on dedicated Council web page , newsletter, direct email and social media	3 months November 2022 - January 2023

Activities	Stakeholders	Engagement Techniques	Communication Techniques	Indicative Timescale
<p>Proposed Plan as modified. Revise SEA Environmental report, publish. Update Habitats Regulation Appraisal Send copies of all to Scottish Ministers Advertise Intention to Adopt Notification of representees</p>			<p>Intention to adopt notice in local newspaper (s)</p> <p>Publish Report of the Examination, Modifications and Local Development Plan as modified to adopt on the Council website</p> <p>Copies available in public libraries* and Development Policy Office* (Manse Brae, Lochgilphead)</p> <p>Notification to representees on PLDP2 Direct Mail to Scottish Ministers</p>	
Adoption				
<p>Adoption process for LDP2 Publish post adoption SEA Statement and submit to SEA Gateway</p>	<p>Council Representees on PLDP2 Scottish Government</p>	<p>Council process. Information Publicity</p>	<p>Adopted Local Development Plan 2 available in public libraries* and Development Policy Office* (Manse Brae, Lochgilphead) and published on dedicated Council web page</p> <p>Notice in local newspaper (s)</p> <p>Notify all those who made representations on the proposed plan.</p> <p>Direct mail to Scottish Ministers</p>	<p>February 2023</p>

Activities	Stakeholders	Engagement Techniques	Communication Techniques	Indicative Timescale
Action Programme				
Publish Action Programme	Councillors Scottish Ministers	Council process	Publication of Action Programme on dedicated Council web page Copies available in public libraries*; Copies sent to Scottish Ministers	May 2023
* Hard copies will be made available during advertised consultation periods in local libraries and at the council office, Manse Brae, Lochgilphead, subject to the impacts of Covid-19 (Coronavirus (Scotland) Act 2020) where documents may only be available on line.				

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ARGYLL AND BUTE COUNCIL**PPSL COMMITTEE****DEVELOPMENT & ECONOMIC GROWTH****23rd March 2022**

**Update on Planning Appeal Reference: ENA-130-2045 – Invergare, Glenarn Road,
Rhu G84 8LL**

1. INTRODUCTION

This report provides an update on the recent decision by the Planning and Environmental Appeals Division in relation to Planning Appeal Reference ENA-130-2045, whereby the enforcement notice was upheld but the appeal allowed to the extent that the Reporter varied the terms of the notice.

2. RECOMMENDATION

Members are asked to note the content of this report.

3. DETAILS OF APPEAL DECISION

Decision by: Mr Rob Huntly, a Reporter appointed by the Scottish Ministers;
Planning Appeal Ref.: ENA-130-2045;

Site Address: Invergare, Glenarn Road, Rhu G84 8LL

Appeal by: Mr and Mrs Graham Gardner against the enforcement notice reference 19/00238/ENFHS dated 15th October 2021 served by Argyll and Bute Council;

The alleged breach of planning control: The unauthorised material change of use of the Land Affected from a dwellinghouse (Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997) to use for short term visitor letting;

Date of Site Visit by Reporter: none;

Date of Appeal Decision: 11th February 2022.

A copy of the appeal decision is appended at Appendix 1.

The enforcement notice was upheld but the appeal allowed insofar as the Reporter varied the terms of the notice by modifying the requirements.

The Reporter considered the appeal failed on the following statutory grounds of appeal:

- (b) that the change of use alleged has not occurred;
- (c) what has occurred does not mount to a breach of planning control; and,
- (g) that the period (for compliance) specified in the notice in accordance with S.128(9) falls short of what should be reasonably allowed.

The reporter allowed the appeal under the following ground:

- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.

The enforcement notice served by the planning authority required the appellants to:

“Cease the Use of the Land Affected for short term visitor letting.”

The Reporter finds that *“there is force in the appellants’ argument that that, as worded, the enforcement notice could be regarded as potentially preventing the occupation of the appeal property as a dwellinghouse in a manner which might not amount to a material change of use.”*

However, the Reporter is able to address this by modifying the requirements set out in the enforcement notice as follows:

“You are required to;

Cease the use of the Land Affected for short term visitor letting, other than any letting which comprises a private residential tenancy as defined in the private Housing (Tenancies) (Scotland) Act 2016.”

This modification to the notice provides clarity that the letting of the property by means of a private residential tenancy would not breach its terms. The Reporter also considers that this modification would be consistent with the principles set out by established legal judgements.

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
- 4.2 Financial – None
- 4.3 Legal – None
- 4.4 HR – None
- 4.5 Fairer Scotland Duty: None
- 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 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 Rob Huntley, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-130-2045
- Site address: Invergare, Glenarn Road, Rhu G84 8LL
- Appeal by Mr and Mrs Graham Gardner against the enforcement notice reference 19/00283/ENFHS dated 15 October 2021 served by Argyll and Bute Council
- The alleged breach of planning control: The unauthorised material change of use of the Land Affected from a dwellinghouse (Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997) to use for short term visitor letting.
- Date of site visit by Reporter: none

Date of appeal decision: 11 February 2022

Decision

I uphold the enforcement notice but allow the appeal to the extent that I vary the terms of the notice by modifying its requirements, as set out at the end of this notice. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Preliminary matter

1. Taking account of the nature of the breach of planning control alleged in the notice and of the grounds on which the appeal is made, I reached the conclusion that my consideration of the appeal would not be assisted by an-on-the-ground inspection of the appeal premises. A visual inspection of the site on a single occasion would not, in any event, have provided me with material which would be determinative in this regard. I am satisfied that the written and other material provided to me by the appellant, the council and in representations by others has enabled me to give full and proper consideration to the appeal, without undertaking a physical on-the-ground inspection of the site. I have therefore not needed to visit the appeal site in person, and I have not done so.

Reasoning

2. An appeal against an enforcement notice may be made only on one or more of the grounds (b) to (g) specified in section 130(1) of the Town and Country Planning (Scotland) Act 1997. The appeal is stated, on the appeal form and in the appellants' statement submitted in support, to be made on grounds b), g) and f). These grounds provide, respectively:

Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR
www.gov.scot/policies/planning-environmental-appeals/



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- b) that the matters stated in the notice have not occurred;
- f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach;
- g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

3. It is suggested on behalf of the appellants that there is overlap between statutory ground of appeal b) (that the change of use alleged has not occurred) and ground c), namely that the change of use (if it has occurred) does not constitute a breach of planning control. I have therefore considered the appeal in the context of each of the grounds b), c), f) and g) as specified in section 130(1) of the Town and Country Planning (Scotland) Act 1997.

Ground b)

4. An appeal on ground b) of section 130(1) of 1997 Act is concerned with whether the matter alleged in the enforcement notice has occurred as a matter of fact. An appeal claiming that what has occurred does not amount to a breach of planning control falls more directly within the scope of an appeal on ground c), which I address separately below.

5. The appellants take issue with the specific wording of the use alleged to have occurred, preferring the term "short stay commercial visitor accommodation" to "short term visitor letting", which is the phrase used in the enforcement notice. However, they confirm that the property has, from 2019, been let for short periods to groups occupying the whole property. They have provided a table giving details of the periods and durations of such lettings between April 2019 and October 2021. The table reveals that during 2019 there were 39 separate letting periods. A total of 19 lettings took place during 2020, with a further 16 during 2021 up to October of that year. During parts of 2020 and 2021 covid-related measures restricted the ability of the property to be occupied by groups and I have no doubt that demand for such occupation was also affected by the pandemic during this period, irrespective of the existence of any formal restrictions.

6. The appellants advise that during 2020 the property was additionally used for 28 nights to accommodate military personnel involved in the covid vaccination programme. I agree with the appellants that, because of the unique circumstances involved, this period of occupation should not be treated, of itself or together with the other lettings summarised above, as forming a component of the use at which the enforcement notice is directed.

7. From the above, and leaving any military covid-related occupation out of account, it is evident that the majority of lettings have been for 2 or 3-night periods, and that such lettings have been for occupation by visitors. A smaller number of lettings have been for a longer duration, but none is recorded in the table provided by the appellants as exceeding 7 nights. I find that over the period for which the appellants have provided records, the occupation of the appeal property can properly be described as short-term visitor letting, as is alleged in the enforcement notice.

8. In the emailed response of 10 December 2019 to the council's Planning Contravention Notice, the appellants confirmed that the property was being rented out. The



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description of the use of the property included in the statement which accompanied an application for planning permission subsequently submitted to the council (application reference 21/01404/PP), mentions "short term rental" and "exclusive use self-catering accommodation" with a 2-night minimum letting period being specified. The appellants have also confirmed that the property is not their principal home, although they say they do visit on occasion.

9. I find there to be a close consistency between the appellants' own evidence of the number and duration of lettings and the information provided in representations made by interested parties in response to this appeal. I am therefore satisfied that the letting of the property for occupation by short-term visitors, as alleged in the enforcement notice, has occurred as a matter of fact. Although I note that the appellants' take issue with the use of the phrase "short term visitor letting" in the enforcement notice, I do not consider that there is any difference of substance between this and the appellants' preferred term of "short stay commercial visitor accommodation". For the above reasons the appeal on ground b) fails.

Ground c)

10. It has not been suggested to me that any planning permission is in force to authorise the use of the property as described in the enforcement notice. Indeed, the council has refused application reference 21/01404/PP, which sought planning permission for use of the property as "exclusive use visitor accommodation". Nor has it been suggested to me that a short-term letting use is specifically authorised by any of the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), or otherwise.

11. The appellants rightly point out that a change of use will only amount to development where such a change is material. If a change is not material, then no development would be involved, no requirement for planning permission would arise and no breach of planning control would have occurred. I agree that in such circumstances, there would be no basis for the issue of an enforcement notice. The appellants also correctly comment that whether a change of use is material so as to constitute development involves consideration of the particular circumstances in each case.

12. In this regard, my attention has been drawn to a judgement of the English Court of Appeal in the case of *Moore v Secretary of State for Communities and Local Government*¹. In that case the court determined that whether a material change of use is involved is a question of fact and degree in each case. It would not be correct to regard all instances of short-term lettings as inevitably involving a material change of use, nor that such use could never be material. Although the Moore case was decided in the context of the separate legislation of the English planning jurisdiction, and on its own facts, I accept that the same principles are also relevant to my consideration of this appeal.

13. I note that representations by interested parties in response to the appeal make reference to numerous reports being made to police and the council's environmental health service of noise disturbance at Invergare. In this regard stag and hen parties, amplified music and singing are mentioned. I have been provided with no details in this regard, but I note that the appellant has not denied such occurrences. I cannot be certain that all such

¹ *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202

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disturbances as may have arisen have been directly associated with short-term lettings at the property. However such problems are more likely to arise with large groups in occupation for short periods than would be expected from use of the property as a house.

14. I find that the short-term nature of lettings at the property must inevitably result in more frequent coming and going associated with turnover of occupation. This, and the accommodation of groups of up to 24 individuals on the appellants' evidence, gives rise to a significant number of traffic movements, as referred to by those making representations in response to this appeal. These factors together lead me to conclude that the nature of the occupation of Invergare has, since 2019, been materially different from what would be expected from use as a house by a single household, with or without visitors in the normal course of occupation.

15. The appellants have drawn my attention to decision on an enforcement appeal concerning a property at West Linton in the Scottish Borders council area referred to as Greenloaning². That appeal was against an enforcement notice which alleged an unauthorised material change in the use of that property from a residential dwelling to short-stay commercial visitor accommodation. The appellants suggest that, because the Greenloaning appeal reporter found that use of that property for holiday letting for 12 weeks before 9 November 2008 was ordinarily incidental to its main use as a house, that is to be taken as defining a threshold below which a material change of use cannot be held to have occurred. The appellants claim that because occupation of the present appeal property, Invergare, by short-stay visitors occurred for less than 84 nights (equivalent to 12 weeks) in each of the years 2019, 2020 and 2021 (excluding any covid-related military occupation) it must follow that no material change of use has occurred. I reject that proposition for the reasons set out below.

16. In the Greenloaning case there was an appeal on ground d). The reporter therefore had to determine whether the material change of use alleged had occurred more than 10 years before the date of the enforcement notice. If it had, the breach of planning control would potentially have gained immunity from enforcement action. The relevant date in that respect was 9 November 2008 and it was in that context that the reporter addressed the nature of the use of the property before that date. The reporter had conflicting evidence on when the Greenloaning property ceased to be occupied as a house comprising the main residence of the appellant and his family (paragraph 11 of the decision notice dated 25 April 2019). He was however able to conclude that whenever that occurred it was later than 9 November 2008. The reporter found that during the period more than 10 years before the date of the enforcement notice, the lawful use of the property had been as a house within class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

17. That aspect of the reporter's consideration of the Greenloaning appeal was directly relevant to his consideration of when any material change of use was initiated, and whether this meant that the enforcement action in that case was time-barred. It cannot be read as determining that an accumulated period of short-term occupation of not more than 12 weeks is to be taken as a threshold below which there would be no material change of use. The reporter found that during that period Greenloaning continued to be the appellant's main residence. That finding was central to his conclusion that the limited holiday letting

² Greenloaning appeal decision reference ENA-140-2013 dated 25 April 2019

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use of the property for a total of 12 weeks was ordinarily incidental to its main use as a house, and that enforcement action was not time-barred.

18. There is no suggestion in this appeal that any breach of planning control at Invergare is time-barred because it took place more than 10 years before issue of the enforcement notice. There is no appeal on ground d). By contrast with the Greenloaning position, there is also no suggestion in this appeal that, during the period since short-term letting of Invergare commenced in 2019, the property has been occupied by the appellants or their family as a house, whether as their sole or principal residence or otherwise. Nor is it suggested that Invergare has been occupied as the sole or main residence of any other household. It follows from this that I am unable to conclude that any short-term occupation of Invergare has been incidental to a main use of the property as a house.

19. The reporter's determination of the Greenloaning enforcement appeal was challenged in the Court of Session³. The appellants suggest that, because the court did not interfere with the reporter's finding that the limited use of the Greenloaning property for holiday letting before 9 November 2008 was ordinarily incidental to its main use as a house, that is to be taken as endorsing the use of a 12-week threshold for materiality in this appeal. In his opinion delivering the judgement of the Court, Lord Malcolm confirmed that it was relevant and appropriate for the reporter to consider the issue of when the appeal property ceased to be used as the appellant's residence. That consideration does not arise in this appeal as it is not suggested that the use of Invergare was, at the time of the issue of the enforcement notice or since, occupied as a house within Class 9 of the Use Classes Order. The short-term letting use at Invergare has not therefore been incidental to its use as a house. I therefore conclude that the present appellants' case is not assisted by the Court's non-interference with the reporter's finding on that point in relation to Greenloaning.

20. I address whether, or to what extent, the requirements of the enforcement notice may exceed what is necessary to remedy the breach of planning control in my consideration of the appeal on ground (f) below. However, for the reasons above, I conclude that a material change of use of the property, as referred to in the enforcement notice, has occurred. The terms of ground of appeal c) are not met and an appeal on this ground cannot succeed.

Ground (f)

21. Section 128(3) of the Town and Country Planning (Scotland) Act 1997 requires an enforcement notice to specify the steps required to be taken to achieve any of the purposes set out in section 128(4) of the Act. The purposes stated in that sub-section are:

- "(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or*
(b) remedying any injury to amenity which has been caused by the breach."

22. In its response to the appeal, the council has drawn my attention to an enforcement decision notice on an appeal relating to a short-term letting use of accommodation at

³ Michael Gerard Cameron v Scottish Ministers [2020] CSIH 6 (30 January 2020)

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7-8 Baxters Place, Edinburgh⁴. I am familiar with that case as I was the reporter appointed to decide that appeal.

23. In the Baxters Place decision I determined that an appeal against an enforcement notice on the ground of exceeding what is necessary to remedy injury to amenity is available only if the steps required by the notice are for the purpose of removing or alleviating injury to amenity which has been caused. The council's purpose in issuing the Baxters Place notice was to remedy the breach of planning control by requiring cessation of unauthorised use of those premises. That was the purpose provided for in section 128(4)(a) of the 1997 Act. It was not a purpose of remedying any injury to amenity pursuant to sub-section 4(b). I therefore concluded that it was not open to me, in deciding the Baxters Place appeal, to modify the notice so as to substitute requirements to achieve a purpose consistent with section 128(4)(b) of the 1997 Act (to remedy injury to amenity), when the stated purpose of the notice as issued derives from sub-section 4(a) (to remedy a breach of planning control).

24. Although those same principles would also be applicable in relation to this appeal, the appellants have not suggested that requiring cessation of the short-term letting use is excessive because lesser steps would remedy any effect on amenity. Rather, they argue that the enforcement notice should not place a bar on all or any short-term visitor letting, as specifying the requirements of the notice in such wide terms could prevent lettings which would not amount to a material change of use. In this context the appellants make reference to persons staying at the property where no fee is paid; visitors accommodated for work purposes; and house swaps, as potential examples of circumstances which they suggest may not amount to a material change of use.

25. I have not been provided with sufficient detail of any such hypothetical occupation to enable me to determine whether a material change of use would or would not occur in such circumstances. In any event, for the purposes of my consideration of this appeal, it is not necessary for me to come to any firm conclusion in that regard, and I have not done so.

26. The appellants have drawn my attention to principles established by the English Courts in the Mansi case⁵, in which aspects of a decision on an appeal against an enforcement notice were reviewed. In its judgement the court made clear that the terms of an enforcement notice must not go beyond what is necessary to remedy the breach of control complained of, and that the notice should ensure that existing lawful uses are preserved. That case involved consideration of the legislative provisions in England under the Town and Country Planning Act 1962 then in force and turned on its own facts. However, I accept that the principles the court set out are also applicable in the separate Scottish planning jurisdiction of this appeal. Applying these principles, I conclude that the requirements of the enforcement notice should not be drawn so widely as to prevent occupation of the appeal property in a manner that may not amount to a breach of planning control.

27. Section 26B of the Town and Country Planning (Scotland) Act 1997 refers to changes of use involving short-term lettings. Sub-section 3(a) provides that a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 does not constitute a short-term let. A tenancy of a dwellinghouse (or part of it) is also not a

⁴ Appeal decision ENA-230-2144 dated 19 February 2019

⁵ Mansi v Elstree Rural District Council [1965] 16 P&CR

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short-term let where all or part of the dwellinghouse is the only or principal home of the landlord or the occupier, as provided by sub-section 3(b) of section 26B.

28. Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 specifies that a 'private residential tenancy' is one where the property is let as a separate dwelling as the tenant's only or principal home and is not one of the 21 categories of occupation excluded by schedule 1 of the 2016 Act.

29. I accept that occupation of the appeal property under a private residential tenancy in accordance with the terms of section 1 of the 2016 Act would not amount to a short-term let and would therefore be unlikely to amount to a material change of use. Nor would a material change of use arise in the case of a 'house swap' referred to as an example by the appellants. However, in both such cases, and potentially other circumstances too, the underlying occupation of the property would necessarily be as the occupier's only or principal home. The appellants have confirmed that the appeal property is not occupied by them as their only or principal home. Nor is it suggested that any of the lettings that have taken place have been to provide the only or principal home of the tenants. The short-term nature of the individual occupations listed in the schedule provided by the appellants supports this position.

30. I do not consider that there is any significant potential for confusion as to the nature of the occupation of the appeal property that the enforcement notice requires to cease. However, reflecting the legislative provisions I have referred to above, a modification to the provisions of the enforcement notice to make clear that it would not prohibit letting by means of a private residential tenancy, is appropriate. This would clarify the effect of the enforcement notice and ensure that there would be no inadvertent infringement of the principle established by the court in the Mansi case. Accommodating visitors at the property in conjunction with its occupation as the only or principal home of its main occupants would also not amount to a material change of use and would therefore not be in breach of the terms of the notice. As explained above, it is not necessary for me to set out a definitive list of all potential occupations by visitors that would be ordinarily incidental to occupation of the property as a house. Nor is it appropriate for me to seek to do so, but as an example I would regard guests visiting the occupant's home to be a normal and incidental aspect of residential occupation which would not be prohibited by the enforcement notice.

31. Section 132(2)(b) of the Town and Country Planning (Scotland) Act 1997 enables me to modify the terms of the enforcement notice provided I am satisfied that no injustice would be caused to either the appellant or the planning authority by such modification. I am satisfied that no injustice would be caused either to the appellants or to the council by the modification I make to the notice in this regard.

32. To that limited extent, the appeal on ground (f) therefore succeeds. The requirement of the enforcement notice is modified as set out under the heading Modification to the enforcement notice at the end of this decision notice.

Ground (g)

33. The notice provides a period of 28 days from the date on which the notice takes effect for compliance with its requirements. In the absence of any appeal, the notice would

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have required compliance by 17 December 2021. That would have meant that an already booked letting of the property for the period 28 December 2021 to 4 January 2022 would, unless cancelled, have been in contravention of the terms of the notice. The appellants regard this as unreasonable and maintain that they may incur financial penalties if such a pre-existing booking were to be cancelled. They therefore seek a longer period for compliance to enable current bookings to be honoured.

34. However, the appellants explain that they had declined to take further bookings until the outcome of this appeal is known, so it was only the single booking over the New Year period 2021-2022 referred to above that could potentially be affected. Section 131(3) of the 1997 Act provides that the effect of the enforcement notice is suspended until final determination or withdrawal of any appeal. The 28-day compliance period does not therefore commence until the date of this decision notice. As my determination of this appeal, as expressed in this decision notice, postdates the only booking referred to by the appellants, it is apparent that a 28-day period for compliance with the notice would not require any committed booking to be interfered with. For these reasons, I have no basis to conclude that the 28-day period for compliance with the enforcement notice is unreasonably short. The appeal on ground (g) consequently fails.

Other Matters

35. I note that the appellants comment that the enforcement notice is defective because, they say, it does not specify what it requires to be done. In this regard the appellants suggest that the council should have described the nature of a use of the property for short-term letting occupation of the property that would not amount to a material change of use. It is not the purpose of an enforcement notice to seek to specify what use of the property would not amount to a material change of use. The breach of planning control alleged is specified in section 3 of the notice, and section 5 requires cessation of that unauthorised use. Although I have modified the requirements of the notice for the reasons explained above, I am satisfied that there is no inherent deficiency in the notice in this regard.

36. I note that Rhu and Shandon Community Council makes reference to works being carried out at the property without the benefit of listed building consent, planning permission, or building warrants. However, the enforcement notice is concerned with the use of the property and not any operational development. These matters are not therefore relevant to my consideration of this appeal.

Conclusion

37. I have found that there is force in the appellants' argument that, as worded, the enforcement notice could be regarded as potentially preventing the occupation of the appeal property as a dwelling house in a manner which might not amount to a material change of use. However, I am able to modify the notice so as to make clear that letting of the property by means of a private residential tenancy would not be a breach of its terms. This would be consistent with the principle set out in the judgement of the English Courts in the Mansi case, that an enforcement notice should preserve existing lawful uses.

38. Subject to the modification below, which I make in response to the appeal on ground (f), I determine that none of the other statutory grounds raised in this appeal against the

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enforcement notice, can succeed. The notice is therefore upheld, subject to the modification set out at the end of this notice.

Rob Huntley

Reporter

Modification

Delete section 5 of the enforcement notice and replace it with the text below:

5. WHAT YOU ARE REQUIRED TO DO

You are required to:

Cease the use of the Land Affected for short term visitor letting, other than any letting which comprises a private residential tenancy as defined in the Private Housing (Tenancies)(Scotland) Act 2016.

Time period for compliance: 28 days from the date this notice takes effect.

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of Schedule 7A of the Local Government(Scotland) Act 1973

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