



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

*Customer Services*  
*Executive Director: Douglas Hendry*

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

14 February 2018

**NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD** on **WEDNESDAY, 21 FEBRUARY 2018** at **10:45 AM**, which you are requested to attend.

Douglas Hendry  
Executive Director of Customer Services

**BUSINESS**

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**
- 3. MINUTES**
  - (a) Planning, Protective Services and Licensing Committee 17 January 2018 (Pages 3 - 34)
  - (b) Planning, Protective Services and Licensing Committee 24 January 2018 at 12 noon (Pages 35 - 40)
  - (c) Planning, Protective Services and Licensing Committee 24 January 2018 at 2 pm (Pages 41 - 48)
  - (d) Special Planning, Protective Services and Licensing Committee 9 February 2018 (Pages 49 - 54)
- 4. LICENSING OF FUNFAIRS IN SCOTLAND - CONSULTATION**

Report by Head of Governance and Law (Pages 55 – 90)
- 5. PLANNING (SCOTLAND) BILL**

Report by Head of Planning, Housing and Regulatory Services (Pages 91 – 104)

**6. INFENERGY LTD: ERECTION OF METROLOGICAL MAST (80 METRES HIGH) FOR A TEMPORARY PERIOD OF 3 YEARS: LAND APPROXIMATELY 1,593M NORTH WEST OF CRAIGENDIVE, LOCH STRIVEN (REF: 17/02949/PP)**

Report by Head of Planning, Housing and Regulatory Services (Pages 105 – 118)

**7. DEFENCE INFRASTRUCTURE ORGANISATION: NOTICE FOR PROPOSED SUBMARINE TRAINING FACILITY: LAND NORTH OF THE SPORTS PITCHES, HM NAVAL BASE CLYDE, FASLANE (REF: 18/00007/PAN)**

Report by Head of Planning, Housing and Regulatory Services (Pages 119 – 124)

**8. UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISIONS**

Report by Head of Planning, Housing and Regulatory Services (Pages 125 – 128)

**EXEMPT REPORT FOR NOTING**

**E1 9. ENFORCEMENT REPORT - REFERENCE 17/00164/ENOTH1**

Report by Head of Planning, Housing and Regulatory Services (Pages 129 – 134)

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

The appropriate paragraph is:-

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

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

**Planning, Protective Services and Licensing Committee**

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

Contact: Fiona McCallum

Tel. No. 01546 604392

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the MAIN HALL, VICTORIA HALLS, KINLOCH ROAD, CAMPBELTOWN  
on WEDNESDAY, 17 JANUARY 2018**

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

Councillor Gordon Blair	Councillor Donald MacMillan
Councillor Rory Colville	Councillor Roderick McCuish
Councillor Robin Currie	Councillor Alastair Redman
Councillor Lorna Douglas	Councillor Richard Trail
Councillor Audrey Forrest	

**Attending:** Charles Reppke, Head of Governance and Law  
Sandra Davies, Acting Major Applications Team Leader  
Richard Kerr, Principal Planning Officer  
Chris Read, Marine Harvest – Applicant  
Steven Bracken, Marine Harvest – Applicant  
Paul Featherstone, Marine Harvest – Applicant  
James Ross, Council’s Roads Officer – Consultee  
Marina Curran-Colthart, Council’s Local Biodiversity Officer – Consultee  
Iain Aitken – Neutral representee  
Councillor Donald Kelly, Supporter  
Tom Millar, Supporter  
Allan McDougall, Supporter  
Lyle Gillespie, Supporter  
Bill Roy, Supporter  
David Bassett, Supporter  
Bob Miller, Save the Gauldrons Group – Objector  
Valerie Nimmo, Objector  
Christine Russell, Objector  
Livingston Russell, Objector  
Fiona Walker, Objector

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Mary-Jean Devon, George Freeman, Graham Archibald Hardie, Jean Moffat and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. MARINE HARVEST SCOTLAND: ERECTION OF BUILDINGS TO FORM FISH HATCHERY INCLUDING FORMATION OF ACCESS, CAR PARKING AND ASSOCIATED LANDSCAPE BUNDING: MARINE ENVIRONMENTAL RESEARCH LABORATORY, LOSSIT POINT, MACHRIHANISH, CAMPBELTOWN (REF: 17/00642/PP)**

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and the Head of Governance and Law identified those present who wished to speak.

## PLANNING

Sandra Davies presented the application on behalf of the Head of Planning, Housing and Regulatory Services. A summary of her presentation is detailed below.

This is a major application for a large scale development comprising a commercial scale fish hatchery and other associated works including access and parking. The development would be located on a site adjacent to an existing Marine Environmental Research Facility (MERL) where developmental work leading to this commercial scale project has been undertaken.

Planning permission is sought for a Wrasse Hatchery for the breeding of Ballan Wrasse with the other associated works. The purpose of the development is to provide a marine fish farm company with a farmed source of cleaner fish which are used as a biological control for parasitic sea lice on marine fish farms.

Wild stocks of wrasse are insufficient to meet demand for this purpose and do not provide a sustainable source. Fish farm companies are increasingly looking at innovatory methods of sea lice control, in order to reduce reliance on chemical treatments and to improve environmental conditions at their farms. The applicants have been carrying development into the farmed production of wrasse at the existing research facility at Machrihanish with a view to building a commercial scale a facility with sufficient productive capacity to satisfy the demands of their marine farms within Scotland.

This application is for a large scale development located within the countryside zone which is not supported by the Local Development Plan unless an exceptional case is put forward and accepted by the Council and an Area Capacity Evaluation has been carried out which concludes the landscape has the capacity to accommodate such a development.

In this case it is therefore necessary for Members to consider firstly, if the development benefits from an exceptional case sufficient to warrant development on this scale in the countryside zone, secondly, whether an ACE assessment provides reassurance that the landscape has sufficient capacity to absorb development on this scale in the particular location proposed, and finally, whether there are other policy matters or any other material considerations which ought to influence the outcome of the application.

Before going on to consider the details of the planning application it is first necessary for Members to conclude whether there is a valid exceptional case and if so, to go on to review to the conclusions of the ACE. If this is accepted it is then appropriate to go on to consider the recommendations of the planning report.

Appendix C of the report contains the assessment of the ACE. For any ACE to be progressed an exceptional case must first be agreed. The exceptional case must demonstrate that the proposal has a locational and/or operational need tied to a specific location, or there is an overriding economic or community benefit which outweighs the other policies of the LDP.

This type of development requires access to seawater and is therefore confined to a coastal location. Most of the coastline in Argyll and Bute falls within the countryside development management zone, which in turn, confers undeveloped coast status on

the coastal edge. Only in the case of settlements, and other land allocated for development with a coastal frontage, will more favourable circumstances present themselves in settlement strategy terms. The exceptional case has been accepted by Officers on the basis that the Applicant has demonstrated through the consideration of alternatives there are no other allocated or otherwise suitable sites on the less sensitive developed coast which would satisfy the Applicant's requirements. In addition the location proposed will benefit from an association with the existing research facility both in terms of access to an existing marine abstraction and discharge, and the ability to build upon local expertise accrued during the developmental stage.

With officers having accepted that there is an exceptional case, an ACE has been carried out.

The landscape compartment includes Marine Harvest's developmental Wrasse hatchery facility and the associated University of Stirling research establishment which have a coastal location given their dependence on seawater. Other buildings within the landscape compartment include a Seabird and Wildlife Observatory, an old Coastguard Station and a further University of Stirling Building, all of which are developments dependent upon having coastal locations.

The area is defined in the SNH Landscape Assessment of Argyll and The Firth of Clyde as being a "Marginal Farmland Mosaic" landscape character type. Within this landscape type, the key characteristics include "undulating, uneven landform and rocky outcrops on the lower margins of the upland moor".

- indented rocky coastline with small sandy bays;
- archaeological sites.

The application site and its immediate surroundings exhibit all of these characteristics, in terms of the undulating uneven landform with rock outcrops to the south, the indented rocky coastline to the west and, in terms of archaeology, the remains of the former transatlantic radio station.

The areas which contribute to the definition of the character of the ACLC include:-

- the foreshore
- the open coastal strip formed by the areas of raised beach to the rear of the foreshore
- the elevated flat agricultural fields above the escarpment defining the extent of the raised beaches.

These areas are considered to be the Key Environmental Features considered worthy of protection.

The fairly flat coastal terrace does, however, provide an opportunity for development within the wider landscape compartment, subject to development not impinging unreasonably upon the defining attributes of the coast and, in particular, the more compelling views out to sea. It would provide opportunity for further development adjacent to the existing marine research laboratory provided that the proposal would not seriously undermine any of the KEFs identified previously.

In terms of visual and landscape impact, there are a number of elements of the proposal which may give rise to effects.

These include:-

- the five large agricultural style sheds
- the proposed new access
- the re-routing of a public path
- new earthworks and screening
- the re-direction of a watercourse
- the temporary construction access route

The proposed site would benefit from natural screening as it would be located immediately below the escarpment containing the raised beach thus ensuring that it is screened from long distance views from the north, the east and part of the south.

It is considered that the significant effects on visual receptors would be limited to relatively close views to the west and south-west which would be primarily experienced by those accessing the coast on foot along the recreational path to the Gauldrons. Although the development would be experienced by those on foot, it would be situated on the landward side of the core path and would not intrude in key views down the coast or out over the sea.

It should be noted that the site itself is not located within any landscape designation although there are some non-statutory designations within 5km of the site.

In conclusion, the buildings are protected from long range views by the effect of topography and will only be experienced at short range.

They would be screened on the approach by intervening topography and by being set against a backdrop of higher land formed by escarpment behind the raised beach.

Whilst recreational users would walk past the building at close quarters when heading south-west along the core path, this would form only a short section of the walk. In addition, the more compelling views would be down the coast and out to sea and not inland towards the hatchery buildings.

Furthermore, the presence of the existing Marine Environment Research Laboratory and Observatory reduce the sensitivity of this location to change resulting from additional development, given the presence of some marine related development in this area already.

The ACE concludes that the particular characteristics of the application site are such that the wider landscape has the capacity to absorb the scale and type of development proposed without giving rise to any significant adverse effects on the landscape character or visual amenity of the site.

Section 25 of the planning act requires that all developments be decided in accordance with the development plan unless material considerations indicate otherwise.

Policy DM1 of the LDP is supportive of large scale development in the countryside where an exceptional case has been accepted, and this is supported by an ACE which concludes that the site has capacity for development.

All of other policies relevant to this proposal are detailed and considered in the planning report.

The proposed development would comprise a close grouping of buildings in a rectangular form with a gross footprint of approximately 9000 sqm.

The design of this industrial building is considered to be acceptable subject to a condition which is proposed requiring the most prominent seaward elevations to be timber clad, which is a typical response to large structures with a location need in the countryside, such as large farm sheds.

The site is located on a popular recreational Core Path which provides access to the Gauldrons which is located to the south of the site. Should planning permission be approved for this development, a small localised diversion of the Core Path will be required and this will prompt a separate statutory process at the applicant's expense, with opportunity for public representation. Access to the Gauldrons would be maintained during construction and it is considered that whilst those using the Core Path will have to pass close to the new buildings once operational, the impact on amenity will not be significant given that the main focus for the walk will be in terms of views out to sea and further along the coast.

Concerns have also been raised in relation to the remains of an historic radio station which was established in 1905 and used for pioneering communication between Scotland and the USA. Within 12 months of this mast being used it had collapsed in a storm and all that remains are the concrete foundations of the structure and some hut bases and cable stays.

Historic Environment Scotland (HES) have taken the view that the site does have some cultural significance but have declined to afford the remains any protection by means of scheduling or listing. The West of Scotland Archaeology Service (WoSAS) has however expressed concerns about the impact on the remains of the radio station and has recommended that the application be refused in its current form.

The development would not result in the removal of the mast base itself but the remaining concrete foundations for the guy wires used to support the mast and the hut bases would be lost. In view of the cultural interest in the previous use of this site, the Applicant has agreed to include interpretation panels on the outer part of their visitor reception building and toilet block. This would afford opportunity to both explain the former use as a transmitting station and to explain the aquaculture process.

Clearly the site does have some cultural significance, however, all of the above ground structures have been removed and in its current condition the remains are not readily capable of interpretation. Given their unprotected status, regardless of the circumstances of the current proposal, it would be open for them to be removed, and despite a recent request for protection HES has declined to extend any form of protection to them.

In these circumstances, whilst Officers have taken account of the comments of HES and WoSAS, they are not convinced that the remains of the radio station are of such value to warrant their preservation in situ or for the application to be refused.

The Area Roads Officer has been consulted in connection with this planning application. There are no objections to the proposal subject to a number of road improvements which have been discussed with the applicant. A section 75 legal agreement would not be required as the land identified for the improvements is either within the road boundary or is under the control of the applicant. Further information on the proposed road improvements are detailed in Supplementary Report No.1.

The application has attracted a large number of representations both for and against the proposal. There just over 100 expressions of support with just over 60 objections. The points of support and objection are summarised in the report. No objections have been received from consultees with the exception of WoSAS.

In conclusion, it is the Officers' view that the Applicant has demonstrated an exceptional case, the findings of the ACE have shown that there is capacity within the landscape for this development and finally the proposal accords with all other LDP policies.

This is an important and innovative economic development which will contribute to the sustainability of Marine Harvest's marine fish farms in locations across Scotland, many of which are located within Argyll and Bute. The proposal will therefore contribute not only to the economy of South Kintyre, but will bring indirect benefits to aquaculture production both in Argyll and Bute and elsewhere.

Taking account of the above it is recommended that planning permission be approved subject to the conditions set out in the report.

### **APPLICANT**

Chris Reid, Environmental Manager gave a presentation on behalf of Marine Harvest Scotland. He was accompanied by Steve Bracken, Business Support Manager and Paul Featherstone, Hatchery Manager. He gave a quick overview of the proposal to build a recirculation hatchery to enable a sustainable source of clearer fish to use to supply salmon farms. He confirmed that this was an opportunity to build on work which has been ongoing for the last few years and that the proposed facility will produce up to 1 million juvenile Ballan Wrasse a year and allow a move to a more sustainable use of cleaner fish. He confirmed that the new proposal would work alongside the existing facility and work closely with other cleaner fish facilities owned by Marine Harvest.

He advised that the existing facility has been going since 2010 and is a joint venture between Marine Harvest and Scottish Sea Farms supported by research expertise of the University of Stirling. The initial 2 year trial has grown from there and has been successful in producing a steady source of cleaner fish to commercial farms. He advised that the trial facility does not have the scale or capacity to continue to meet the commercial demands.

He explained why they were using cleaner fish. He said that sea lice were the biggest challenge for fish farms across the world and that cleaner fish have given the opportunity to deal with the naturally occurring parasite. A key component of animal



welfare is the removal of these parasites from the fish. Previously this was dealt with through the use of chemicals. He said that the use of cleaner fish was more passive and environmentally friendly and not stressful to the fish. He explained that the bulk of cleaner fish currently use in salmon farms in Scotland were caught wild. He said that the long term implementation of this approach was not as sustainable as farming the cleaner fish. He said that farming the cleaner fish would remove the sustainability risk and would mean more consistency in the fish being distributed to the farms. He pointed out that there were two types of cleaner fish – Ballan Wrasse and Lump Sucker. He explained the difference between the two and advised that they would use Ballan Wrasse as it was easier to farm. He said that moving to farm cleaner fish was critical not just for Marine Harvest but for the aquaculture industry as a whole. He confirmed that the facility at Lossit Point would work in tandem with other facilities that they had. He commented that Wrasse farming was a complicated process and had a large number of life cycle stages which required a well-trained team who were very knowledgeable to make it work. He added that the facility required to be in close proximity to the shore and that the existing facility would be of benefit to them.

He referred to the elevations of the proposed buildings and pointed out that they would be as low lying as possible. He referred to the concerns raised about the facility being built on the Gauldrons and he confirmed that the site would be 800m north of where the Gauldrons were. He advised that an access path to the Gauldrons would run next to the facility and he confirmed that Marine Harvest would accommodate the re-routing of the core path.

On a slide he showed a montage view of the site from the Gauldrons. He pointed out the proposed buildings, the existing building and the coast guard building. He explained that there were a number of factors that were considered in choosing the location for this development. He advised that there needed to be a good separation from other active fish farms as it was important to reduce the risk of disease transfer to the fish on site as it would impact on other areas if the cleaner fish were diseased. He said that they also required to have suitable land and that the challenge was to find a location close to the sea. He pointed out that the land also had to be low lying, flat and available. He advised that within the Kintyre peninsula the proposed site and the MACC base were the only areas that they could consider to be feasible. Another factor was an available workforce. He pointed out that they already had a workforce here and that an additional 10 jobs would be created in addition to those already in the trial. He said that they needed a community nearby for the workers to live and that the area around Machrihanish was perfect in that perspective. He confirmed that the existing operation at Machrihanish had skilled and knowledgeable staff which was an added bonus.

He confirmed that they had extensive talks with the MACC base during 2014/15 to see if the facility could work at that location. He advised that they were stuck on two key issues – the availability of water and biosecurity. In terms of biosecurity, he explained that the possibility of other aquaculture facilities working near them could carry the risk of bringing disease on to the site and that they would rather avoid that if possible. He also referred to the risk of shared water intakes and discharges and roads. He advised that at the lava stage the Wrasse were sensitive to noise and that this was a risk they could not afford to take. He referred to the need for a pipeline to access water and that the issue was the make-up of the seabed. He advised that at the proposed site there was a rocky seabed which would be stable. He pointed out that at the MACC area there was a sandy seabed which would throw up two issues.

He explained that wild weather and wave action throws up sand and sediment which could lead to blockages in the pipes. He also explained that a sandy seabed was not a stable sandbank and that it could shift and swamp intake points which would lead to them losing the ability to intake fresh water. He advised that there were also environmental challenges as to access the water from the MACC area would require digging up the Machrihanish dunes to lay the pipeline. He pointed out that the dunes were a Site of Special Scientific Interest (SSSI). He advised that there would also be disturbance to the golf course and beach.

He referred to mitigating any potential impacts and confirmed that they were happy to accommodate the work required by the Roads Officer. He referred to road traffic during and after construction and commented that during the construction process there would be a temporary significant increase in traffic and that once the site was in operation there would only be a small scale increase in cars usage and only one additional van per week. In terms of noise he advised that it would take 12 months to complete the construction and that they would work with the contractors to ensure they were considerate during this process. He advised that the buildings were designed to absorb as much noise as possible. He said that traffic movements would also be done in a considerate way. In terms of visual impacts he confirmed that they intended keeping the buildings as low lying as possible and that earth mounds on the shore side would be built to not only act as protection from the weather but also to mask the building from the coastal path. He confirmed that in respect of marine discharge, all discharges fell under SEPA licensing and that the proposed facility would have the same technological issues as the existing one which has consistently met the SEPA criteria. He confirmed that they would be happy to work with SEPA to ensure that this continued to be the case.

He highlighted the benefits from this proposed development which would require 10 full time jobs in addition to those already in place at the existing facility. He advised that overall the development would bring a direct economic impact of £300,000 per year with an additional £80,000 indirect benefit to the community. He pointed out that the site would receive regular visits from Marine Harvest staff who would require overnight hotel accommodation. He confirmed that they would erect information boards which would cover items of local interest such as the former transmitting station as well as what the development was for. He advised that to have a commercial facility like this would be a first for Scotland and would allow the area to become a centre of excellence for aquaculture in Scotland.

### **CONSULTEES**

#### Council's Roads Officer

James Ross advised that one of the things he looks at is the suitability of an existing road for a development to see whether or not it can sustain current traffic and an increase in traffic. He referred to the number of nearby private dwellings along with existing buildings. He confirmed that he has been in discussion with the Applicant about ways to carry out commensurate improvements to the existing road which would include resurfacing and passing places. He confirmed that he felt there was a need for an additional passing place and that it was proposed to site this on the Machrihanish side of the site access. He confirmed that the works would be carried out in two phases with the first phase completed before construction works started at the site. He advised of the surfacing works that would be carried out and confirmed that after construction of the development was complete a check of the road would

be made to identify any soft spots that have developed which would require strengthening works. He confirmed that the road would also be resurfaced again in the final phase. He advised that he has also asked for passing place signs to be erected at each passing place. He said that this would hopefully discourage parking at these locations. He confirmed that he was comfortable with the proposal and that the Applicant has agreed to cover all the costs for this work. He commented that the additional passing place would make things better and the surfacing works would also extend the life of the road.

Council's Biodiversity Officer

A summary of the presentation given by Marina Curran-Colthart is detailed below.

As Argyll and Bute Council's Local Biodiversity Officer, my role in terms of Development Management is to provide impartial advice on biodiversity issues and where appropriate to request further information in the form of surveys on habitats and species related to individual sites so as to inform the decision making process.

Under my remit as the biodiversity officer and In terms of this application, I would like to focus on four areas:

1. Habitats - Open land – raised beech, rocky outcrops, small burn and relation to the coastline,
  2. The ornithological interest,
  3. Otters as a European Protected Species both in relation to habitat and activity and include mitigation,
  4. Plant species survey was commissioned by Marine Harvest Scotland,
  5. The proposed '*Naturalistic landscaping*' element of the proposed development which is to be designed and implemented as befitting the areas naturalistic character.
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1. Habitats - open grazing land, rocky outcrops, a ditch and located adjacent to the coastline: The beach is made up of rocky outcrops, sand and shingle. The site is rough grazing with remains of foundations of the former transmitting station present.
  2. The ornithological interest for this site: 7 difference species of birds were recorded
    - Twite
    - A Northern wheatear
    - A Song Thrush
    - Four Grey Herons roosting by Yellow Iris bed.
    - Meadow Pipits
    - Pied Wagtail
    - Golden Plovers

Noted these species are not just confined to this site as adjacent land is similar in habitat

2a. Butterflies: 4 species recorded

Butterflies included Painted Lady (1) Large White (2) and Small Tortoiseshell (1) A Small Copper butterfly.

3. Otters as a European Protected Species both in relation to habitat and activity and include mitigation:

During 18 surveys of Marine Harvest's proposed development site at Uisaed Point, Machrihanish during 18<sup>th</sup> July – 24<sup>th</sup> August there was negative results of Otters on, or near, the proposed development site.

No signs of Otters (scarts) were found on any walk through survey (18) of Marine Harvest's proposed development site.

If the Committee are minded to grant planning permission, I have recommend that a protocol for daily pre- start site checks for Otter, that all pipe ends are sealed and that any open foundations have a temporary ramp inserted to allow for escape.

4. Plant species survey was commissioned by Marine Harvest – did not identify any localised interest of significance, the conclusion being that many of the plant species are found to be present on many parts of the surrounding area.

5. The proposed 'Naturalistic landscaping' which is defined as 'imitating or producing the effect or appearance of nature,' is to be designed and implemented as befitting the areas naturalistic character thus supporting existing functioning ecosystems capable of providing habitat and food for animals and insects, whilst at the same time helping to perpetuate many native plants whose habitats are being reduced through development. I ask that I have sight of this design (to include naturalistic rock formation installations) and plant selection proposal in draft for comment, I have already advised this in my response dated 17 Oct 2017.

If the committee are minded to grant planning permission, I ask that the Applicant apply the mitigation and advice as set out in the surveys they commissioned.

**NEUTRAL REPRESENTATIVE**

Iain Aitken of the Machrihanish Holiday Park advised that having looked at the application he had concerns about potential road safety issues for pedestrians in the village of Machrihanish. He pointed out that the roads improvements were not for the village itself. He advised that currently the pavement was only 90cm wide forcing pedestrians onto the road. He confirmed that he had concerns about the increase in HGV traffic and other traffic particularly during construction. He advised that he also had concerns about when the site would be put in place and what the hours of operation would be. He asked that all his concerns be taken into consideration.

## **SUPPORTERS**

### Councillor Donald Kelly

Councillor Kelly advised that he thought it will have been very useful that the Committee managed to do a site visit as, he said, there has been a lot of misleading information going forward from the start of this campaign. He stressed that the proposal was for Lossit Point and had nothing to do with the Gauldrons. He commented that he knew the area well and pointed out that The Gauldrons started from the kissing gate which was well beyond the site. He said that the proposal would basically be as close to the existing site as possible which was a plus. He added that the proposal would be on a low lying area of low value agricultural land which was boggy at the moment. He advised that going back 30 years ago there used to be an agricultural shed so previously there was some sort of activity at that location. He referred to the concerns raised about the site of the Fessenden Radio station. He advised of a project set in motion a few years ago by the late Nancy Smith and Duncan McArthur along with the Campbeltown Community Council and The Laggan Community Council to recognise the Fessenden Radio station and at that time they proposed putting an information board at the entrance to the site. He advised that unfortunately after Nancy and Duncan passed away the project was never moved on any further. He commented that he was pleased to see Marine Harvest recognising the importance of this area and that they would be providing information panels at their proposed new facility.

Councillor Kelly confirmed his main point of supporting this application. He advised that in the 17 years as a local Councillor he has never received as many representations of support by email, phone and letter from the local community. He said that the reason for this support was that the University of Stirling have been at Machrihanish for 25 years and have created a facility that has created long term jobs. They have taken people into the local area and they in turn have put children into the local school and some are living in the local area which is reversing the trend of depopulation in the outlying areas.

He welcomed Marine Harvest's commitment to employ an additional 10 people and commented that it was good to see that these jobs were good quality high paid jobs. He referred to the majority of employees at Marine Harvest being young and said that it was important to support the youth in the community. He said that if this proposal gets supported this would lead to 10 new jobs and he advised that the added bonus was that the spins offs from Marine Harvest would be immense. He pointed out that the construction phase would be a spin off as there would be the potential for local contractors to get involved in the development.

He advised that the key thing was that this facility would put Argyll and Bute on the map supporting a cleaner greener way to addressing sea lice. He said that he would hate for this facility to be moved somewhere else and that there was a need to capitalise on this. He confirmed that he was 110% behind this project as local Councillor and he asked the Committee to consider supporting it.

### Tom Millar

Tom Millar advised that he was Director of MacFadyens Contractors. The firm has 75 employees living in the Kintyre area and they contributed to the economy and community. He confirmed that MacFadyens were an approved contractor with

Marine Harvest and that hopefully there will be future opportunities to continue. He advised that Marine Harvest were one of their key customers not only contributing directly through jobs but also through the supply chain of local opportunities. He said that working with them over the years has allowed them to develop their skills and has allowed them to take on apprentices for construction work and that he would like to see the company expand.

He said that Campbeltown was a fragile and rural community. He advised that Marine Harvest were repeat customers and that the proposed new hatchery would bring the opportunity of further maintenance and support work. He said that the fragile economy in Kintyre could not be underestimated and that there was a need to grab these opportunities and that they should not be missed. He commented that there was little opportunity for young people to gain employment here and that the majority left the area for further education with no opportunity to return. He said that there was a need for job opportunities to keep the community alive and growing.

He referred to a final report prepared by the Argyll and Bute Economic Forum which recognised the need for Argyll and Bute to maximise opportunities for aquaculture and which highlighted five things which were key to that:- staying close to the key decision makers; streamlining the planning application and consent process; encouraging the widening of species produced; enabling greater local processing to help add value to the local product; and enabling greater collaboration with the academic sector to ensure Argyll grows as a centre of excellence for aquaculture technology and product improvement. He advised that he hoped that this planning application would be granted in order that Campbeltown and the Kintyre community can continue to survive and evolve.

### Allan McDougall

Allan McDougall advised that he was Project Manager with MacFadyens Contractors and that he had a close relationship with Marine Harvest. He confirmed that they had a skilled workforce on call to Marine Harvest not just one or two men and that they carried out a wide variety of works to support Marine Harvest. He said that should Marine Harvest no longer be a key investor in the area there was concern that this would lead to a downturn in the area and an impact on jobs. He confirmed that he fully supported Marine Harvest's inward investment and said that this development should be embraced by the community as there were those who depended on it for employment.

### Lyle Gillespie

Lyle Gillespie advised that like many people in the area he went to university with limited opportunities to return to the area. He said that he was fortunate to work for MacFadyens Contractors whom enabled him to retrain as a quantity surveyor. He confirmed that he has been employed for 4 years now and that he knows of many others who have had to remain in the central belt. He advised that it was projects like this that will allow companies in the supply chain to employ more people and that this opportunity needed to be grasped with both hands.

### Bill Roy

Bill Roy advised that he was the Manager at the University of Stirling Research Laboratory at Machrihanish but was speaking today in a personal capacity. He said

that he has worked and lived here for 25 years. He also said that the Research facility supported aquaculture research with sea lice being key to the work they have been doing. He advised of being interested in the use of cleaner fish since the early 90s. He said that when Marine Harvest came on site in 2010 this led to research funding and support from Marine Harvest. He confirmed that they have continued with this research project and have been able to employ staff at the Marine Laboratory. The support from Marine Harvest as enabled investment in the marine laboratories and has allowed the unit to produce outputs of research and that they could see the benefits with their commercial partners. He advised that this project has been very important and that they he did not expect this to stop but to expand. He confirmed that he supported the project because of the benefits it has brought to his workplace and also to the local residents and that he was keen to see more jobs and more economic benefits. He advised that working with Marine Harvest has started something brand new in Scotland. He pointed out that it was first developed in Machrihanish and therefore it was only fair that it should continue at Machrihanish and that the development be allowed to go ahead.

#### David Bassett

David Bassett confirmed that he worked with Bill Roy at the Research facility. He advised that he was also the Chair of Southend Community Council but was speaking today in a personal capacity. He said that he was encouraged by what Marine Harvest and Bill have said about the cleaner fish. He said that from a personal perspective he believed cleaner fish were the short and medium term way forward as other methods were difficult and slow. He added that from the point of view of residents this investment was required in terms of jobs for the area and the young people. He advised that Campbeltown Grammar School and Argyll College were already teaching aquaculture and that there needed to be jobs in this industry here to enable the young people to stay in the area.

#### **OBJECTORS**

##### Bob Miller

Bob Miller confirmed that he was a Council employee. He advised that he was speaking in a personal capacity and also as a representative of the Save the Gauldrons Group. He said that the Group was an online group with a Facebook page and that as of last night had 960 followers, overwhelmingly from people that were opposed to this development. He said that it touched people who not only lived here but also visitors to the local community and people who used to live here. He acknowledged that everyone wants the benefits of the extra jobs and that everyone can see the benefits of Wrasse fish as an alternative to using chemicals and that this was taken as read.

He advised that the issue for the Group was the location of the proposed development. He referred to developments of this type normally being on brownfield sites and said that they did not think that an exceptional local need case has been shown in this case to build on the countryside site. He said that they believed that for this particular location the dis-benefits outweighed the benefits that have been muted and that Marine Harvest should be asked to look at alternatives within Argyll and Bute. He said that the Group think the Committee should reject this proposal. He advised that nowhere has it been demonstrated that this is the best site. He commented that it was hard to believe there were no other brownfield sites. He

pointed out that the Local Development and Plan (LDP) and the Supplementary Guidance on Coastal Development was only passed by the Council last year and states that "It is important that the character of the Argyll and Bute coast is protected from inappropriate development and that development which requires a coastal location is directed in the first instance to areas where development has taken place". He said that the overwhelming presumption is that the LDP is adhered to.

He said that the Group believe that the MACC site is such an alternative brownfield site. He referred to Marine Harvest giving four key reasons why they could not consider the MACC development. The first being skills transfer and having all that experience was vitally important. Mr Miller pointed out that Marine Harvest had another site down in Anglesey for the production of Wrasse and Lump sucker. He advised that an article in the Fishfarmer magazine said this site could produce enough fish for Scotland. He questioned how it was possible to transfer skills all the way down to Anglesey and not to the MACC site.

The Chair asked Mr Miller to pause his submission to allow a comfort break and the meeting adjourned and reconvened within a few minutes when Mr Miller was invited to resume his submission

He then referred to a second reason being biosecurity hazard and said there were two elements to this. He said that the first was biohazard from contamination and that the contamination element related to the proximity of the Niri fish farm on the site. He pointed out that this fish farm had now shut down. He said that this was a close containment facility which did not pump anything out. He then advised that the other element was the concept of lockdown if a nearby fish farm was contaminated which would mean Marine Harvest having to close down its site. He advised that this would only be an issue if this was the only site producing Wrasse. He pointed out that they had an alternative backup facility in Anglesey which would also produce Wrasse. He commented that the Planning Officer said that Marine Harvest were best placed to make the call if there was a biosecurity hazard he did not agree with that view. He then read out Marine Science Scotland's independent assessment in respect of lockdowns. He referred to Marine Harvest saying that they had intensive discussions with MACC. He commented that the MACC site was huge and that the only location they looked at was a single site at the end of the runway. He advised of an area where there was plenty flat land at the north end of the site and said that they had not looked at sites to the north.

He also referred to the supply of sea water and to tearing up the SSSI. He commented that this would not be necessary as Scotland was renowned for its drilling capacity. He said that no one has seen the paperwork or costings. He also referred to the tanks and the issue of sediment and to noise. He asked if the Committee had seen any evidence about noise and vibration at the airbase site compared with this site. He said they did not believe that it has been demonstrated that there are no other alternative sites across Argyll and Bute.

He referred to the disused radio station and commented that this was not an unappreciated site just an unexploited site. He commented that the WoSAS have said that this area should not be developed. He advised that this was not an insignificant field and once destroyed would be gone forever.

He also commented that Marine Harvest intended putting in a discharge pipe in an entirely different direction to the pipe which was already there. He advised that they



wanted to put in a pipe a minimum of 850m straight out to the north into the bay. He advised that in that bay was an 18<sup>th</sup> century shipwreck and it was also the site of a Viking battle and that all that archaeology has not been explored. He said that there was a need for a underwater archaeology survey to be done.

He then commented that the Committee have not benefited from the receipt of a full environmental impact assessment. He advised that Marine Harvest applied for and were granted a screening exemption. He said that the Group believe this was granted incorrectly under Schedule 3 of the Town and Country Planning Act particularly as the planning team did not have the full facts in front of them at the time as they did not have the assessment from HES. He referred to the Planning Officer advising that HES said the site had some cultural significance but have declined to afford the remains any protection my means of scheduling or listing. Mr Miller advised that the only reason HES did not do this was because the site was the subject of a planning application which meant they could not. He then advised that this site has a unique landscape character type.

He referred to the Biodiversity Officer mentioning a couple of studies undertaken by Marine Harvest and he commented that these were only done after the planning application had been submitted and that the Biodiversity Officer only required these to be undertaken over a couple of months. He commented that this was only one season in the year and that this was a place used by migratory species at all times. He also referred to the large number of different species that had been recorded.

In terms of social amenity, he said that the distressing element of submissions so far was that element referred to as the north of the Gauldrons. He said that this development would completely cover the top green part and to say that it was not of any consequence was an absolute travesty just because people would be walking passed it to get to the rocky bit. He advised that the green bit was used and valued just as much as the rocky part and that it was not a low value plot of land that could be sacrificed. He said that this would be a significant amenity loss. He referred to Councillor Kelly advising of the number of people that had contacted him and he said that they had hundreds of postings from people about this site. He advised that coastal development guidance says that you should not destroy pieces of the coastline without an understanding of local community use. He said that no study has been undertaken about this.

In respect of visual amenity he advised that you could not take a bit of coastline in isolation and take it out of wider panoramas. He advised that coastal guidance says it is imperative that consideration is also given to the views from the sea to the land and not just the land to the sea. He pointed out that the only view provided in a slide was a view from the cutting. He said that the main view was from the trig point and that there was no way you would not have that view ruined by having a large industrial building there.

He referred to economics and suggested that if Marine Harvest put this site somewhere else in Kintyre or Argyll and Bute all of these economic benefits would still apply.

He referred to the issue of the discharge pipe being glossed over as SEPA would deal with that. He advised that he believed this issue need to be addressed. He said that the sandy bit was a designated bathing water site with a Blue Flag status and this was where the proposed discharge pipe would point to. He said that part of

the economic viability of the area was tourism and he asked the Committee to imagine the impact on tourism if this Blue Flag status was jeopardised. He stressed that public health has not been assessed and that it was not enough to say that SEPA would take care of that. He also referred to comment about Wrasse being ecologically beneficial and stated that you could not grow 1 million fish per year without subjecting them to chemical treatments.

He referred to the Roads Officer confirming that Marine Harvest would be responsible for the cost of upgrading the road etc. He advised that this work has already been done and that the Council have already put roads infrastructure into the airbase already. He also referred to the increase in traffic movements along the road.

In summary he advised that the Group think the exceptional locational circumstances sufficient to overturn the LDP and SG have not been evidenced and have been insufficiently demonstrated. He said that the dis-benefits and potential dis-benefits outweighed the benefits. He suggested an alternative scenario. He advised that if this planning application was rejected the Group would go for community buyout of this site to be used for community use to be protected in perpetuity. He advised that the landowner would still get extra money. He said that this alternative approach would mean the benefits would flow for the many rather than profits for the few. He confirmed that the Group would like to oppose this application.

### Valerie Nimmo

A summary of Valerie Nimmo's presentation is detailed below.

My husband was born and brought up in Drumlemble, while I have lived and visited Drumlemble and Campbeltown for almost fifty years. In that time I have enjoyed many walks to the Gauldrons. These always started at the gate and latterly at the cattle grid. On my early walks there was only a neglected lifeboat station but then the University of Stirling took this over as a marine research station and I applauded the restoration of a derelict building. However since Marine Harvest came on the scene the site has gradually become industrialized. While I didn't like this, it was acceptable in that it was confined to one area and did not encroach on the exquisite place beyond. Because it is when you turn left at the present Marine Harvest facility and climb the small rise that you enter a magical place with views to Rathlin Island and Ireland. It was magical to William MacTaggart, Scotland's most famous landscape artist, who painted "The Coming of St. Columba" here. It was magical to Reginald Fessenden when he chose this place for its uninterrupted pathway for his first transatlantic radio communication. It is magical to the large number of visitors who walk this way all year round. It is also a sacred place. My brother-in-law was a miner at the Machrihanish pit. When it closed down he relocated to a coal mine in the north of England, but he always indicated that he wanted his ashes scattered at Uisead Bay and they were. Our family is only one of many local families who consider Uisead Bay a hallowed place.

Now Marine Harvest want to destroy this magical and sacred place by concreting over it, building a huge warehouse type building as big as a mega supermarket, diverting a burn, destroying the environment and habitats. This makes no sense to me when there is an alternative site available.

Argyll & Bute Council spent thousands of pounds producing a Local Development Plan in which this area was designated "countryside". Large-scale industrial development such as this should not routinely be permitted, where there are suitable sites elsewhere. As I have already said there is a suitable site elsewhere at MACC Business Park. Marine Harvest Scotland has not shown that they have investigated all sites in the business park. They have cited some dubious science to the effect that there would be cross contamination from a nearby onshore salmon farm yet failing to show any evidence that diseases of salmon can be transmitted to wrasse. They have stated that there would be problems accessing seawater. Yet the miners of Drumlemble and Machrihanish could tunnel under the dunes and out to sea with their limited technology in the fifties and sixties. Again Marine Harvest has failed to show at their public meeting or subsequently that they have investigated the feasibility of such a pipeline.

Argyll & Bute Council has spent thousands of pounds developing the infrastructure in and around the MACC Business Park and if, this proposal goes ahead they will have to spend thousands more on the infrastructure at Machrihanish. While I note that the developer has to improve the public road from the end of the two-lane carriageway to the site access this does not take into account the damage that will be done to the approaching road surfaces.

In addition, according to the Committee Planning Application Report, Scottish Water cannot confirm that there is sufficient fresh water supply for this development. It is inconceivable that a development of this size can be permitted without a guaranteed water supply. Argyll & Bute Council will have to ensure that the local villagers have priority for water.

Argyll & Bute Council are presently consulting on a new local development plan where there is a possibility of creating a new National Park on Argyll's west coast and its islands. This is an excellent proposal, which would combine protection of the environment and expansion of tourism. Marine Harvest's proposed plans will desecrate a countryside coastline zone popular with tourists.

Tourism is one of the most important employers in Campbeltown and surrounding areas. The shipyard came and went, Jaeger came and went. Dairy farming and fishing are in decline. The one employment area, which is expanding, is tourism. It is important that we protect the countryside that tourists come to enjoy.

It appears to me that a development at Lossit Point may be a cheaper option for the company but not for Argyll and Bute Council. The council taxpayers of Argyll and Bute I would suggest are not going to be happy to learn that in these cash strapped times that they are subsidising a multi-national company.

I appeal to you to uphold the Local Development Plan and reject this proposal.

Save Argyll and Bute Council from needless expenditure. Save our tourism jobs. Save our countryside.

Christine Russell

Christine Russell advised that she was an artist and lived and worked in Argyll. She said that she mainly painted pictures of Kintyre and that her pictures could be seen in galleries all over Argyll. She said that she was in no doubt that the area of the

Gauldrons was the best loved part of Argyll and she sold the most pictures and received the most commissions for that area. She said that the Gauldrons were the most beautiful part and advised that when you left the present industrial part this opened up to important vistas of green fields where you could see the headland. She pointed out that on one side was the Atlantic. She referred to the remoteness and uniqueness of the area and described it as quite beautiful and unspoilt. She referred to visitors to the area and commented that one local business took in £4,000 in one day when a cruise ship recently visited Campbeltown. She advised that she and her husband have agreed to take two coach trips to the Gauldrons when the next cruise ship comes in. She said that if this industrial proposal was allowed to go ahead then we must forget about tourism. She said that this part of the country was one of the most valuable we had and that to destroy it would be short sighted and wrong.

#### Livingston Russell

Livingston Russell said he echoed what his wife had said. He advised that one particular thing had struck him – cost benefit analysis. He said that all the costs seemed to be on the local community and all the benefits seemed to be for Marine Harvest.

#### Fiona Walker

Fiona Walker said that the Gauldrons was a very special place. She advised that she and her family have been coming here for 72 years and that her grandparents and parents came on holiday and that they owned a small cottage at the end of the loch. She referred to there already being traffic to the development with the fish farm buildings already there. She advised that there was an alternative that must be taken up. She commented on the proposed five large sheds and said that no natural screening could stop it looking dreadful. She advised that the existing fish farm already made a lot of noise and had lots of lights. She said that she understood the argument for jobs. She asked the Committee to grasp the alternative suggested by Mr Miller. She confirmed that she would not like to support this application.

The Chair ruled and the Committee agreed to adjourn the meeting at 12.40 pm for lunch.

The Committee reconvened at 1.15 pm.

### **MEMBERS' QUESTIONS**

Councillor Redman referred to the creation of new jobs and jobs for life and asked the Applicant to comment on job security and the opportunity for career advancement. Mr Reid said the job for life term was a difficult one. In terms of job security, he advised that the area of cleaner fish was a growth industry where lots of investment was being made not just by Marine Harvest but by others. He said that Marine Harvest had a lot of fluidity for employees to move from within one area to another. He said that they recognised that people were likely to arrive with certain skill sets and that there would be opportunities there if people were willing to develop. He added that people could start at this site and go on elsewhere in the country or take what they have learnt and build on it somewhere else. He advised that the jobs were as secure as they could be in terms of what they were trying to do

Councillor McCuish referred to Mr Miller saying that this development would destroy the coastline. He asked Mr Miller to advise what effect the existing building has had on the coastline and if this site was of such national importance, he asked why the Group had waited until now to consider a community buyout. Mr Miller replied that he thought it was obvious if you were to stand at the trig point and look northward the existing site only has a deleterious effect. The difference, he thought, was that here this was a much larger size and magnitude. He commented that the existing facility did impinge on the distinct and enclosed bay and that this was an unspoilt vista. He referred to the Coastal Supplementary Guidance and advised of the need to consider the land to the sea, the sea to the land and the 360 degrees around that.

In regard to Councillor McCuish's second question, Mr Miller advised that the Save the Gauldrons Group was set up after the first presentation given by Marine Harvest to the community. He advised that it was not set up to promote that area per se. It was for the same reason that no one decided to go for a designation as it was already designated as countryside. He advised that they did not think that because of this designation that someone would build on it. He commented that the HES designation that this site was culturally significant was the highest it could give out without listing or scheduling the site. He pointed out that the community right to buy law was only relatively new. He commented that they had the expertise to do this as they knew the people involved with MACC and that they would tap into this if the Committee decided to go against this application.

Councillor Colville referred to the Applicant advising in their presentation about their partnership working and he asked for some background on this. He also asked the Applicant to advise on the process for receiving an operator's licence from Marine Scotland Science. Mr Reid confirmed that the existing trial facility was a joint venture between Marine Harvest and Scottish Sea Farms and that this was supported by the University of Stirling which provide research. He said that the actual activity on the site was a joint venture and that the University of Stirling used this facility to carry out their research. Mr Featherstone confirmed the relationship with the University. Mr Reid confirmed that this development was Marine Harvest's only facility. In terms of the future of Wrasse he said that they saw that as a massive growth part and the optimum thing for addressing sea lice issues. Mr Featherstone advised that he regarded Wrasse as the end game in the battle against sea lice and he explained the benefits of using Wrasse. He advised that ultimately by 2021 we will have cleaner fish as a farmed source.

Councillor Colville commented that he remembered visiting the site 12 – 15 years ago and that research at that time was undergoing in respect of cod. He also commented that there was a big debate about raising salmon out with the sea in tanks and asked if this was the case would there still be a need for Wrasse. He said that it was his interpretation that raising salmon in tanks was unhealthy for the salmon. He asked the Applicant if he was correct or could Wrasse be done away with if everyone moved to onshore fish farming. Mr Featherstone advised that onshore or close containment was in its infancy and that there were a lot of technical challenges in creating salmon up to 4 or 5kg in this way and a lot of work needed to be done to make it viable. He said that it has been tried in other parts of the world and has not been successful so far. Referring to onshore systems he said the challenge would be finding available sites for onshore salmon farming as extensive space was required. He advised that it was also more expensive to run than cage systems. He agreed that it was quite right that the behaviours of salmon in tanks meant it was more stressful to salmon than in cages. He advised that he could see it

being a long time in the future for the salmon industry to go into tanks onshore. Mr Bracken gave an example of a smolts hatchery in Lochailort and the size that these hatcheries need to be. He advised that they have tied their colours to the mast and that they wanted to rear fish in the sea and to have better containment in the sea. He advised that he could not see the Wrasse disappearing like that. He said that in Norway they have 30 or 40 facilities growing cleaner fish so they are committed as well. Mr Reid agreed about the behaviours of salmon in tanks and that they were trying to avoid that. He said that they would prefer a good current flow in pens. He advised that to give the salmon the same environment they currently had in the sea on land would need large volumes of water. Mr Reid advised that Marine Scotland authorisation was principally carried out for salmon farms to make sure salmon farms did not overlap and create opportunities where a disease could hop from one place to the next. He confirmed that there would be no issue of overlapping at the location of the site.

Councillor Colville asked the Applicant if granting this application would mean the Marine Scotland would not grant a fish farm nearby. Mr Reid advised that he would expect Marine Scotland would cluster the two facilities into one disease management area. He advised that he did not know the details of what other proposals there were.

Councillor Colville sought and received confirmation from Mr Kerr on the conclusions of the Area Capacity Evaluation.

Councillor Douglas expressed concern that this proposal was moving away from the LDP. She also referred to the number of environmental issues raised. She asked the Applicant to confirm what the lifespan of the Wrasse was and what the production rate would be. She also asked that if further expansion was required would this be the best place. She referred to the issue raised about the Blue Flag status of the beach and ask what the impact of the proposal would be on this beach. Mr Featherstone advised that the Wrasse process took 18 months from eggs to final size. He said that once the Wrasse reached their final size there was about three inputs into the sea every year – early spring, late spring and late autumn to coincide with the input of smolts into cages. He confirmed that Marine Harvest had a facility in Anglesey and that the idea was to work in tandem with the development at Machrihanish. He advised that he did not see any cause for the existing application to be expanded on as there was good scope to bring the fish to a certain stage and to then have them transported onto Anglesey to grow to their final size.

Referring to environmental issues and the Blue Flag status of the beach he advised that he thought the existing discharge pipe was going to be extended into slightly deeper water and that was all. He pointed out that SEPA seemed quite happy with the situation and that they have received no adverse comments from SEPA. He advised that the base has been operating since 2002 initially as a cod hatchery and now for Wrasse. He confirmed that SEPA regularly take samples and no adverse comments having been received over this time. He pointed out that SEPA were consulted on this application and that he assumed they were happy with the proposal. He confirmed that they did use chemicals and medicines from time to time during the process and that SEPA were aware of this. He confirmed that they were looking at reducing the need for chemical use with Wrasse and that they were looking at probiotics as an area to be looked at to reduce chemical usage.

Mr Reid advised that in terms of the length of time Wrasse were on farms, they were permitted to be on a site for 2 cycles which was 4 years and at that point this was the limit when any population of cleaner fish could be on site. At that point they required to be culled and new fish used. He advised that Marine Scotland were concerned that over time the cleaner fish would start to harbour diseases from salmon and that there was a need to limit this risk. He confirmed that under the current guidance there was a need to refresh at least every 2 cycles. He confirmed that because of this there would be an ongoing need to ship cleaner fish to farms. He advised that the new development would be for brood stock and that it would be critical in the overall process. He confirmed that Anglesey would grow them on. Mr Featherstone confirmed that they had their own brood stock and that they were now into the first generation of farmed Wrasse and that it was very important to maintain the integrity of that. He stressed that if they had to go through a lock down if any disease came in they would have to start again. He confirmed that it has taken 7 years to get to this stage as the Wrasse were very slow growing. He confirmed that biosecurity was of paramount importance to them.

Councillor Douglas asked Planning to clarify what their understanding was of an exceptional case. She also asked the Objectors and the Applicant to confirm whether or not they felt there was enough consultation carried out on this planning application. Mr Kerr advised that he firstly wanted to make it clear that the issue of discharge consent is solely for SEPA under their control regulations and was not a planning consideration. He pointed out that there was plenty of Government guidance for planning not to go into pollution control and that was why very little comment has been made on this in the report. In terms of the exceptional case he explained that the reason there needed to be an exceptional case was because the land was not allocated for development. He confirmed that it was in the countryside zone which allowed certain kinds and scales of development. He advised that this was a large scale development which would not normally be considered so, to be accepted, there needed to be an exceptional case put forward. He said that this stems from being a marine development which requires a coastal location. He advised that they had few coastal sites in Argyll available for development and that the obvious one was at the MACC base. He confirmed that they raised this initially and alerted the company to the MACC base as a potential alternative site and they did go off and look at the opportunity of developing that site. This was discounted and therefore in the absence of an allocated site to put this development on, in the absence of a brownfield site and a site for development at the coast all that pointed out that this was an exceptional case. He confirmed that as there was a requirement for a coastal location, that there were benefits to the Applicant's capitalising on their existing facility and in the absence of other suitable sites, Planning have regarded this as an exceptional case with a locational need. Subsequently to that, he confirmed that the ACE process was able to show the landscape had capacity.

Mrs Russell referred to regularly visiting the Gauldrons at least once a month and that on a wild day you may meet no one and on a nice day you may meet 20 people. She confirmed that no one has asked her about the Gauldrons and she did not think there has been any survey of tourism uses. She said she did not know anything about Save the Gauldrons.

Mr Miller advised that he thought there had been an adequate consultation process. He said that they thought the deficiency was the lack of evidence they could comment on. He advised they had no environmental impact analysis, no evidence of Marine Harvest's options appraisal of other areas, no evidence of appraisal of the

MACC site. He questioned how they could judge how good their appraisal process was. He commented that there was no noise study and no independent analysis of biohazard and no study of leisure impact.

Mr Reid said it was difficult to say whether enough consultation had been carried out. He advised that there will always be some that will take the view there should have been more information. He confirmed that anything they have been asked to provide they have produced in a timely manner.

Councillor Trail asked the Roads Officer to comment on the concerns raised about road safety and the risk to pedestrians in the village. Mr Ross confirmed that the biggest concern would be during the construction phase. He advised that this could be addressed through a driver's code of conduct. He advised that he did not know who the main contractors would be but quite a lot of the local contractors would know the area well. He confirmed that driver's codes of conduct have been used before eg. Timber transport driving passed schools. He advised that if a code was put in place all contractors would need to sign up to that and the only way of keeping an eye on that would be through the public and if we receive any complaints. He acknowledged that when the construction work was finished there would still be an increase in vehicle movements. He pointed out that there were speed limits in the village and if there was irresponsible driving this should be reported to the Police.

Councillor Blair asked if a traffic survey had been done. Mr Ross confirmed that for this scale of development they had asked for a report on existing vehicle movements and predicted vehicles movements and tonnage during construction and after construction. He advised that this was all looked at and it was obvious that there would be an increase during the construction phase and that once that has all settled down they would be looking at 10 extra employees and possibly 10 extra vehicles per day. He pointed out that the biggest problem was the local road users and those familiar with the area. He advised that if the single track road was used a lot by pedestrians they could look at erecting pedestrian road signs to warn drivers.

Councillor Blair sought and received confirmation from Mr Reid that Marine Harvest have never been prosecuted in respect of biosecurity.

Councillor Blair sought and received confirmation from Mr Kerr that the Council were involved in the shellfish environmental. He confirmed that this was a food hygiene issue for environmental health. He advised that SEPA were in charge of the CARS licence process. He confirmed that the ability to discharge was controlled by SEPA and the impact on shellfish and food hygiene concerns were Environmental Health and that both industries would work together to a degree. He confirmed that this was not a planning consideration.

Councillor Blair referred to comments made about the wildlife survey that was carried out only being a snapshot in time and he asked the Biodiversity Officer if this was the normal practice to do a snapshot or would it be more appropriate to do a longer survey. Ms Curran-Colthart confirmed that the survey was carried out during the optimum time. She advised that as there was no additional information in terms of rough grazing and that there was ample other rough grazing adjacent what the Applicant has come up with in terms of mitigation was fit for purpose.

Councillor Blair asked Mr Roy if they saw their current research in Wrasse coming to a close and, if so, would they diverse into other areas. Mr Roy confirmed that they



have been working on salmon for 50 years since commercial farming started. He confirmed that their main work was salmon but they did not expect their work on Wrasse to stop very quickly. He advised that similar technology for Wrasse was being used for other fish species. He said that they have tried cod and others were trying halibut. He confirmed that the work gone in so far would not be wasted and could be diverted but he did not see the work on Wrasse stopping anytime soon.

Councillor Currie commented that Mr Miller went on at length of the potential loss of visitors to the area as it was so picturesque just now. He asked Mr Miller if he also thought this was the case for other picturesque places such as Ardnamurchan, Ross of Mull, the head of Loch Fyne and Kerrera. He commented that these areas all had fish farms and he asked Mr Miller if he believed visitor numbers to these areas had decreased. Mr Miller advised that he could not comment on whether visitor numbers have fallen in other areas. He advised that anywhere where you have a special place with unique qualities you could not deny its benefits. He said that the issue here was why the development had to be on this beautiful special site. He advised that he believed the Applicant had not proved that this was the only site possible.

Councillor Forrest referred to Scottish water saying they have no objection but also saying there was no guarantee that the proposed development could be serviced. She asked Planning if this was a massive hurdle and whose responsibility would it be to deal with it. Mr Kerr advised that the onus was on Planning to consult with Scottish Water and that they had the opportunity to object if they were not happy with the proposal. He advised that if they could not service the site at the moment this would be because there was insufficient capacity at the treatment works etc and this would not be an impediment to any development necessarily. He said that if augmentation of the system was required that would need to be carried out at the developer's expense and condition 15 detailed in the report refers to this. He advised that there would be no prospect of the development going ahead without a public water supply being available. He commented that obviously the majority of the water required on site would be sea water.

Mr Reid confirmed that it would be their responsibility to deal with that and if they got passed this hurdle this would be the next step and they accepted that this was their responsibility.

Councillor Colville sought and received confirmation from Mr Kerr that condition 9 related to the landscape mounding and reference to it being naturalistic.

Councillor Kinniburgh asked Planning why it was deemed that an Environmental Impact Assessment (EIA) was not necessary in this case and he also sought clarification on Schedule 3 of the Town and Country Planning Act. Mr Kerr advised that through initial discussions with the Applicant it was identified that this was a scale of development that would be appropriate to go through screening for environmental impact to determine if a report was required or not. He advised that there were circumstances set out and derived from European directives which would mean a report was mandatory and in this case it did not fall into any of these circumstances. In this case a discretionary screening process was gone through and it was determined that an EIA was not required as it was not a designated site in relation to the historic environment or nature conservation. He advised that the only one was geological and it had already been arranged for SNH to go out on site. He confirmed that as the site had no qualifying interests it was agreed that an EIA was not required.

Mr Kerr also advised that schedule 3 was an environmental impact regulation and not planning legislation. He advised that the schedule set out things to take into account when determining whether or not an EIA was required.

Councillor Kinniburgh sought comment from Planning on the statement made that HES could not designate the site because a planning application had been submitted. Mr Kerr advised that this was a policy decision taken by Historic Scotland before it became Historic Environment Scotland. He said that he thought the reason for adopting this stance was to avoid them trumping the decision by planning decision makers. Mr Kerr advised that he did not think there was a statutory bar on them doing it. He commented that they obviously routinely survey areas.

Councillor Blair sought and received confirmation from Mr Kerr that Planning Officers determine whether or not an EIA is required.

### **SUMMING UP**

#### **Planning**

Richard Kerr summed up as follows:-

This proposal represents an important initiative in the evolution of the aquaculture sector. One of the most difficult challenges facing the fish farming industry is the prevalence of parasitic sea lice on farmed fish, which present a welfare issue for fish producers and which by their propagation into surrounding waters pose a threat to the health of wild fish.

The conventional method of lice control by the fish farm producers has been by means of chemical treatments the effectiveness of which has diminished as increased resistance has been built up. This has led to the need to use innovative methods to augment conventional treatments and has led to experimental biological control. The most successful species employed for this purpose have been Ballan Wrasse, although their use in numbers means that wild caught fish do not provide a sustainable source sufficient to meet the needs of the industry. This has led to research into the production of wrasse by farmed methods, using recirculation equipment. Much of this developmental work has been conducted by the Applicant at the Marine Research Facility at Machrihanish.

This has now progressed to a point where the Applicant wishes to commence commercial scale production in order to meet the demands of their marine farms up and down the west coast, many of which are located in Argyll and Bute. The production of seawater fish on land is dependent upon access to the sea in order to be able to secure the necessary seawater abstraction and discharge. This necessarily prompts a site search limited to coastal sites. Given that the Applicant's expertise in this innovative area has been accrued at Machrihanish, their preference has been to build upon this by establishing a production scale facility nearby; although the need for a single production point to serve geographically dispersed sites across a wide area means that this is ultimately a footloose proposal, albeit confined to prospective coastal locations.

Readily suitable development sites on the coast in Argyll for a venture on this scale, within a settlement bounded by the coast for example, are not available and the

development plan does not specifically allocate coastal sites for this purpose. Following pre-application discussion the Applicant was advised to give consideration to the suitability of the MACC base and we are aware that despite having done so, for reasons which have been given, that site was discounted. Brownfield coastal sites suitable for aquaculture purposes are few and far between. Permission has already been given for the redevelopment of the redundant former fish farm at Tayinloan, and there are no similar sites available elsewhere in Kintyre. Most undeveloped land on the coast in Argyll falls within the 'countryside' development management zone, which presumes against many forms of development, including proposals on this scale, unless there is a justifiable exceptional case advanced, supported by a landscape analysis in the form of an Area Capacity Evaluation.

In sourcing a prospective site there have been a number of factors influencing the Applicant, namely the desirability of exploiting expertise gained thus far during the developmental stage of wrasse cultivation, the ability to secure consentable seawater abstraction and discharge, and the need to locate in an area remote from either existing or likely proposed aquaculture sites, in order to minimise biosecurity risk. The latter is a particular issue for this type of process, which will see fish produced on the farm being distributed across many production sites over a wide area; hence the aversion to anything which presents an avoidable disease transmission risk. These factors have pointed to the suitability of a site adjacent to the existing facility at Machrihanish.

The process for Members to follow in the adjudication of this application for is therefore a) does the proposition advanced by the Applicant amount to a justifiable exceptional case sufficient to satisfy development plan policy, if so, b) does the ACE assessment provide sufficient reassurance that the site selected is appropriate to accommodate the scale of development proposed, and then c) what other material considerations are there to be weighed in the balance.

The report and the presentation today confirm the Officers' conclusion that, on the basis of the facts of the case and the views expressed by consultees, the development ought to be approved having regard to the Applicant's case, the conclusions of the ACE undertaken by Officers, and consideration of other material considerations; including views expressed by consultees, and supporters and objectors. The development is one which will make a contribution to the local economy of South Kintyre and which will be an important initiative in aquaculture production in locations up and down the west coast. In weighing the balance between these economic advantages and the local environmental impacts, it has been concluded that permission ought to be granted as an exceptional case sufficient to render the proposal consistent with the provisions of the development plan.

Suitable vehicular access to the site and connection to existing seawater abstraction and discharge points can be readily achieved. The buildings although extensive in footprint have been kept as low as possible and benefit from rising land at the rear, which serves to provide a backdrop in short range views, and screens opportunity for long distance views. There will be some localised adverse visual amenity effects, but the use of materials appropriate to a rural location will help assimilate these structures in their landscape setting. Footpath access along the coast will require a localised diversion under separate powers, but those accessing the coast would continue to enjoy the most compelling views without interruption, which are out to sea. There are no significant adverse nature conservation implications and the

interests prompting a local geological designation are unaffected. The proposal will pose some historic environment implications in that some remnants of the foundations of the former radio transmission station will be lost to development. These are neither listed nor scheduled as monuments and do not therefore benefit from any ongoing protection as historic assets. Interpretation facilities proposed by the Applicant will address not only the intended use of the site, but also the historical use of the land as a transmission station.

I commend the application to you on the basis of the recommendation and the conditions set out in the report.

### **Applicant**

Chris Reid clarified some minor points in relation to the MACC base in respect of biosecurity and lock down. He said that if they were located on the MACC base and an issue arose which required lock down at another facility this would affect them. He confirmed that this element of separation will give them extra security to continue. He added that the MACC base were looking to develop further over the next 20 years and Marine Harvest would not like to be in the middle of a large development at that location. He confirmed that the Anglesey operation would run in tandem with the Machrihanish one and that both were needed to achieve fish numbers. He advised that recruitment processes have run for Anglesey and that he did not see the staff being interchangeable with those here.

### **Consultees**

#### Council's Roads Officer

James Ross confirmed that he had taken on board comments about pedestrians and that he would look at a driver code of conduct and the erection of pedestrian signs on the single track road.

#### Council's Biodiversity Officer

Marina Curran-Cotthart confirmed that the site itself was not nationally designated. She advised that SNH were statutory consultees and had declined to offer comment on this application. She confirmed that the surveys were fit for purpose and were carried out at the optimum time and that they were also carried out by suitably qualified persons. She advised that she was interested to hear there were 400+ species of birds in the area. She confirmed that the purpose of the survey was to allow the Planning Authority to make decisions based on the outcome of a survey. In this case she confirmed that there was nothing specified in terms of threatened species. The survey also steers the developer to schedule works that will not disturb the wildlife. She added that she welcomed the naturalistic landscaping.

### **Supporters**

Councillor Kelly confirmed that if he felt this proposal was in anyway detrimental to the community he would be sitting with Mr Miller. He advised that he felt this development was very beneficial and should absolutely be embraced.

Tom Millar reiterated the importance of this project going ahead for the local community and for the survival and growth of Kintyre and the Campbeltown area.

He referred to comments made by objectors about the MACC base. He confirmed that he was the Chair of the MACC Airbase and he advised that they did have extensive discussions with the Applicant when HIE took the opportunity to them. He advised that they went back and forward with drawings and there was much discussion about biosecurity issues and also the problem that MACC did not have access to the sea. These obstacles all mounted up and from a MACC perspective they had to accept that.

Allan McDougall advised he had nothing further to say and that he fully supported the application.

Lyle Gillespie confirmed that he still supported the application.

Bill Roy advised he had no further comment to make.

David Bassett advised that if no one walked to the Gauldrons anymore they were welcome to come to Southend. He confirmed that a colleague who had children who walked to the bus stop, would have concerns about pedestrian safety during the construction phase.

### **Objectors**

Bob Miller advised that he did not say there were 400+ species of birds and what he had said was there were 430 species of all types of flora and fauna. He pointed out that SNH had not commented except about geology. He confirmed that when he asked why this was the case SNH had advised that this was not due to a lack of importance of the site but due to declining resources and that they were unable to respond to everything. He said that he hoped the Councillors would object and if the application was objected he had drafted a competent motion to support this objection which he read out.

Valerie Nimmo advised that she was not disputing the value of the Wrasse or the bringing of high quality jobs and jobs during the construction phase. She confirmed that she was disputing the location of the development. She advised that she did not think Marine Harvest had provided Planning with sufficient evidence to allow this development to be classified as exceptional and she said she did not think it should be given the go ahead.

Christine Russell advised that she was very pleased for all the Atlantic salmon that would be happy and pleased for the jobs coming to Kintyre. She said that she was distressed that the landscape was not valued as much.

Fiona Walker advised that she would like to support Bob Miller and Valerie Nimmo. She confirmed that she did not support the development which would spoil the area. She advised that she understood the improvements that would be made using Wrasse and the argument for jobs.

The Chair established that all those present had received a fair hearing. In terms of the Councillors National Code of Conduct, Councillor Donald Kelly, Supporter, and also Councillor Anne Horn, who had observed the hearing, left the meeting at this point.

## DEBATE

Councillor Colville advised that he was impressed by the existing facility. He commented that he did not believe the development would have a detrimental effect to visitors to the area. He advised that the existing facility had no impact on a wildlife observatory next to it. He said that the key thing for him was that one of the driving forces for economic development in Argyll and Bute was Dunstaffnage and that he has often thought that there was a real prospect here to have something similar at Machrihanish with the University of Stirling having a facility here. He commented that Kintyre has always been industrial and there was a need to replace the industries that have come and gone. He advised that the key policy was LDP 8 – Supporting the Strength of our Communities and for that reason he would be supporting the application.

Councillor McCuish advised that he would be supporting the application and said that this was not just a feather in the cap for Kintyre but a fantastic thing for Argyll and Bute. He commented that he understood the objectors' point of view and he acknowledged that this was wonderful scenery with wonderful views but you could not eat the scenery. He advised of the need to protect the people looking for jobs and wanting to stay here. He said he was jealous of this development coming to Kintyre and he wished it all the best.

Councillor Currie advised that for the reasons outlined in pages 14 and 15 of the agenda pack he had no hesitation in supporting the application.

Councillor Douglas said that she had given great thought to what she had read in the planning report and to what she had heard at the hearing. She advised that she had sympathy for the objectors. She advised that what came to mind was her visits and holidays to Ardnamurchan. She said that the introduction of fish farms there had not stopped her from visiting. She advised that the scenery in Scotland had to be balanced out with local jobs and the economy and for that reason she was supporting the application.

Councillor Forrest thanked the objectors for making a good case. As far as she was concerned, the Applicant had made an exceptional case and the recommended conditions were substantial and would address issues raised. In terms of the LDP to support the economy of rural communities, by encouraging the retention of this facility she said this was a start in this direction.

Councillor Redman advised that in his view industry was good and created jobs and growth. He said that Argyll needed more jobs and more growth and for that matter he would be supporting the application.

Councillor Blair advised that he had taken on board the environmental issues raised by objectors. He commented that he thought it was a missed opportunity for not having an EIA for this type of activity and that he was disappointed that there was none. He suggested that Marine Harvest should work in partnership with the community regarding their landscaping. He confirmed that he would be voting in support of the application with the proviso that he would expect the Applicant to have partnership working with the community in respect of landscaping mounding and biodiversity issues as heritage was so important.

Councillor MacMillan advised that all the questions he would have asked were asked by other Councillors and that he was delighted to support the application.

Councillor Trail advised that when he saw the Gauldrons for the first time today he was impressed with the beauty of the scenery. He said that the structures would only affect views from certain points and he did not think there would be an adverse effect on tourists as he believed they were robust and would keep coming back.

Councillor Kinniburgh confirmed that he thought the exceptional case had been made. He advised that he was in no doubt that this facility would be good for the economy. Lots of research has been done and he congratulated the Applicant in bringing such a facility to Kintyre and Argyll and Bute in general and said that this was something of national interest. Turning to the actual buildings he acknowledged that they would have a visual impact but personally his own opinion was that where it would be situated and the material used would limit its impact and that he certainly supported the application.

## **DECISION**

The Committee unanimously agreed to accept the conclusions of the Area Capacity Evaluation contained in Appendix C to the report of handling and having so concluded, to approve the planning application subject to a Public Path Diversion Order being promoted by the Council at the developer's expense in respect of the Core Path crossing the site, under Section 208 of the Town and Country Planning (Scotland) Act 1987 (as amended) and subject to the following conditions and reasons:-

1. The development shall be implemented in accordance with the details specified on the application form dated 6/2/17 and the approved drawing reference numbers:

AL (0) 006 B  
AL (0) 007B  
AL (0) 005 E  
AL (0) 10 A  
AL (0) 20 B  
AL (0) 40 C

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.

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

2. The development shall be constructed with finished floor levels which satisfy a Flood Protection Level of at least 5m AOD, or as may be otherwise agreed in writing by the Planning Authority following the submission of any site specific calculation which includes the 1 in 200 year coastal still water level and allowances for wave action, climate change and a 0.6 m freeboard.

*Reason: In order to safeguard the development from flood risk.*

3. Prior to development being commenced, proposed alignment and cross-section information relating to the proposed channel providing realignment of the existing burn crossing the site shall be submitted to and shall be approved in writing by the Planning Authority. The re-directed burn shall be designed in order to convey the 1 in 200 year design flows plus surface water emanating from the development site. The development shall be completed in accordance with the duly approved details.

*Reason: In order to safeguard the development from flood risk.*

4. Surface water drainage serving the development hereby permitted shall be to be designed in accordance with CIRIA C753 and Sewers for Scotland 3rd Edition.

*Reason: In order to safeguard the development from flood risk.*

5. No development shall be commenced until the developer has submitted for the approval of the Planning Authority in consultation with the Council's Roads Engineers, a scheme for the improvement of the public road approach to the site between the termination of the two lane carriageway and the termination of the public road at the access point to the site, and this has been agreed in writing. This shall address the need to improve the running surface of the carriageway and to improve passing place provision along this single track section. It shall identify the timing of works to be carried out which shall be phased to address the needs of construction traffic and to provide for the final condition of this section of road once construction operations have been completed. The development shall not be first occupied until the duly approved works have been completed in full.

*Reason: In order to secure road access to the site commensurate with the scale of development in the interests of road safety.*

6. No development shall be commenced until an Access Management Plan (AMP) has been submitted to and approved in writing by the Planning Authority. This AMP shall provide details of the location of the diverted Core Path including details and timings of any temporary diversions required during the construction period as well as the width of the proposed path(s) and a cross section showing the proposed construction details. Thereafter the development shall be completed in accordance with these details following the confirmation of a Path Diversion Order under section 208 of the Town and Country Planning (Scotland) Act 1997. The final path shall be completed prior to the occupation of the development hereby approved.

*Reason: In order to ensure that the proposed path has an acceptable design and location and in order to avoid conflict between construction and public access.*

7. The development shall not be first occupied until the car parking and servicing areas shown on the approved plans have been constructed, surfaced and made available for use. These areas shall remain free of obstruction thereafter for the parking and manoeuvring of vehicles.

*Reason: In order to ensure adequate car parking and loading/unloading provision within the confines of the site in the interests of road safety.*



8. Prior to site clearance or construction works being commenced, a protocol for checking for the presence of bird species and any mitigation required, and for daily checks for otter for the duration of the construction period, shall be agreed in writing by the Planning Authority in consultation with the Council's Local Biodiversity Officer. No ground disturbance works shall be carried out during the bird nesting season (end of February to beginning of October) unless otherwise agreed in advance in writing by the Planning Authority.

*Reason: In the interests of nature conservation.*

9. Prior to the first occupation of the development the landscaped mounding indicated on the approved plans shall be formed to the height and extent as shown and this shall be landscaped during the first planting season following the substantial completion of the development. Details of the 'naturalistic landscaping' relating the mounding and realignment of the path referred to in the Planning Policy Statement accompanying the application shall be shall be agreed in writing in advance by the Planning Authority in consultation with the Council's Local Biodiversity Officer. These details shall include proposed species and rock features intended to be employed. Any landscaping which fails to become established shall be replaced in the following planting season with equivalent planting to that originally required to be planted.

*Reason: In order to secure an appropriate appearance in the interests of visual amenity.*

10. Prior to the commencement of development the developer shall submit for the Council's approval an archaeological mitigation strategy. Thereafter the developer shall ensure that the approved strategy is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service

*Reason: In order to protect archaeological resources.*

11. No external storage of goods, materials or waste products shall be permitted on land outside the buildings other than in locations and subject to containment which has been agreed in advance in writing by the Planning Authority. Prior to the development being commenced a Site Waste Management Plan addressing both the construction and operational phases of the development shall be submitted for the written approval of the Planning Authority. The development shall be implemented and occupied thereafter in accordance with the duly approved details or such revisions as may be agreed subsequently by the Planning Authority.

*Reason: In the interests of visual amenity and to avoid bird attractants in the vicinity of an operational aerodrome.*

12. Prior to development being commenced, samples and/or full details of the proposed external walling and roofing materials to be employed on the buildings hereby approved shall be submitted for the written approval of the Planning Authority. Notwithstanding the effect of condition 1 and the details provided in the application submission, the outermost seaward facing (north-west) elevations of the buildings and the outermost return elevations (south-west and north-east)

shall be clad in untreated vertical timber boarding, left to weather naturally unless any alternative finish is agreed in writing by the Planning Authority.

*Reason: In order to secure an appearance appropriate to the landscape setting of the development in the interests of visual amenity.*

13. Prior to the installation of any external lighting at the site details of the location, number and luminance of the intended lighting units, the manner in which they will be aligned or shielded to avoid glare outwith the site boundary, and the means by which they will be controlled so as to restrict times of operation shall be submitted for the written approval of the Planning Authority. The development shall be implemented and occupied thereafter in accordance with the duly approved details or such revisions as may be agreed subsequently by the Planning Authority.

*Reason: To ensure that the lighting of the site is controlled so as to avoid unnecessary illumination in an area largely free of artificial light sources, in the interests of amenity.*

14. Prior to the development being first occupied, the visitor interpretation facilities detailed in the application submission shall be equipped and made available for use by the public. These shall address the historic use of the site for radio transmission purposes and details of the intended signage and displays for that purpose shall be agreed in advance in writing by the Planning Authority. Thereafter the interpretation facilities shall remain available for access by the public during hours which shall also be agreed in advance in writing by the Planning Authority.

*Reason: In the interests of maintaining awareness of the cultural heritage value of the former use of the site preceding development taking place.*

15. No development shall commence on site until authorisation has been given by Scottish Water for connection to the public water supply. Confirmation of authorisation to connect shall be provided in writing to the Planning Authority before commencement of development.

*Reason: To ensure the development is adequately served by a public water supply.*

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 9 November 2017 and supplementary pack 1, submitted)

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 24 JANUARY 2018**

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

Councillor Rory Colville	Councillor Roderick McCuish
Councillor Robin Currie	Councillor Jean Moffat
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Audrey Forrest	Councillor Sandy Taylor
Councillor George Freeman	Councillor Richard Trail
Councillor Donald MacMillan	

**Attending:** Charles Reppke, Head of Governance and Law  
Angus Gilmour, Head of Planning, Housing and Regulatory Services  
Sandra Davies, Acting Major Applications Team Leader  
Sybil Johnson, Senior Planning & Strategies Officer

The Committee convened at 12 noon. The Chair ruled, and the Committee agreed to adjourn the meeting at 12 noon to allow three Members of the Committee time to return from another meeting.

The Committee reconvened at 12.20 pm.

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gordon Blair, Lorna Douglas and Graham Archibald Hardie.

**2. DECLARATIONS OF INTEREST**

Councillor Rory Colville declared a non-financial interest in planning application reference 17/02484/S36 which is dealt with at item 5 of this Minute as he is a member of a tripartite Social Enterprise Group which was applying for Scottish Government funding to develop a community renewables investment project, with wide community benefits. He left the room and took no part in the consideration of this application.

**3. MINUTES**

- a) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 at 11.00 am was approved as a correct record.
- b) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 at 2.20 pm was approved as a correct record.
- c) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 at 2.40 pm was approved as a correct record.
- d) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 at 3.00 pm was approved as a correct record.

- e) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 at 3.20 pm was approved as a correct record.
- f) The Minute of the Planning, Protective Services and Licensing Committee held on 12 December 2017 3.40 pm was approved as a correct record.
- g) The Minute of the Planning, Protective Services and Licensing Committee held on 19 December 2017 was approved as a correct record.

**4. MR GRAHAM MACQUEEN: ERECTION OF RECREATIONAL HUT (PART RETROSPECTIVE): LAND APPROXIMATELY 830 METRES NORTH EAST OF ATLANTIC BRIDGE (REF: 17/02438/PP)**

The Acting Major Applications Team Leader spoke to the terms of the report and advised of a late email representation received from Councillor Andrew Vennard which was in addition to a previous representation he had submitted and emphasised the difficulty of locating the hut at an alternative location. This application was first presented at the November meeting where a request was made by the Applicant's Agent that consideration of this application be continued to the December meeting to enable the submission of further details incorporating elements of the proposed development absent from the current application. At the December meeting the Committee were advised that that the Applicant's Agent had requested a further continuation to the January 2018 meeting. Reference was made to supplementary report number 3 which brought to Members' attention a number of drafting errors in the main report of handling presented at the November meeting and also to advise Members of further representations received together with additional information submitted in support of the application and also addressing concerns from the Applicant and his wife regarding the content of the main report of handling. Given the significant interest in this application with a broad range of issues raised it was considered that there would be benefit in the application being addressed by means of a discretionary local hearing in advance of determining this application.

**Decision**

The Committee agreed to hold a pre determination hearing at the earliest opportunity.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 8 November 2017, supplementary report number 1, supplementary report number 2 and supplementary report number 3 dated 17 January 2018, submitted)

Having previously declared an interest in the following item Councillor Rory Colville left the meeting at this point.

**5. EDF ENERGY RENEWABLES LTD (VIA SCOTTISH GOVERNMENT CONSENTS UNIT): ELECTRICITY ACT SECTION 36 CONSULTATION RELATIVE TO AIRIGH WIND FARM: LAND SOUTH WEST OF TARBERT, ARGYLL (REF: 17/02484/S36)**

The Acting Major Applications Team Leader spoke to the terms of a report advising of the Scottish Government's Energy Consents and Deployment Unit Section 36 consultation regarding the proposed Airigh Wind Farm at land south west of Tarbert,

Argyll. A supplementary report was also referred to which advised of further information, a further representation and a further consultee response received by the Energy Consents Unit. In Scotland, any application to construct or operate an onshore power generating station with an installed capacity of over 50 megawatts requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Any ministerial authorisation given would include a 'deemed planning permission' and in these circumstances there is then no requirement for a planning application to be made to the Council as Planning Authority. The Council's role in this process is one of a consultee along with other consultation bodies. It is recommended that the Committee object to this proposal for the reasons detailed in the report and that the Scottish Government be notified accordingly.

### **Motion**

To agree the recommendations detailed in the report.

Moved by Councillor David Kinniburgh, seconded by Councillor Jean Moffat

### **Amendment**

To agree that arrangements be made to hold a site visit prior to making a recommendation to the Scottish Ministers in order to determine the visual impact of the proposed wind farm.

Moved by Councillor Sandy Taylor, seconded by Councillor Donald MacMillan

The Amendment was carried by 8 votes to 3 and the Committee resolved accordingly.

### **Decision**

The Committee agreed that arrangements be made to hold a site visit prior to making a recommendation to the Scottish Ministers in order to determine the visual impact of the proposed wind farm.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 22 December 2017 and supplementary report number 1 dated 22 January 2018, submitted)

Councillor Colville returned to the meeting.

## **6. DEVELOPMENT PLAN SCHEME ANNUAL UPDATE - LOCAL DEVELOPMENT PLAN 2**

Consideration was given to a report seeking approval of the updated Development Plan Scheme, including its associated Participation Statement and to obtain authority to publish the approved updated Development Plan Scheme and submit it to the Scottish Ministers.

**Decision**

The Committee noted the contents of the report and approved the updated Development Plan Scheme attached in Appendix A to the report for publication and submission to the Scottish Ministers.

(Reference: Report by Executive Director – Development and Infrastructure Services dated 21 December 2017, submitted)

The Council resolved in terms of Section 50(A)(4) of the Local Government (Scotland) Act 1973 to exclude the press and public for the following 3 items of business on the grounds that they were all likely to involve the disclosure of exempt information as defined in Paragraph 13 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973.

**7. ENFORCEMENT UPDATE - REFERENCE 16/00076/ENAMEN AND 17/00046/ENAMEN**

A report providing an update on enforcement case references 16/00076/ENAMEN and 17/00046/ENAMEN was before the Committee for information.

**Decision**

The Committee noted the contents of the report.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 10 January 2018, submitted)

**8. ENFORCEMENT REPORT - REFERENCE 13/00328/ENFOC2**

Consideration was given to enforcement case reference 13/00328/ENFOC2.

**Motion**

To agree the recommendations in the report and that if there is no progress in respect of recommendation 2 within 3 months that a report come back to the PPSL Committee for consideration on how to proceed.

Moved by Councillor David Kinniburgh, seconded by Councillor Rory Colville

**Amendment**

To agree that arrangements be made to hold a site visit, that further information be provided to Members on the site and that Officers hold a briefing meeting with the Members on the history of the site.

Moved by Councillor George Freeman, seconded by Councillor Alastair Redman

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

**Decision**

The Committee agreed to the recommendations detailed in the report that if there is no progress in respect of recommendation 2 within 3 months that a report come back to the PPSL Committee for consideration on how to proceed.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 10 January 2018, submitted)

**9. ENFORCEMENT REPORT - REFERENCE 17/00131/ENOTH3**

A report on enforcement case reference 17/00131/ENOTH3 was before the Committee for consideration.

**Decision**

The Committee agreed to continue consideration of the report to a future meeting.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 10 January 2018, submitted)

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**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 24 JANUARY 2018**

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

Councillor Rory Colville	Councillor Roderick McCuish
Councillor Robin Currie	Councillor Jean Moffat
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Audrey Forrest	Councillor Sandy Taylor
Councillor George Freeman	Councillor Richard Trail
Councillor Donald MacMillan	

**Attending:** Charles Reppke, Head of Governance and Law  
Sheila MacFadyen, Senior Solicitor  
Graeme MacMillan, Trainee Solicitor  
Remo Romolo Serapiglia, Applicant  
Patrick Campbell-Corcoran, Applicant's Solicitor  
PC Alison Simpson, Police Scotland

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gordon Blair, Lorna Douglas and Graham Archibald Hardie.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR AMENDMENT TO A STREET TRADER'S LICENCE (R SERAPIGLIA, LARBERT)**

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed.

Charles Reppke referred to written materials received from the Applicant's Solicitor which he advised would be circulated to the Members.

Mr Reppke also advised that a late objection to the application had been received from Mrs Potter and as she was not present to explain the reason for her late objection, Mr Reppke confirmed that in her letter she had advised that she had been unaware of this application and that was why her objection was late.

The Chair invited the Applicant to advise if he felt this late objection should be taken into consideration. The Applicant's Solicitor, Patrick Campbell-Corcoran stated that they did not feel that the late objection should be taken into consideration. He referred to the dates when the notice of the application was advertised and the deadline for submission of responses. He pointed out that this objection was 30 days late and should not be taken into account.

The Chair invited the Members of the Committee to consider whether or not the late objection should be taken into account. Mr Reppke confirmed, when asked, that the late objection was dated 21 January 2018 and a signed copy was received on 23 January 2018.

Councillor Currie advised that he did not think the late objection should be taken into consideration.

Councillor Freeman referred to notices of application being displayed in the local offices and that the local community were not aware of when these notices would be displayed. He stated that he felt the objection should be taken into consideration.

The Committee agreed not to take the late objection into consideration.

Having moved an Amendment which failed to find a seconder, Councillor Freeman asked for his dissent from the foregoing decision to be recorded.

The Chair invited the Applicant's Solicitor to speak in support of the application.

## **APPLICANT**

Mr Campbell-Corcoran advised that this hearing was regarding Mr Serapiglia's Street Traders Licence. He explained that Mr Serapiglia ran an ice cream van and has done so since the early 1980's and that the business has been in his family since the 1950's. He referred to the difficulties Mr Serapiglia was having trading in Luss. He pointed out that Mr Serapiglia held 6 other licences but the issue was only arising in Luss. He confirmed that Mr Serapiglia was seeking the removal of condition 17, the thrust of which did not permit Mr Serapiglia to trade within 100m of any establishment that sold similar produce. He referred to the paperwork circulated to the Members which summarised a court case – McCluskey vs North Lanarkshire Council and also provided details of a response to a FOI request to Argyll and Bute Council. He explained the details of the Court Case which sought to reverse a decision of a local licensing authority imposing a condition in terms of paragraph 18(1) of Schedule 1 to the Civic Government (Scotland) Act 1982 prohibiting trading within a distance of 250m from all secondary schools between 8 am – 5 pm on any school day during term time. The intention behind the condition was the promotion of healthy eating among children. He read out various paragraphs from the Sheriff Court judgement in the case (2016 S.L.T. (Sch Ct) 31) and said that it was found that the decision of the local authority was ultra vires. He also referred to the statement in the report which said that "licensing for the "optional" activities should be introduced only where it is shown to be necessary to prevent crime, to preserve public order or safety, or protect the environment. The purpose of licensing is not to restrict trade or competition". He advised the Members that condition 17 on Mr Serapiglia's licence had the effect of rendering him unable to trade in Luss and that he has not done so for some time. He said that Mr Serapiglia was unable to deal with his customers in Luss and it was not viable for him to keep checking the stock sold by nearby shops. He referred to the FOI response from Argyll and Bute Council which confirmed that this was a standard condition imposed as standard practice on street trader's licences. He advised that his client had a right to know what was legal and what was not. He questioned what 100m meant – did it refer to a measurement as the crow flies; or was it a line drawn from the van to the door step of a shop. He also asked if it was regarding ice cream in general or specific flavours of ice cream. He said that his submission was that condition 17 should be removed

from his client's licence and that the Committee had the power to do this. He referred to the Police letter which advised of a red light issue from 2017. He explained that Mr Serapiglia did not think the light had been red. He thought it was amber and that it was unsafe to stop. The case went to court and Mr Serapiglia was convicted and he had now put that behind him. He advised that there was no objection from the Police in respect of relevant convictions. He said that his client had 6 other licences and the only difficulty he had was in Luss. He advised that his client believed the local traders there were trying to protect their patch. He advised that there was no compelling issue to have this condition which restricted trade.

## **POLICE SCOTLAND**

PC Alison Simpson referred to a letter of representation from the Chief Constable which advised of a conviction received by the Applicant on 28 September 2017 as a result of an incident which took place on 18 June 2016.

## **MEMBERS' QUESTIONS**

Councillor McCuish referred to Mr Serapiglia's current application being due for renewal in June 2018 and he asked his Solicitor if this would not be a more appropriate time to apply for the removal of the condition. Mr Campbell-Corcoran advised that June was still a while off and it could potentially mean a decision not being made until the autumn. He pointed out that Mr Serapiglia has not been able to trade in Luss at all because of this condition.

Councillor Colville sought and received confirmation from Mr Reppke that the hearing held last year was not to do with the 100m rule and that the details of that hearing should be disregarded for this current application.

Councillor Freeman sought and received confirmation from Mr Reppke that if condition 17 was removed from Mr Serapiglia's licence this would apply to all the locations across Argyll and Bute listed on his licence and not just Luss.

Councillor Moffat sought and received confirmation from Mr Campbell-Corcoran that there were other shops in Luss selling ice cream.

Councillor Devon referred to the various paragraphs from the Sheriff Court report which Mr Campbell-Corcoran had read out and she commented that she believed that condition 17 was for licensing purposes and she sought and received further comment on this from Mr Campbell-Corcoran as to why he did not believe this was the case. He referred to the statement made in the report that a condition should only be attached in order to prevent a crime or public disorder.

Councillor Trail sought advice about the rationale behind condition 17. Mr Reppke explained that it was to ensure that street traders did not trade within 100m of shops selling similar goods. He advised that this condition has been in existence since the former Council resolved to licence street traders under the Civic Government Act. He said that this was a condition that many other Councils have adopted in the past and that many still had it.

Councillor Trail asked what the reasons were for the separation. He pointed out that there was nothing to stop ice cream shops setting up close to other ice cream shops.

Mr Reppke advised that this was something for the Members to consider during the debate.

Councillor Taylor referred to the Applicant's Solicitor saying that this was not a licensing issue and asked for Mr Reppke's opinion. Mr Reppke advised that it was a matter for the Committee to consider whether the clause had a proper purpose.

Councillor Currie asked the Applicant if it was his submission that competition rules should apply. He commented that there was nothing to stop a shop opening next door to another shop and selling the same goods and he asked the Applicant if this should also apply to street traders. He also referred to getting a tape measure out each time a new shop opens and he asked the Applicant if he was right to suggest that condition 17 was a burden. Mr Campbell-Corcoran replied that in terms of competition he could see no reason why a shop can open up but a street trader could not. He said that it seemed unusual for a street trader to be saddled with additional burdens which restrict competition and trade. He referred to paragraph 87 in the Sheriff Court report which said that the purpose of licensing was not to restrict trade. He referred to his client being obliged to take a tape measure out every time and questioned how he could plan his trade. He suggested that there was real risk of him committing an offence under this Act, given the current condition.

Councillor Freeman said that it was his understanding that the 100m rule did not apply to shops because they paid non domestic rates and a street trader did not. He asked Mr Reppke if he could confirm that this was the case. Mr Reppke advised that he could not comment, on that view.

Councillor Freeman referred to only one street trader licence having condition 17 removed and this was on Mull and this was because it was argued that the 2 adjacent traders did not offer similar goods. He commented that this condition was added to all street trader licences across Argyll and Bute and asked the Applicant's Solicitor if he believed this to be the case. Mr Campbell-Corcoran replied that judging from the FOI response this seemed to be applied across the board. He said the fact that one licence had the condition removed was neither here nor there. He suggested that there may be quite a few of these applications in the pipeline. He said that his reasons for bringing this case was because he believed it was still within the power of the Council to amend the condition.

Councillor Freeman sought and received confirmation from the Applicant's Solicitor that he duly accepted that the information provided in the FOI response was accurate and that barring one licence all the others had the 100m rule attached.

Councillor Redman referred to consumer choice and asked what Mr Serapiglia's weekly footfall of customers was. Mr Serapiglia advised that it was difficult to say as it depended on the weather etc. He confirmed that he had enough customers to survive and that there was a large demand for his product.

Councillor McCuish referred to the timeline between Mr Serapiglia's road traffic incident and the case coming to court and he asked why Police Scotland had not reported this at the hearing last year. PC Simpson replied that they had not been asked to talk. Mr Reppke explained the circumstances around the previous hearing being called which did not involve the Police.

Councillor Colville referred to paragraph 87 of the Sheriff Court report and advised that he would not find anything which differentiated between 100m and 250m and he asked if the decision made by the Sheriff in respect of 250m would also have applied if the distance was 100m. Mr Campbell-Corcoran advised that he did not think 100m or 250m was relevant. He said that the argument had the same underlying principle that there was some sort of restriction. He said that if the condition was not for a licensing purpose then it was ultra vires and the Council did not have the powers to attach it.

Councillor Colville said that the court case was quite specific about trading around schools. He asked if the Sheriff could take the same decision in respect of this case. He asked if this case made it enforceable.

Councillor Moffat advised that it may be helpful if someone could advise why the 100m restriction was put in place in the first place. She asked why Argyll and Bute Council put in place the 100m rule for street traders. Mr Reppke advised that this was a standard condition which has been in existence since it was resolved to licence street traders prior to 1986.

Councillor Freeman said that the Civic Government (Scotland) Act refers to conditions that can be attached and that is one that is there and not just Argyll and Bute can apply it. He referred to conditions having to apply to licensing and said that the North Lanarkshire case was clearly not about licensing and that it was about the promotion of healthy eating in school children. Mr Reppke advised that it was not correct that all conditions were set out in the Act. He advised that Councillor Freeman was correct to say that the Council could impose conditions. He also advised that Members needed to judge the matter before them and if a proposed decision was legal or not legal this would be dealt with at that time.

Councillor McCuish asked from a purely business point of view what this condition meant for Mr Serapiglia. Mr Serapiglia advised that it could mean him getting into trouble with the law. He said that people relied on the service he provided and that it was a shame to jeopardise that. He confirmed that if affected his business.

Councillor Colville referred to pages 23 and 24 of the Sheriff Court report which referred to the sale of food outside schools. He asked the Applicant's Solicitor to point out anything that reinforced the argument that any distance limit applied. Mr Campbell-Corcoran advised he was not saying any distance limit. He acknowledged that the Council had the power to apply conditions to a licence and that this was restrained by the Act itself. He said that the Sheriff tried to work out the restrictions and stated that these were prevention of crime and to preserve safety. He gave the example that the condition could apply to trading near a bus stop to prevent the bus driver's sightlines being restricted. He advised that the court case referred to obesity. He suggested that in this case it was a blanket policy. He said that if it was applied to protect local business the Sheriff was saying that you could not do that. He advised that it was his submission that this was the case here.

Councillor Currie asked the Applicant's Solicitor if he agreed that he has confused some of the Committee by producing these documents. He said that the Committee were not here to discuss the McCluskey case. He suggested that the Applicant's case was simply that he wished condition 17 to be removed because of the burden it was putting on his business. He suggested that there was a huge difference between an ice cream van which was mobile and a burger van which sold unhealthy

food. Mr Campbell-Corcoran confirmed that his client was asking for condition 17 to be removed because it was burdensome and onerous and prevented his client from providing a service in Luss.

## **SUMMING UP**

### **Police Scotland**

PC Simpson advised that she had nothing further to add.

### **Applicant**

Mr Campbell-Corcoran advised that he hoped that he had made his client's position clear that condition 17 was preventing him trading in Luss. He said there was plenty of trade in Luss and there was a high demand and that he would not be stealing customers. He pointed out that the business has been in the family for a long time and that this condition was too onerous. Mr Serapiglia advised that he was just an ordinary person trying to get on in life like everyone else. He said that he was just trying to do his job and that it was very difficult when people came up to the van to annoy you and that he did not want this. He also advised that he did not want to keep coming back before the Committee and that it was a big deal to come here for a day.

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

## **DEBATE**

Councillor Kinniburgh sought and received confirmation from Mr Reppke that a lot of licences would be due for renewal in the near future. Mr Reppke confirmed that a substantial body of renewals across a range of licences will be due and that these would be looked at from July 2018. Councillor Kinniburgh advised that he thought it would be more appropriate to consider a review of that condition at that time.

Mr Reppke stated that he understood the views of the Applicant's Solicitor and said that he did not entirely agree with all of these. He confirmed that there was a plan to bring to Committee before June a report asking the Committee to look at some of the issues regarding some of the standard conditions that the Council had and that Members would be invited to consider whether they would be appropriate for renewal or if there needed to be changes. He confirmed that the plan was to bring forward this report before the renewal applications came forward.

Councillor Freeman commented that the Applicant's Agent continued to refer to Luss. He pointed out that this was not a Luss issue as the licence related to lots of other areas across Argyll and Bute and if the condition was removed this would apply across Argyll and Bute. He pointed out that in June 2017 it was agreed that Mr Serapiglia's licence should remain unchanged until June 2018. He said that if they were dealing with one street trader then they should all be treated the same. He advised that the Committee should be given the opportunity of considering all the conditions. He confirmed that he thought the decision taken in June 2017 should remain and that the licence should remain unchanged until it was up for renewal.

Councillor Redman advised that he took the view that choice was good. He said that he liked the idea of choice as a consumer. He referred to the Applicant's Solicitor

mentioning stealing customers. He advised that customers would go where they wished if someone did a good job and sold a good product at a competitive price. He advised that the Committee should not be interfering with a person's livelihood or business.

Councillor Currie advised that the reason the Committee met last year was because of an alleged nuisance and it was not to do with conditions. He advised that he was supportive of removing condition 17 to allow free trade. He advised that if they were anywhere else than Luss these vehicles would be going around housing schemes with their bells chiming. He commented that Luss was jam packed with tourists gasping for ice cream and that it was unreasonable to put on a condition preventing trading within 100m. He said that it was his opinion that it was burdensome and unreasonable and that he would be supportive of removing it. He suggested that instead of waiting on other applications coming in, this case could be a pilot to see if it worked.

Councillor Moffat advised that she agreed with the views of Councillor Redman but she was inclined to go with the view of Councillor Freeman. She referred to dealing with precedent. She said there was a need to look at condition 17. She advised that it was grossly unfair for someone to buy or rent a premises and to start selling the same as a van outside. She said that vans should not be stopped from coming round. She said that she felt that condition 17 needed to be looked at and if it was taken away just now it would need to be taken away from everyone. She pointed out that this would not just apply to ice cream vans but to all street traders. She said that if the Committee took the decision today to remove condition 17 for this business then she believed the flood gates would open for all other street traders looking for the same. She said that the Committee should go ahead with Councillor Freeman's proposal and wait so that the Committee can review this in a considerate manner.

Councillor Colville confirmed that he was of a similar view to Councillors Moffat and Freeman. He advised that the Committee may need to remove this condition because of the court case but he was of the view that the Committee should hesitate to remove for just one at this moment in time. He commented that this case seemed to relate to one place, Luss. He said that he had no wish to restrict an Applicant's wish to trade in Luss and that there must be separate solution.

Councillor Sandy Taylor left the meeting at this point as he had another appointment.

Councillor Trail advised that he concurred with Councillor Freeman as the Committee needed to consider the implications of this issue.

Councillor McCuish advised that he took the opposite view. He asked why the Committee could not remove the condition till June and then it would fall in line with other licences when they came forward for renewal. He asked if it would be possible to remove the condition just for Luss. Mr Reppke advised that the Applicant was asking for the removal of the 100m rule and Members should deal with that. He confirmed that the application was for the complete removal and that Members should determine that. He said that if the Committee did not agree to that today there could be the opportunity to apply again.

Councillor McCuish asked if the condition could be removed till June. Mr Reppke advised that as the application was due for renewal then it would only last until that time.

Councillor Devon advised that whilst she had sympathy for the Applicant and the impact on his business, she referred to the Committee previously refusing a street trader licence for an ice cream van in Oban as there was already an ice cream van. She confirmed that she supported Councillors Trail and Freeman and that the licence should run its course until June. She said that the Committee's remit was to protect and to make sure licensing laws were adhered to.

Councillor Kinniburgh confirmed that he had listened to all that had been said. He said that he had formed an opinion which did not quite go to the extent of reconsidering in June. He said that what was clear to him was the need to review condition 17 and some others.

### **Motion**

To agree to continue consideration of this application to allow the Committee time to consider a report on the general issue of conditions and that a report on this should be brought to the PPSL Committee in March and that thereafter the Committee would resume consideration of this application.

Moved by Councillor David Kinniburgh, seconded by Councillor Jean Moffat

### **Amendment**

To agree to remove condition 17 from Mr Serapiglia's street trader's licence.

Moved by Councillor Roderick McCuish, seconded by Councillor Alastair Redman

The Motion was carried by 8 votes to 3 and the Committee resolved accordingly.

### **DECISION**

The Committee agreed to continue this application until March following consideration of a report on the general issue of conditions.

(Reference: Report by Head of Governance and Law, submitted)



**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD  
on FRIDAY, 9 FEBRUARY 2018**

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

Councillor Gordon Blair	Councillor Alastair Redman
Councillor George Freeman	Councillor Sandy Taylor
Councillor Donald MacMillan	Councillor Richard Trail
Councillor Jean Moffat	

**Attending:** Charles Reppke, Head of Governance and Law  
Sandra Davies, Acting Major Applications Team Leader  
Arlene Knox, Senior Planning Officer

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Rory Colville, Robin Currie, Mary-Jean Devon, Lorna Douglas, Audrey Forrest, Graham Archibald Hardie and Roderick McCuish.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. EDF ENERGY RENEWABLES LTD (VIA SCOTTISH GOVERNMENT CONSENTS UNIT): ELECTRICITY ACT SECTION 36 CONSULTATION RELATIVE TO AIRIGH WIND FARM: LAND SOUTH WEST OF TARBERT, ARGYLL (REF: 17/02484/S36)**

At the PPSL Committee on 24 January 2018 it was agreed to arrange a site visit before considering a response to this consultation. Following the site visit which took place earlier in the day the Acting Major Applications Team Leader presented the report for further consideration along with a supplementary report which advised of correspondence received from the Applicant' Agent which sought to address a number of points raised at the Committee meeting on 24 January 2018. The report also provided Members with the Officers' view on these matters. In light of the above there is no change to the recommendation to object to the proposal for the reasons detailed in the main report dated 22 December 2017.

**Motion**

To agree to object to this proposal for the reasons detailed in the report of handling.

Moved by Councillor David Kinniburgh seconded by Councillor Jean Moffat

The Chair ruled, and the Committee agreed, to adjourn the meeting at 2.30 pm to allow Members of the Committee time to prepare a competent Amendment.

The Committee reconvened at 2.45 pm.

**Amendment**

To agree not to object to this proposal for the following reasons:-

1. Landscape impact is minimised given that the site sits lower in the landscape due to the surrounding topography and as such it does not have a significant impact on the Upper Forest Moor Mosaic and the Rocky Mosaic character types.
2. The location of the proposed wind farm is distant from visual receptors and as such the impact is minimised by this separation and as such it does not have a significant adverse visual impact on the appreciation of South Knapdale.
3. The distance from existing wind farms is substantial which minimises the cumulative impact that can be perceived. Given that the proposed wind farm will sit in a bowl it will not extend the cumulative visual impact from Kintyre into Knapdale.

Given those views, to raise no objection on the basis of a minor departure from the specified policies and guidance in the Local Development Plan.

Moved by Councillor George Freeman, seconded by Councillor Richard Trail

The requisite number of Members required the vote to be taken by calling the roll and Members voted as follows:-

**Motion**

Councillor Kinniburgh  
Councillor MacMillan  
Councillor Moffat  
Councillor Redman

**Amendment**

Councillor Blair  
Councillor Freeman  
Councillor Taylor  
Councillor Trail

On there being an equality of votes the Chair gave his casting vote for the Motion and the Committee resolved accordingly.

**Decision**

The Committee agreed to object to this planning application for the following reasons and that the Scottish Government be notified accordingly:-

1. The proposal lies in the Upland Forest Moor Mosaic (UFMM) (6b) landscape character type (LCT) identified in the 'Argyll and Bute Landscape Wind Energy Capacity Study' (LWECS 2017) which has established that this LCT has an overall 'high sensitivity' to Very Large typology wind turbines and affords no scope to accommodate them. The area in which the proposal is located forms the landscape backdrop to the coastal, small scale, settled Rocky Mosaic LCT and to views across the scenic West Loch Tarbert area. The proposal lies within the western part of this area which is designated an Area of Panoramic Quality (Knapdale APQ). This landscape also forms the backdrop to the adjacent Knapdale National Scenic Area (NSA).

In this location, there are a number of landscape characteristics increasing sensitivity to large or very large turbines, including the scale, complexity of landform, visual sensitivity, and landscape context. The close proximity of the development to the highly sensitive coastal landscape (Rocky Mosaic LCT) and intrusion into the landscape of South Knapdale as appreciated from locations across West Loch Tarbert, and across the sea from locations in West Kintyre and from Gigha, are key constraints. At 149.5m to blade tip the turbines will appear out of scale/too large in relation to the higher open ridge to the north-east and distract from the landscape setting of West Loch Tarbert (as represented by VP 9 Dun Skeig). These uplands currently form an uncluttered backdrop to the scenic West Loch Tarbert area and the introduction of development at this scale would compromise this composition and significantly detract from the contribution South Knapdale makes to the experience of West Loch Tarbert (as represented by VP 10 Ronachan) and the appreciation of this area across water (as represented by VP F2 from the Islay-Jura ferry).

The number and size of turbines proposed would therefore have a significant adverse effect upon the character, qualities and experience of the landscape within areas of the Upland Forest Moor Mosaic (6b) and the smaller scaled and settled 'Rocky Mosaic' (20) landscape character types and associated seascape. This would be clearly contrary to the guidance set out in the 'Argyll and Bute Landscape Wind Energy Capacity Study' 2017.

The foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect benefits which a development of this scale would make, including local economic benefits and the achievement of climate change related commitments. Having due regard to the above it is considered that this proposal is inconsistent with the provisions of the Scottish Planning Policy; Scottish Government's Onshore wind turbine: planning advice (May 2014); 'Onshore Wind Policy Statement' (December 2017); Policies LDP STRAT 1 - Sustainable Development; LDP DM 1 – Development within the Development Management Zones; LDP 6 – Supporting the Sustainable Growth of Renewables; and LDP 9 – Development Setting, Layout and Design; of the 'Argyll & Bute Local Development Plan' (adopted 2015) and Supplementary Guidance: SG LDP ENV 13 – Impact on Areas of Panoramic Quality (APQs); and the conclusions of the 'Argyll & Bute Landscape Wind Energy Capacity Study' (LWECS) 2017.

2. There is extensive visibility of the proposal from the West Loch Tarbert area, the wider seascape (including islands) and from part of the west coast of Kintyre. Development on the scale proposed would intrude in scenic views from these locations and would compromise the contribution South Knapdale makes to the landscape setting of West Loch Tarbert in particular. It would pose significant adverse effect on views from the Islay – Jura ferry (as represented by VP F2) and would extend the influence of wind farm development upon the Isle of Gigha from locations to the east within Kintyre, to also include this additional location to the

north. The proposal's significant visual effects would include popular and scenic walking routes including part of the Kintyre Way (as represented by VP 10 Ronachan), the walk to Dun Skeig (as represented by VP 9 Dun Skeig), coastal locations popular for recreation on the north-west coast of Kintyre and around the West Loch Tarbert area, and would include views from the Islay/Jura ferry and recreational watercraft. In addition to the inappropriate scale of the turbines, the design results in a poor layout and image from some locations (as represented by VP 3) where there is a considerable variation in turbine position/height.

The proposal would therefore lead to significant adverse visual effects in the appreciation of South Knapdale from frequented coastal locations in west Kintyre and from the Isle of Gigha where sensitive receptors in terms of transport routes, settlement and tourism/recreational assets are concentrated, and in views of South Knapdale from locations offshore. This would be clearly contrary to the guidance set out in the 'Argyll and Bute Landscape Wind Energy Capacity Study' 2017.

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

Having due regard to the above, it is considered that this proposal is therefore inconsistent with the provisions of the Scottish Planning Policy and Scottish Government's Onshore wind turbine: planning advice (May 2014); 'Onshore Wind Policy Statement' (December 2017); Policies LDP STRAT 1 - Sustainable Development; LDP DM 1 – Development within the Development Management Zones; LDP 6 – Supporting the Sustainable Growth of Renewables; and LDP 9 – Development Setting, Layout and Design; of the 'Argyll & Bute Local Development Plan (adopted 2015) and Supplementary Guidance: SG LDP ENV 13 – Impact on Areas of Panoramic Quality (APQs); and the Argyll & Bute Landscape Wind Energy Capacity Study (LWECS) 2017.

3. The proposal would result in the spread of the effects of wind farm development from the Kintyre peninsula, where development is currently concentrated, across West Loch Tarbert into Knapdale, thereby posing significant adverse cumulative effects on the experience of Knapdale and Kintyre. The uplands of Knapdale presently provide an important uncluttered backdrop to, and contribute to the scenic composition of, West Loch Tarbert. This proposal would extend the influence of very large scale wind turbine development to the northern side of West Loch Tarbert, thereby reducing the distinctiveness of the Knapdale landscape and the contribution which it makes to the setting of sensitive coastal areas valued for their scenic qualities. In particular, it would impinge on the dramatic coastal panoramas of the Paps of Jura as experienced from west Kintyre where they are first revealed (Clachan and Ronachan).

This change to the established pattern of development, and the spread of development into a new area would also be experienced from locations offshore, particularly from the Isle of Gigha and from key ferry routes. Significant adverse cumulative visual effects would occur from offshore, and from parts of Gigha as represented by VP 12, the sea and West Loch Tarbert as represented by the Islay – Jura ferry view (F2) where, in combination with Freasdail Wind Farm, wind farms would then have an unwelcome presence on both sides of West Loch Tarbert.

These significant adverse cumulative landscape and visual effects would be clearly contrary to the guidance set out in the 'Argyll and Bute Landscape Wind Energy Capacity Study' 2017.

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

Having due regard to the above, it is considered that this proposal is therefore inconsistent with the provisions of the Scottish Planning Policy; Scottish Government's Onshore wind turbine: planning advice (May 2014); 'Onshore Wind Policy Statement' (December 2017); Policies LDP STRAT 1 - Sustainable Development; LDP DM 1 – Development within the Development Management Zones; LDP 6 – Supporting the Sustainable Growth of Renewables; and LDP 9 – Development Setting, Layout and Design; of the 'Argyll & Bute Local Development Plan (adopted 2015) and Supplementary Guidance: SG LDP ENV 13 – Impact on Areas of Panoramic Quality (APQs); and the Argyll & Bute Landscape Wind Energy Capacity Study (LWECS) 2017.

(Reference: Report by Head of Planning, Housing and Regulatory Services dated 22 December 2017, supplementary report 1 dated 22 January 2018 and supplementary report number 2 dated 6 February 2018, submitted)

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ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES  
AND LICENSING COMMITTEE

CUSTOMER SERVICES

21<sup>ST</sup> FEBRUARY 2018

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**LICENSING OF FUNFAIRS IN SCOTLAND - CONSULTATION**

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**1.0 EXECUTIVE SUMMARY**

1.1 The purpose of this report is to advise members of the ongoing consultation on a draft proposal submitted to the Scottish Parliament by Richard Lyle MSP. The proposal is for a Bill to exempt travelling funfairs from public entertainment licensing requirements under the *Civic Government (Scotland) Act 1982*, and to create a distinct new licensing system for travelling funfairs in Scotland.

**2.0 RECOMMENDATIONS**

2.1 Members are asked to note the contents of this report.

2.2 Members are asked to consider whether they wish to make representations to the consultation, and if so, decide on the nature and content of those representations.

2.3 If members wish to respond to the consultation, it is further recommended that members authorise the Head of Governance and Law, in consultation with members, to draft an appropriate response within the prescribed timeframe.

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ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES  
AND LICENSING COMMITTEE

CUSTOMER SERVICES

21<sup>ST</sup> FEBRUARY 2018

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## LICENSING OF FUNFAIRS IN SCOTLAND - CONSULTATION

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### 1.0 INTRODUCTION

- 1.1 Travelling funfairs in Scotland are currently required to apply for public entertainment licences under the *Civic Government (Scotland) Act 1982* from the relevant local authority for the area that they seek to operate in.
- 1.2 On 4<sup>th</sup> December 2017, Richard Lyle MSP opened a consultation on his draft proposal for a Bill to exempt travelling funfairs from public entertainment licensing requirements and to create a new bespoke licensing system for travelling funfairs in Scotland.
- 1.3 The purpose of this report is to advise members of the ongoing consultation on the draft proposal.

### 2.0 RECOMMENDATIONS

- 2.1 Members are asked to note the contents of this report.
- 2.2 Members are asked to consider whether they wish to make representations to the consultation, and if so, decide on the nature and content of those representations.
- 2.3 If members wish to respond to the consultation, it is further recommended that members authorise the Head of Governance and Law, in consultation with members, to draft an appropriate response within the prescribed timeframe.

### 3.0 DETAIL

- 3.1 Public entertainment licences are optional under the 1982 Act. Each local authority must pass a Resolution if they wish to licence this activity. To date, all 32 local authorities in Scotland have passed Resolutions requiring public entertainment licences for funfairs.
- 3.2 There are currently 3 funfair operators who hold full public entertainment licences issued by Argyll and Bute Council.
- 3.3 On 4<sup>th</sup> December 2017, Richard Lyle MSP issued a consultation paper (**Appendix 1**) relating to a draft proposal that he lodged in the Scottish



Parliament, which is the first stage in the process of introducing a Private Member's Bill. The consultation is intended to inform a Member's Bill that is anticipated to be introduced in the Scottish Parliament later this year.

- 3.4 The proposal is for a Bill to exempt travelling funfairs from public entertainment licensing requirements and create a bespoke new licensing system for travelling funfairs in Scotland.
- 3.5 The consultation outlines that the main issue identified with the current licensing regime is that each local authority has their own individual licensing processes in place. This results in large variations in conditions imposed on funfair operators, fees payable for licences, and times taken to process applications.
- 3.6 The consultation paper also acknowledges that non-statutory best practice *Guidance on Public Entertainment Licences in Respect of Funfairs (Appendix 2)* was published by the Scottish Government in July 2017. However, it was noted that this does not compel local authorities to change their current practices. Each local authority is therefore entitled to consider the guidance and act upon it on an individual basis, not a collective one.
- 3.7 The proposed Bill will seek to exempt funfairs from public entertainment licensing requirements by amending the 1982 Act to this effect. It will also seek to establish a new permissions process for operation and management of travelling funfairs in Scotland. In particular, the new system is intended to reduce the time that local authorities are permitted to consider and decide applications by setting a shorter and fixed timescale; stipulate that any fees charged are proportionate and for administrative purposes only by either capping maximum fees or setting a fixed fee for all local authorities; and creating sufficient flexibility to deal with situations where alternative sites are required at short notice.
- 3.8 The consultation paper highlights that important issues such as health and safety, the maintenance of rides and hygiene of food and drink available at funfairs will not be affected by the proposal as these issues are covered by other legislation.
- 3.9 The consultation paper outlines that the most significant effects of the proposal on local authorities would be a requirement to implement the new process created by the proposal, the shortening of timescales to process and decide on applications, and a duty to ensure that application fees will only cover outlay costs for the local authority.

#### **4.0 CONCLUSION**

- 4.1 The author of the consultation paper states that the purpose of the proposal is to establish a new licensing system that is fair, consistent and proportionate for funfair operators. He also encourages all those with views on funfair licensing to take part in the consultation process to aid understanding of the issues, point to the best way forward and inform a

Private Member's Bill that he intends to introduce in the Scottish Parliament later this year.

- 4.2 The closing date for responses to the consultation is 26<sup>th</sup> February 2018. The consultation questions can be found at pages 17-20 of the consultation paper.

## **5.0 IMPLICATIONS**

- 5.1 Policy: If a Private Member's Bill is subsequently introduced and passed, the Council will need to amend its policies in relation to the licensing of funfairs.
- 5.2 Financial: There will be financial implications if the application fees for funfair licences are required to be revised by the Council, or if they are to be capped or stipulated by the Scottish Ministers.
- 5.3 Legal: The Council will require to implement the changes set out in any legislation that may be introduced at a later date following the consultation process.
- 5.4 HR: None
- 5.5 Equalities: None
- 5.6 Risk: None
- 5.7 Customer Services: None

## **APPENDICES**

1. Consultation Paper: *Licensing of Funfairs (Scotland) Bill*, 4<sup>th</sup> December 2017
2. *Civic Government (Scotland) Act 1982: Guidance on Public Entertainment Licences in Respect of Funfairs*

**CHARLES REPPKE**  
**Head of Governance and Law**

For further information contact: Graeme McMillan  
Tel: 01546 604431

## Licensing of Funfairs (Scotland) Bill



**A proposal for a Bill to exempt travelling funfairs from public entertainment licensing requirements and to create a distinct new licensing system for travelling funfairs in Scotland**

**Consultation by Richard Lyle MSP  
Scottish National Party Member for Uddingston and Bellshill**

4 December 2017

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## FOREWORD



The purpose of this proposal is to consult on the removal of travelling fairs from the licensing regime created by the Civic Government (Scotland) Act 1982, and the establishment of a new licensing system that is fair, consistent and proportionate.

Travelling fairs, or funfairs as they are also known, are predominately a place of "free to enter" entertainment made up of a number of rides and stalls ranging from dodgems to carousels. These fairs will travel from place to place offering a space where people from all walks of life can come together and have fun together.

This important community role has been recognised by UNESCO who included the travelling fair industry as within their definition of "Intangible Cultural Heritage". The Scottish Government has also recognised the importance of these fairs as places of social and leisure activity which is fundamentally part of the human condition. In 2009, at a Parliamentary reception in Holyrood, then First Minister Alex Salmond said—

"Travelling showpeople are an important part of Scotland's culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen".

Owing to local authorities having a wide degree of flexibility when applying the licensing regime, operators are at the mercy of local variances ranging from a refusal to accept temporary applications to having a requirement for the applicant to pay a separate fee for each ride at the fair. The totality of these local variances is untenable and intolerable for travelling fairs. The reality is that the licensing framework under the 1982 Act creates a barrier of local "red-tape" which has resulted in a decimation of these important cultural, social and family events. My proposal will address these problems by creating a new fair, proportionate and consistent licensing system that allows local authorities to retain control of applications, but also allows operators to be able to manage their businesses more effectively.

It is important to stress that my proposal will not affect the health and safety aspect of travelling fairs, which is of course of vital importance, as that is regulated through the Health and Safety Executive.

I encourage all those with views on fairground licensing to take part in this consultation process – community groups, businesses, local authorities, Police Scotland, and individuals. Hearing views from a wide range of stakeholders will aid understanding of the issues and the best way forward. This will inform a Member's Bill that I intend to introduce in the Scottish Parliament in 2018.

I look forward to hearing your views.

A handwritten signature in black ink, appearing to read "Richard Lyle". The signature is written in a cursive style with a large initial 'R' and 'L'.

**Richard Lyle MSP**

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at: Richard Lyle MSP, 188 Main Street, Bellshill, North Lanarkshire, ML4 1AE; 01698 479900, email: [Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot).

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>.

## **AIM OF THE PROPOSED BILL**

The aim of this proposal is to make it less burdensome and more financially viable for those who put on travelling funfairs to manage and operate their businesses. The proposal is to achieve this by—

- taking travelling funfairs out of current public entertainment licensing requirements, which are being applied inconsistently, disproportionately and inflexibly; and
- creating a new bespoke licensing process for travelling funfairs in Scotland, that is consistent, proportionate and flexible.

A broader aim of the proposal is to help to ensure the survival and viability of the many communities of showpeople in Scotland, whose way of life and successful future is being threatened by current law and practices.

## **BACKGROUND**

### **Definition of a travelling fair**

This proposal relates specifically to travelling fairs, i.e. funfairs which move from location to location across the country and are invariably operated by showpeople.

### **Summary**

The ability of people, most usually Scotland's proud and historic communities of showpeople, to manage and operate travelling funfairs across the country is being threatened by the current approaches to licensing being taken by Scotland's local authorities.

Those wishing to hold a travelling funfair in a particular location—

- need to apply for a licence from the relevant local authority a long time in advance (often up to 3 months);
- are charged a range of fees (often non-refundable if the application is unsuccessful), some of which are economically unviable for showpeople; and
- are unable to move to an alternative site if the licensed site is not in a fit state to hold the funfair when it arrives.

This proposal seeks to address these problems by ensuring the continued appropriate permissions to hold travelling funfairs are controlled by Scotland's local authorities, but without the current inconsistencies and red-tape which is having such a damaging cultural and economic effect on showpeople in Scotland, and is increasingly preventing people across Scotland from being able to enjoy all the fun of the fair.



## **Current law governing funfair licensing in Scotland**

Scotland's 32 local authorities currently enjoy discretion when deciding whether to require public entertainment licences.

The Civic Government (Scotland) Act 1982 (c.45)<sup>1</sup> gives local authorities the power to require public entertainment licences, if they choose to do so, by passing a resolution. It is therefore an optional, rather than a required, licensing arrangement.

However, all 32 local authorities in Scotland have passed such resolutions and, as such require public entertainment licences for funfairs. However, local authorities have a great deal of discretion as to how the licensing system operates within their areas. Scotland therefore has 32 different systems in place for licencing funfairs, which have a wide variety of terms, conditions and fees attached to them.

**It is important to note that public entertainment licences are not required to regulate health and safety aspects of funfairs.** Very important issues such as the safety and maintenance of rides and hygiene of food and drink available at funfairs, are covered by other legislation (see below for further information).

### **Application of the law across Scotland's 32 local authorities**

Due to the discretion local authorities enjoy for deciding on their own licensing arrangements for funfairs, there is great disparity amongst authorities. Perhaps the best, and most problematic, example of this is in the fees charged. Fees vary greatly across the country, from £45 to over £4000. Councils are also able to retain fees, which are payable on application, even when an application is not successful and many of them are doing so. Whilst it is understandable that councils do not refund the cost of processing an application (which is not dependent on the outcome of that application) any such processing fee should be modest and should not vary significantly from authority to authority. The larger fees being charged are clearly therefore not just to cover the cost of administration and authorities must be profiting from them. Refusing to refund any part of these larger fees therefore has a significant negative impact on the applicants.

The time it takes for local authorities to process applications also varies considerably. The 1982 Act gives local authorities up to three months to consider an application, and six months to come to a decision. Within these statutory parameters, the actual time an applicant can expect a decision is therefore dependent on the resources available to individual local authorities and the pressures that are on them at any given time.

Details of fees charged and processing times across Scotland's 32 local authorities can be seen in the table below (information obtained in October 2017)—

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<sup>1</sup> The Civic Government (Scotland) Act 1982 (c.45). Available at: <http://www.legislation.gov.uk/ukpga/1982/45/contents>.

<b>Local Authority</b>	<b>Cost of License</b>	<b>Processing Time</b>
Aberdeen City	£324 (temporary), £695 (full)	Apply 28 days in advance
Aberdeenshire	£375 (3 year)	8 Weeks' Notice
Angus	tiered	At least 28 days
Argyll and Bute	£151 (year)	Not Known
City of Edinburgh	Fees range from £1035 for 2-5 devices to £4133 for around 20 devices	62 days on average
Clackmannanshire	3 year- £211, temp- £107	8 weeks' notice
Dumfries and Galloway	£368 (1-7 days)	Apply 28 days in advance
Dundee City	£255 (full license)	Apply 28 days in advance
East Ayrshire	£248 (full license)	Apply 28 days in advance
East Dunbartonshire	£50 (temporary), £248 (full)	Apply 28 days in advance
East Lothian	£94	4-6 weeks
East Renfrewshire	£239 (year)	6-8 weeks
Falkirk	£255 (temporary)	3-4 weeks
Fife	£145 (3 year)	4-6 weeks
Glasgow	£597	Not Known
Highland	£508 (temporary)	Not Known
Inverclyde	£165 (year), £495 (3 years)	28 days
Midlothian	£109	3 Months' Notice
Moray	£208 (under 200 capacity), £917 (over 500 capacity)	4 Months
Western Isles	£259	4-6 weeks
North Ayrshire	£285	2 Weeks' Notice
North Lanarkshire	£315	Not Known
Orkney Islands	£128 (year)	Not Known
Perth and Kinross	£300 (year), £480 (3 years)	6-8 weeks
Renfrewshire	£853	3 Months
Scottish Borders	£538 (3 years), £178 (year)	Not Known
Shetland Islands	£161 including application fee (temporary)	Up to six months
South Ayrshire	£895 (3 year)	Apply 28 days in advance
South Lanarkshire	£267	Apply 28 days in advance
Stirling	£113 (1 year)	10 weeks
West Dunbartonshire	£606	90 calendar days
West Lothian	£97	3 months with 35 day notice

These inconsistencies across Scotland are causing a number of difficulties for those who are seeking to hold funfairs, the vast majority of whom are families of travelling showpeople with many years of tradition and experience.

Showpeople are finding it increasingly difficult to—

- pay the very high fees being charged by some local authorities;
- cope with the economic impact of applications being denied but fees being retained; and
- plan their activities (which are, by their very nature, temporary and travelling) due to the lengthy and often bureaucratic processes involved.

As any funfair operating in the rest of the UK does not require a public entertainment licence, those managing them do not face many of the same barriers to conducting their businesses. They are not subject to varying, often high, fees (which are non-refundable if unsuccessful); they are not subject to a lengthy application and decision-making process; and they are not tied to one specific site, so can switch sites more easily if they need to do so. Funfairs which operate in Scotland are therefore at a disadvantage compared to those operating in the rest of the UK.

### **Case studies**

#### *Case study 1*

A member of the Showmen's Guild applied for a Temporary Public Entertainment Licence in relation to a 500 capacity fair taking place in the North of Scotland. The fee for the application was £255 which was non-refundable.

The applicant had 45 years' experience in running fairs and an unblemished record. Within the six months prior to the application the applicant had run shows in a number of other local authority areas and was able to provide letters from a council and past neighbours confirming that the fair had been operated to a high standard and without complaint.

A number of objections were made including one from Environmental Health in relation to potential noise. A hearing was held and, despite the operator committing to a number of control measures and agreeing a noise management plan with environmental health officials, the application was refused. There was no viable appeal route. The Fair, which was only a week away, was therefore cancelled meaning that a number of families had no work for an extended period of time. Had the licence application been determined sooner then the applicant could have tried to identify an alternative site.

*Case study 2*

The operator of a travelling fair on a shopping centre car park (with the consent of the shopping centre) had to move the location of the fair a short distance within the car park to allow for works to be carried out. The local authority insisted that a fresh temporary public entertainment licence was required. This meant that the fair had to stop trading for six weeks while the application was determined despite the shopping centre being happy for the fair to continue trading in this new location.

**Funfair regulation in the rest of the UK**

Funfairs do not require a specific licence to operate in the rest of the UK. Funfairs are not “regulated entertainment” and so are not “licensable activities” for the purposes of the Licensing Act 2003<sup>2</sup> which applies to England and Wales. Funfairs on private land in England and Wales require the permission of the landowner, and if they wish to operate on council owned land they must notify the council in advance. Only notification, rather than permission, is required, unless local byelaws have been passed to require otherwise. Where byelaws are in place they often relate to issues such as opening hours, and control of litter and waste.

Across the UK (including Scotland), health and safety aspects of funfairs are regulated by the Health and Safety at Work etc Act 1974<sup>3</sup> (HSW). The HSW Act applies to all employers, employees and people who are self-employed. The Act protects people whilst at work, and also extends to protecting volunteers and members of the public who may be affected by a work activity, which includes funfairs. To comply with the HSW Act various codes of practice and guidance must be adhered to.

The Fairgrounds and Amusement Parks: Guidance on Safe Practice, published by the Health and Safety Executive in 2007<sup>4</sup>, shows in detail the many health and safety requirements that funfairs need to comply with in the UK. Another relevant document relates to safe crowd management<sup>5</sup>. In terms of issues such as noise nuisance, council environmental health departments have a statutory duty to prevent noise nuisance so would be involved in any such issues relating to a funfair.

Depending on what activities may be part of a funfair, other licences/notices may be required in England and Wales, such as a temporary event notice<sup>6</sup> or street trading

<sup>2</sup> Licensing Act 2003 (c.17). Available at: <http://www.legislation.gov.uk/ukpga/2003/17/contents>.

<sup>3</sup> Health and Safety at Work etc Act 1974 (c.37). Available at: <http://www.legislation.gov.uk/ukpga/1974/37>.

<sup>4</sup> Health and Safety Executive (2007). Fairgrounds and Amusement Parks – Guidance on Safe Practice Available at: <http://www.hse.gov.uk/pubns/priced/hsg175.pdf>.

<sup>5</sup> Health and Safety Executive (2000). Managing crowds safely: A guide for organisers at events and venues. Available at: <http://www.hse.gov.uk/pubns/priced/hsg154.pdf>.

<sup>6</sup> Temporary Event Notice for England and Wales. Details available at: <https://www.gov.uk/temporary-events-notice>.

licence<sup>7</sup>, to cover the sale of alcohol and/or food. Such applications can be approved or refused by a local council.

In Northern Ireland, funfairs are also not part of national public entertainment legislation<sup>8</sup> and are instead able to be controlled by district councils by passing bye-laws<sup>9</sup> with regards to issues such as the hours of operation, safety, and minimising negative impacts on local areas.

### **Scottish Government view**

I led a member's debate on the 125th anniversary of the showmen's guild, which addressed many of the issues in this consultation, on 19 June 2014. At the end of that debate, the Minister for Local Government and Planning in the Scottish Government stated that—

“On the subject of regulation, very valid points were made about regulations and the complexity of having 32 local authorities applying 32 variations of licensing and fee structures. I am sure that members will welcome the fact that work is in hand to look at greater consistency in fees and at harmonisation across the country. That work is being done by a working group.”<sup>10</sup>

In answer to a Parliamentary Question I put down in May 2016 asking the Scottish Government what progress it was making in developing guidance to assist licensing authorities that are considering funfair applications, the Cabinet Secretary for Justice replied—

“Scottish Government officials are engaging with stakeholders with a view to developing guidance to assist licensing authorities in their consideration of funfair applications. To that end, a meeting has been arranged with the Showmen's Guild on 31 May 2016.”<sup>11</sup>

The Scottish Government's view is that, rather than changing the current legislation, or bringing forward new legislation, to tackle these issues, it is best dealt with by issuing guidance to local authorities. In July 2017 the Scottish Government published new

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<sup>7</sup> Street Trading Licence for England and Wales. Details available at: <https://www.gov.uk/street-trading-licence>.

<sup>8</sup> The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. Available at: <http://www.legislation.gov.uk/nisi/1985/1208/contents>.

<sup>9</sup> Under article 67 of the Pollution Control and Local Government (Northern Ireland) Order 1978. Available at: <http://www.legislation.gov.uk/nisi/1978/1049/article/67>.

<sup>10</sup> Scottish Parliament Official Report (19 June 2014). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9261&i=88107>.

<sup>11</sup> Parliamentary Question S5W-00149 and answer. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-00149&ResultsPerPage=10>.

guidance on public entertainment licences in respect of funfairs.<sup>12</sup> However, there is no compulsion on local authorities to change their current practices.

This guidance is also not guaranteed to improve consistency across all local authorities, as each authority will consider and act upon it on an individual, rather than a collective, basis.

## **HOW THIS PROPOSAL WILL ADDRESS THE CURRENT PROBLEMS**

Currently, operators in Scotland can find themselves in the situation of wanting to hold a travelling funfair and, despite complying with all required health and safety legislation, still having to apply to the council for a Public Entertainment Licence. Forms need to be filled in and a fee, which could be up to £4133, sent in with the application. The council can then take up to three months to consider the application and up to 6 months to come to a decision. If the application is turned down, the council may keep some or all of the fee. The organisers are out of pocket, are not able to hold the funfair, and have also been prevented from planning other fairs in other locations, as the outcome of the relevant application was not known. Or, if the application was successful, but on the day of arrival the funfair cannot be set up on the licensed site as it is waterlogged due to bad weather, the organisers cannot hold the funfair on an alternate site as it has no licence for that site and the organiser has no option of trying to recoup the money spent on the licence.

This proposal seeks to take funfairs out of the inconsistent and unnecessarily complex public entertainment licensing system, and create a separate simple, fair and proportionate process in Scotland, tailored to the needs of the funfair sector.

The proposal would seek to minimise red-tape and create an appropriate balance between regulating funfairs, ensuring that operators have permission to stage them and comply with all required legislation, and ensuring that operators can conduct their businesses more reasonably, without being subject to delays, high fees and an inflexible system. **This proposal is therefore to make legislative changes to remove the scope for interpretation and inconsistency.**

## **DETAIL OF THE PROPOSED BILL**

### **Proposed content of the Bill**

The Bill would firstly exempt funfairs from the current licensing requirements by amending the Civic Government (Scotland) Act 1982. The Bill would also establish a new permissions process for the operation and management of travelling funfairs in Scotland.

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<sup>12</sup> Scottish Government (20 July 2017). Civic Government (Scotland) Act 1982 Guidance on public entertainment licences in respect of funfairs. Available at: <http://www.gov.scot/Publications/2017/07/5619>.

In particular, the proposed new system would—

- shorten the time local authorities are permitted to consider and decide upon applications by setting a shorter and fixed timescale;
- ensure that any fees charged are proportionate and for administrative purposes only (possibly by capping fees that can be charged and/or setting a fixed fee consistent across all local authorities); and
- create sufficient flexibility to deal with situations where alternative sites are required at short notice.

**It is important to reiterate that this proposal would not affect the current health and safety requirements (the Bill would make no change to health and safety law) which all funfairs must adhere to, and would not compromise standards in this regard. A Scottish Parliament Bill, in any case, could not amend health and safety law, as it is reserved to the UK Parliament under the devolution legislation.**

### **Who would the Bill affect and how?**

The Bill would predominantly affect four groups of people—

- those who manage and operate travelling funfairs;
- those responsible for licensing/approving funfairs;
- those who attend funfairs; and
- local communities in the vicinity of a funfair.

#### *Operators*

By establishing a clear, simple, proportionate and flexible system for those people operating and managing funfairs to work within, the Bill should have a positive effect on the up to 2000 showpeople living and working in Scotland, and anyone else operating funfair businesses. This should include direct impacts, such as the requirements for being able to hold a funfair being less costly and bureaucratic, and also indirect benefits, such as being able to better plan their business activities over the short, medium and long term, and being able to better manage considerations such as accommodation and education requirements for children of travelling showpeople.

#### *Regulators*

The proposal would have an effect on local authorities, which would no longer be able to license funfairs under the 1982 Act, and would be required to implement the new process created by this proposal. The proposal shortens the time available to local authorities to process and decide on applications, and also ensures that fees charged must only cover any outlay costs. Any local authority currently profiting from applications would no longer continue to do so, but no local authority would suffer costs to it as a result of the proposal.

#### *Attendees*

For those visiting funfairs, or wanting to visit funfairs, the proposal should have a positive impact, as it should be easier for funfairs to operate, and therefore for fairs to be held across Scotland for people to enjoy.

### *Communities*

For local communities that may have concerns about the appropriate management of funfairs, the continued role of local authorities in approving the staging of funfairs should offer reassurance. Also, as detailed above, other legislation and the role of the Health and Safety Executive relating to health and safety and issues such as noise pollution or anti-social behaviour would not be affected by this proposal and would continue to apply.

### **Alternative approaches**

In bringing forward this proposal, possible alternative courses of action were considered, including—

- making no legislative change but encouraging the Scottish Government to issue strong guidance to all local authorities on how they should be approaching licensing of funfairs;
- proposing a member's bill to amend the 1982 Act to change some of the requirements of the public entertainment licensing system;
- proposing a member's bill to remove travelling funfairs from the 1982 Act only (and not replace that with a new bespoke process).

The first of these options is one the Scottish Government has indicated it intends to pursue. However, no such guidance has been issued to date and there is no guarantee when any such guidance may appear or what it would state. Even if such guidance does come forward it would be just that, guidance, and therefore local authorities would still enjoy the current flexibility to manage and license funfairs as they see fit.

Amending the 1982 Act to try and deliver the desired changes would be problematic as it would either involve amending the public entertainment licence process as a whole, which would not be appropriate to address the needs of one specific sector, or would involve complex amendment that would not easily be transparent or accessible or fit for the funfair sector.

Exempting funfairs from the 1982 Act without creating a bespoke process to replace it would disempower local authorities inappropriately from being able to have any input into decision-making.

For these reasons, these options were discounted and this proposal is the one I consider to be the most effective way to guarantee delivering the changes required whilst maintaining an appropriate balance between operators and regulators.



## **Financial implications**

Changing the licensing system as outlined in this consultation would be likely to have financial implications predominantly on—

- those currently paying the fees (showpeople and other operators); and
- those currently charging and receiving the fees (local authorities).

### *Operators*

In the vast majority of cases, possibly in all cases, the fees paid by showpeople and other operators would reduce as a result of the proposal and therefore the proposal would reduce costs for travelling fair businesses, many of which are small and medium sized enterprises.

### *Regulators*

The fees received by local authorities would also reduce. However, as stated above, as the intention of the proposal is to ensure that fees charged relate to administrative cost covering only, whilst any authorities currently profiting from funfair licensing will no longer do so, authorities will only lose any additional profits they are currently making on funfair licences as a result of the proposal.

There may also be other financial implications for local authorities, for example, being required to process applications faster than the current legislation allows may have resource implications for some authorities, but this is not judged to be significant as authorities already have staff processing applications.

If this proposal led to more funfairs being held around Scotland, there may be an impact on local authorities, and on public services, such as Police Scotland and emergency services, in ensuring that funfairs were operated safely for all concerned, including local communities.

## **Equalities**

It is important to note that showpeople are occupational travellers rather than being part of the gypsy/traveller community, but that they can face many similar issues to gypsy travellers, in terms of education issues and discrimination. Showpeople are business people often of many generations of proud tradition, whose livelihood and wellbeing is dependent on being able to travel and stage funfairs around the country. An improved and more proportionate licensing system should therefore have a positive impact for showpeople.

In 2009, the then First Minister, Alex Salmond, said that—

“showpeople are an important part of Scotland’s culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen.”<sup>13</sup>

Currently, showpeople are often unable to plan their activities effectively, due to the lengthy timescales involved in applying for licences. This can make it difficult for them to plan necessities, such as accommodation requirements for different times of the year, and education requirements for children of showpeople. The high fees being charged currently in some parts of Scotland to apply for a licence, which are often non-refundable if not successful, are creating financial hardship for some showpeople.

The proposal therefore has significant potential to positively impact on travelling showpeople from an equalities perspective, in terms of the cultural traditions, as well as from an age (access to education) and possibly gender (depending on the roles of female and male members of showpeople communities) perspective.

### **Sustainability of the proposal**

The Scottish Government’s website states that—

“The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.

The Scottish Government has as its overall purpose to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”<sup>14</sup>

That emphasis on sustainable economic growth is supported by this proposal, which will help to free the small and medium sized business involved from overly-bureaucratic regulation which is stifling their economic viability. The current system is having a negative impact on not only the economic sustainability of those who put on funfairs, but also on local communities. Where fairs are held they are likely to have a positive economic impact on local areas, bringing tourists and visitors into the area, and therefore simplifying the system will hopefully see positive impacts in communities too. The wellbeing of showpeople should also be enhanced by the proposal, which will have a positive impact on future generations. Should this proposal lead to an increase in the number of funfairs held in Scotland then there would be an increase in the related environmental impact (energy required for travel, powering rides, any impact/damage to grass/land etc). However, these same impacts are current managed by funfairs around the country with efforts made to minimise any negative impacts, which would continue to be the case.

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<sup>13</sup> Scottish Government news release from 2009, available at: <http://www.wired-gov.net/wg/wg-news-1.nsf/0/FCBB48A2B4C029EC8025765D00440C77?OpenDocument>.

<sup>14</sup> Scottish Government. Sustainable Development. Available at: <http://www.gov.scot/Topics/Environment/SustainableDevelopment>.

**QUESTIONS**

**SECTION 1 - ABOUT YOU**

**1. Are you responding as:**

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- Politician (MSP/MP/Peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

**2B. Please select the category which best describes your organisation:**

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. club, local group, group of individuals, etc.)

**3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.**

- I am content for this response to be attributed to me or my organisation
- I would like this response to be anonymous (the response may be published, but no name)
- I would like this response to be confidential (no part of the response to be published)

Name/organisation:

**4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)**

Contact details:

**SECTION 2 - YOUR VIEWS ON THE PROPOSAL**

**Aim and approach**

1. Which of the following best expresses your view of the proposal to exempt funfairs from Public Entertainment Licensing requirements and to create a distinct new licensing system for funfairs in Scotland?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response.**

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

- Yes
- No
- Unsure

**Please explain the reasons for your response.**

3. What do you think would be the main advantages, if any, of the proposal?
4. What do you think would be the main disadvantages, if any, of the proposal?
5. What do you think the maximum time available should be for local authorities to make a decision on an application to hold a funfair?

- less than 14 days (please specify)
- 14 days
- more than 14 days and less than 28 days (please specify)
- 28 days
- more than 28 days (please specify)
- no fixed maximum
- Unsure

**Please explain the reasons for your response.**

6. How do you think fees should be determined for local authorities to process an application?

- fee at local authority's discretion
- fee must not exceed the cost of processing the application
- maximum fee set in statute
- single fee fixed in statute
- power of Ministers to set scale of fees
- Unsure

**Please explain the reasons for your response, including details of the amount of any suggested fees.**

**7. What is your view on what should happen to the fee in cases where an application is refused?**

- Full fee returnable to the applicant
- Part of the fee returnable to the applicant
- None of the fee returnable to the applicant
- Unsure

**Please explain the reasons for your response.**

### **Financial implications**

**8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:**

#### *Showpeople*

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

#### *Local authorities*

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

#### *General public*

- Significant increase in cost

- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response.**

**Equalities**

**9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?**

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

**Please explain the reasons for your response.**

**10. In what ways could any negative impact of the Bill on equality be minimised or avoided?**

**Sustainability of the proposal**

**11. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

- Yes
- No
- Unsure

**Please explain the reasons for your response.**

**General**

**12. Do you have any other comments or suggestions on the proposal to exempt funfairs from Public Entertainment Licensing requirements and to create a distinct new licensing system for funfairs in Scotland?**

## HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### **Format of responses**

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/LicensingofFunfairs/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

## Where to send responses

Responses prepared electronically should be sent by e-mail to:

[Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot)

Responses prepared in hard copy should be sent by post to:

Richard Lyle MSP  
188 Main Street  
Bellshill,  
North Lanarkshire  
ML4 1AE

You may also contact Richard Lyle's office by telephone on 01698 479900.

## Deadline for responses

All responses should be received no later than **26 February 2018**.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website <http://www.richardlylemsp.net/>. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

## Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.



If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

### **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).  
**Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).

# **Civic Government (Scotland) Act 1982**

## **Guidance on public entertainment licences in respect of funfairs**

## **Introduction**

1. Scottish licensing authorities often adopt differing approaches to aspects of civic licensing. This allows them to respond most appropriately to local concerns and generally works well.
2. This non-statutory guidance relates to the licensing of funfairs as places of public entertainment, under the Civic Government (Scotland) Act 1982 (“the 1982 Act”).
3. This guidance is intended to assist those seeking to operate funfairs across Scotland, those involved in the processing of applications and those with an interest in the licensing of funfairs. It is intended to encourage licensing authorities to adopt best practice to support and encourage operators in running funfairs across the length and breadth of Scotland. Where possible the guidance provides examples of good practice for applicants for a public entertainment licence, and for licensing authorities when considering licence applications.
4. The guidance should not be taken as an authoritative statement as to the law. Local authorities must ensure that their procedures enable them to comply with the requirements of the legislation. The interpretation of the law is ultimately a matter for the courts. This guidance should not be seen as a replacement for independent legal advice.

## **Legislative background**

### Who needs a licence?

5. The licensing of funfairs can be required by section 41 of the 1982 Act. This section enables a licensing authority to direct that a public entertainment licence is necessary for certain types of activity. Section 41(2) of the 1982 Act provides that a “place of public entertainment” is any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation<sup>1</sup>.
6. We understand that all the Scottish licensing authorities have decided to operate a public entertainment licensing regime, and also to include funfairs within this.
7. Therefore if you intend to hold a funfair, you should contact the local authority for the location where it will take place.
8. The licensing authority is responsible for considering and granting applications for public entertainment licences. There are separate licensing authorities for every Scottish local authority area, each dealing with applications in their own geographical area. Each application is considered by the particular licensing authority and any enquiries should be made direct to the licensing authority itself.

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<sup>1</sup> Section 41(2) also provides a list of certain premises that are exempt from public entertainment licensing requirements.

### Types of licence

9. There are two types of public entertainment licence, a full licence and a temporary licence. A full licence can be granted for a period up to three years. A temporary licence can be granted to have effect for a period not exceeding six weeks.
10. The licensing authority may offer the ability to apply for a temporary licence. However there is no obligation for the licensing authority to make provision for temporary licences. Enquiries about the appropriate licence application should be made direct to the local licensing authority.
11. This guidance highlights the difference between the two types of licence, and applicants should consider carefully which would be most appropriate for their needs.

### The application process

12. The steps which must be followed in applying for a licence, and the procedure which the local licensing authority follows once they have received an application for a public entertainment licence, are contained within Schedule 1 of the 1982 Act.
13. An application for a public entertainment licence should be made to the licensing authority, together with the appropriate fee.
14. The licensing authority may also request that further documents are required with the application. For funfairs, the documents are likely to be the relevant public liability insurance certificates, the health and safety risk assessment and an event safety plan.

### **Full Licences**

15. Where an application for a **full** public entertainment licence has been submitted, the applicant must display a notice at the proposed premises for a period of 21 days. The notice should provide details about the licence application, the applicant and details with regards to making objections and representations.
16. Once the licensing authority has received the application for a full licence, they shall send a copy of the application to the chief constable and the relevant fire authority. The police and fire authority can object to an application for a full licence, and can also make representations to the licensing authority about the application.
17. Members of the public can object to the application, or make representations regarding it. The notice should advise that objections or representations can be made to the local licensing authority, and of the date that objections and representations should be received.

18. The notice should also advise that any objection or representation to the licence application should be made in writing within 28 days of whichever is the later or latest of certain dates set out in the 1982 Act, for example, the date when public notice was first given. Written objections and representations should specify the grounds of objection or nature of the representations, contain the contact details of the person making them, and be signed by them.
19. The licensing authority will consider if the objections or representations have been made correctly. They will also forward a copy of all relevant objections to the applicant, who should be given the opportunity to respond.
20. Once the 21 day site notice period has passed, the certificate must be forwarded to the licensing authority confirming that the notice was displayed.
21. It is for the licensing authority to consider whether any failure to display the notice is reasonable. If they do not consider it reasonable, they may order that the notice be displayed for a further 21 days before considering the application.
22. There are a number of organisations and council departments who will have an interest in the licence application. Examples include Scottish Ambulance Service, Police Scotland, Environmental Health, Leisure Services, Planning Services, Building Services, the Roads Service and the Emergency Planning Unit. Local authorities can however be structured in different ways, and it may be that across Scotland the same role is carried out by different departments.
23. The applicant must liaise with all relevant departments and ensure that they have the correct permissions, licences or certificates to hold a funfair. The licensing authority can provide further advice about the departments which should be consulted.
24. When they are considering the application, the licensing authority may make reasonable inquiries as they see fit. Where they intend to include the results of those inquiries in any decision making, they should notify the applicant of this intention.
25. The licensing authority may also consider that a visit to the proposed site would be useful when dealing with the application. In some local authority areas, the funfair is visited prior to opening to check test certificates and insurances for each ride is in place and to ensure all safety standards are adhered to. Some local licensing authorities set conditions that the licence will not come into effect until a satisfactory inspection takes place.
26. In the case of an application for a full licence, the licensing authority may hold a hearing to consider the application.
27. At that hearing, a licensing committee will consider the application, as well as any relevant representations and objections which have been made by the police, fire authority, or members of the public.

28. The applicant can also make representations for consideration by the licensing authority, addressing any objections.
29. Having considered any and all representations, the licensing authority will decide to either grant the application (subject to conditions) or refuse it.
30. A full licence can be valid for three years, from the date granted by the licensing authority. The licensing authority can grant the licence for a shorter period.
31. A full licence can be renewed, and an application for renewal of a licence is made in the same manner as an application for a new licence. If an application for renewal is made before an existing licence expires, the existing licence remains in force until the renewal of the licence is granted or, if it is refused, until the timescale for an appeal has lapsed or the appeal has been determined or abandoned.

### **Temporary licences**

32. There is no requirement for a notice to be displayed when an application for a temporary licence has been made.
33. Where an application for a temporary licence has been submitted, the licensing authority need only consult the chief constable, and if necessary, the fire authority.
34. The licensing authority can grant a temporary licence subject to conditions.
35. A temporary licence cannot be granted for longer than six weeks, and cannot be renewed. The holder of, or the applicant for, a temporary licence can however also make an application for a full licence for the same activity. If an application for a full licence (for the same activity) is made, the temporary licence, if granted, continues until the full licence is granted or, if it is refused, until the timescale for an appeal has lapsed or the appeal has been determined or abandoned.

### **Conditions**

36. Conditions are specific requirements that the licence holder must comply with, otherwise the licence could be refused, suspended or revoked.
37. The licensing authority can attach standard conditions for all licences granted for funfairs, they may also impose individual conditions to full licences, and also to temporary licences.

38. By way of example, such licence conditions could:

- Restrict the use of the premises to specific kinds of activity.
- Limit the number of persons to be admitted to the premises.
- Fix the days and times when the premises may be open.

39. The licensing authority should give careful consideration as to whether the condition proposed is necessary. The licensing authority should also consider whether, in all the circumstances, the condition is reasonable and proportionate.

40. Any condition attached to the licence must be clear, so that the licence holder is aware of his obligation to comply.

### **Fees**

41. The appropriate fee for the licence should accompany the licence application.

42. Each local licensing authority should ensure that fees are set at a reasonable rate.

### **Varying the licence**

43. A temporary licence cannot be amended. Any change or variation will require a new licence application to be submitted. This should be borne in mind when applying for a temporary licence.

44. The licensing authority has a wide discretion to vary the terms of a **full** licence.

45. They can do so at any time they see fit, whether or not the licence holder has made an application.

46. The licensing authority shall notify the licence holder, the chief constable and the relevant fire authority of the proposed variation of the licence.

47. The licence holder, the chief constable and the relevant fire authority, have the opportunity to be heard at any consideration of the proposed variation.

48. The licence holder must notify the licensing authority as soon as possible of any material change of circumstances affecting the holder of a licence or the activity to which the licence relates.

49. The licence holder must provide the licensing authority with the details of the change proposed.

50. The licence authority shall consult with the chief constable and the relevant fire authority on the change proposed.

51. It is ultimately for the licensing authority to consider the change proposed, and whether or not to consent to it.



52. Any failure to disclose something which the authority decides is a material change could be considered to be misconduct and may have a bearing on fitness to hold a licence and may lead to prosecution.

### **Appeals**

53. A decision not to grant a full licence, or to suspend a full licence, would be capable of appeal. An appeal can be to the Sheriff in the first instance and could be on the grounds that the authority erred in law, based their decision on an incorrect fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.

54. Any appeal in relation to a public entertainment licence must be made within 28 days of the licence application being determined.

55. Where an application for a temporary public entertainment licence has been refused, the only avenue of appeal is by way of judicial review.

### **Conclusion**

56. The 1982 Act makes clear that any decision made by the local authority, when considering applications for public entertainment licences, should be reasonable. This applies to fees, conditions which may be added to the licence, and to the time taken to consider the application.

57. The licensing authority should consider the facts of individual licence applications, and make decisions which are based on local priorities and circumstances.

58. The licensing authority should, where possible, ensure that there is consistency in these decisions, and in the conditions which may be attached to any licence granted.

59. Any query about any public entertainment licensing requirements for funfairs should be directed to the local authority.



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**OGL**

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**ARGYLL AND BUTE COUNCIL**  
**Development and Infrastructure**

**Planning Protective Services and  
Licensing Committee**  
**21 February 2018**

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**Planning (Scotland) Bill**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 This Bill stems from the review of planning which started in September 2015 with the appointment of an independent panel made up of users of the planning system. The review seeks to drive a wide range of improvements aimed at strengthening and simplifying the planning system to ensure it better serves the needs of communities and the economy. The Bills provisions seek to improve the system of development planning in Scotland, give people a greater say in the future of their places and support the delivery of planned development.
- 1.2 Some of the key aspects of the Bill are its provisions in relation to the system of development plans; the opportunities for community engagement in planning; the effective performance of planning authorities functions; and a new way to fund infrastructure development.

**RECOMMENDATIONS**

- 1.3 It is recommended that Members endorse the officer response which has been sent to the Scottish Parliament as set out in appendix 1 of this report

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**2.0 INTRODUCTION**

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2.2 Some of the key aspects of the Bill are its provisions in relation to the system of development plans; the opportunities for community engagement in planning; the effective performance of planning authorities functions; and a new way to fund infrastructure development.

**3.0 RECOMMENDATIONS**

3.1 It is recommended that Members endorse the officer response which has been sent to the Scottish Parliament as set out in appendix 1 of this report

**4.0 DETAIL**

4.1 The Planning Bill has been developed through an extensive engagement and consultation exercise across a full range of stakeholders, including CoSLA, and individual planning authorities, representatives from industry and the general public. This culminated in the Scottish Governments consultation paper “Places, people, and planning” in January 2017. The paper set out four main areas of change, based around the themes of; Making Plans for the Future; People make the system work; Building more homes and delivering infrastructure; and Stronger leadership and smarter resourcing. The PPSL Committee considered a report on this paper and endorsed a consultation response on behalf of Argyll and Bute Council in March 2017. The responses to this consultation were analysed and a position paper published by the Scottish Government in June 2017. Following on from this further analysis, a series of technical papers and stakeholder workshops have been held, and have been used to help inform the content of the draft Bill and the wider progress of the planning review programme.

- 4.2 There are four main parts to the proposed Bill, the first is development planning. There is widespread support for maintaining a plan lead system, and for it to be strengthened to increase certainty about future development and investment. This can ensure that the plan can shape the future of places for the benefit of communities. In order to do this plans must be based on a robust and transparent evidence base informed by open and democratic debate and have a clear path to delivery. The Bill therefore seeks to provide a more streamlined and less procedure heavy system. The National Planning Framework will be extended to include Scottish Planning Policy, and its status as part of the development plan for any area clarified by amending Section 3A of the Act. The enhanced status of the combined NPF and SPP will help streamline the system by removing the need for local development plans to restate national policy. The requirement that the NPF be reviewed every 5 years will be extended to 10 years. The expanded NPF will incorporate a more focused strategic planning element at the regional scale in addition to a national focus. There will be a new duty on planning authorities to assist Scottish Ministers in preparing the NPF, provide specified information and if required by Scottish Ministers to co-operate with other planning authorities to provide this information. This approach reflects the Bills proposals to remove the requirement to prepare strategic development plans for the four city regions. Instead the Bill proposes that authorities should have the scope and flexibility to determine the best ways for them to work together in bespoke regional partnerships, covering shared interests and duties to participate in production of the NPF.
- 4.3 For LDP's the Bill envisages giving them a greater focus on place and delivery. Strengthening the national level of planning policy will reduce the need for repetition and detailed policy wording within Local Development Plans. It is envisaged that this will reduce the time taken to prepare LDP's and improve their relevance to communities by ensuring that there is a much stronger focus on spatial planning and place. The more detailed provisions for LDP include: extending the timescale from 5 to 10 years; requiring the LDP to take in to account the local outcome improvement plan (LOIP) for the plan area; and removing the requirement for the LDP to contain its own separate vision statement for its area, but instead reflect those of the LOIP. The requirement to produce a Main Issues Report will be removed. Instead a single draft Proposed Plan is proposed with a longer consultation period and more scope for the planning authority to amend to reflect views of those responding to the consultation.
- 4.4 At present LDP are subject to independent examination prior to adoption of the plan where objections are received. The new Bill proposes to improve the examination process by frontloading some of the key decisions to ensure that there is early discussion and agreement of the outcomes that the plan should seek to achieve. There will therefore be a requirement for planning authorities to produce an Evidence Report to ensure that the evidence base is clearly set out and used as the basis for an early "gatecheck" of the plan. This will be a new frontloaded step in the examination process, whereby a Reporter will have the scope to approve the report or to recommend additional preparatory work. This could include; agreement on the amount of housing land required in the plan,

scoping of the strategic environmental assessment of the plan, or information on the capacity of the infrastructure of the area to accommodate additional development.

- 4.5 Other changes to the LDP system include removing the provision for statutory supplementary guidance, although there will still be scope for non- statutory guidance or advice to be a material consideration. The Bill will also allow the definition of Key agencies to be widened through Regulations, and place duties on them to participate in the development plan process, and could include for instance private sector infrastructure providers.
- 4.6 One of the key aspects of the proposed reforms is to establish the LDP's role as supporting and delivering development and promoting a collaborative approach to development planning and informing investment decisions. Greater emphasis on this is to be achieved by requiring Action Programmes which are currently prepared to accompany LDP's to be replaced by Delivery Programmes, which are to be agreed by the local authority as a whole, kept updated and reviewed regularly. The Bill proposes that there will be a requirement for the Chief Executive and the Council to sign off the delivery programme to demonstrate awareness and commitment to delivering its content, closing the gap between proposals in the plan and development on the ground.
- 4.7 The Bill will also enable local communities to produce Local Place Plans (LPP) and provide for them to be included as part of the development plan. The aim is to improve community engagement in planning and enable communities to take a proactive role in planning their future. Planning should reflect the aims of the communities it seeks to serve, and it's also important for LPP to support the LDP. It's expected that LPPs will link with wider Community Planning work including alignment with local outcome improvement plans. Where an LPP has been prepared, if it is submitted to the planning authority, then it will need to have regard to the LPP when preparing the LDP, this could either be via an amendment to an existing plan or at a future review of it. If an amendment to the LDP is proposed then it would be subject to standard LDP procedures, including independent examination where Scottish Ministers view it as a significant change.
- 4.8 The Scottish Government has carried out a review of Simplified Planning Zones, (SPZs) and Argyll and Bute Council are participating in a pilot study to see how these can be made to work better. The Bill proposes to replace SPZs with Simplified Development Zones (SDZs), and extend their remit to enable them to be designated in Conservation Areas and National Scenic Areas for example, and also to extend the grant of planning permission for the types of development specified in the scheme, to include other consents such as conservation area and listed building consents and also road construction consents in circumstances where it would be appropriate to do so. The Bill envisages significant potential for SDZs to lead and facilitate development by front loading the planning process. It therefore proposes that there should be a requirement for planning authorities to periodically report on how they have considered making schemes, and also to introduce a duty on authorities to consider making schemes on request, with requirements to report to Scottish Ministers, who

would then have scope to call in schemes or to direct that schemes be made or altered.

- 4.9 In relation to development management the Bill proposes a number of technical changes which aim to improve efficiency of the process, these include: Removal of recovery of advertisement cost for applications as it is to be incorporated in fees; widening the scheme of delegation to other types of applications such as advertisement consent; and allowing applications for the modification or discharge of planning obligations to be granted in part or subject to amendments.
- 4.10 The Bill also proposes to make changes to the provisions for pre application consultation (PAC) with local communities for national and major applications. The changes will require an application to be submitted within 18 months of the PAC notice, and will also allow minor changes that may require a new planning application to be made to use the original PAC rather than require the consultation exercise to be run all over again. While these changes are welcome more effective evidence of public engagement and relevance to the application would be demonstrated if the requirement to submit the application was within 12 months of the PAC rather than 18 months as proposed.
- 4.11 It is also proposed to simplify and clarify the duration of planning permission, and re-introduce the requirement to set the duration of a planning consent by condition. This is in order to increase transparency for applicants and communities. The Bill will also make provision for the default timescales for implementation of the consent to be varied by planning authorities as appropriate to the particular development proposed. Future guidance on these matters from the Scottish Government is expected to ensure that focus on delivery of development is maintained when considering the duration of planning permissions. Allied to this the Bill proposes to streamline the process for serving completion notices and will not require unopposed notices to be referred to and confirmed by Scottish Ministers.
- 4.12 The Bill seeks to vary the regulations which allow Scottish Ministers to set planning fees, this may enable more flexibility, such as enabling some discretionary charging, so that in some instances authorities will have the ability to reduce or waive fees. These changes may also extend to allowing higher fees to be set for retrospective applications, and it is also proposed to increase the effectiveness of enforcement through increase in the level of fines, and by improving the ability of planning authorities to recover expenses associated with ensuring compliance with an enforcement notice.
- 4.13 In order to justify increased planning fees and monitor the effects of additional investment in the planning service, the Bill seeks to introduce new provisions to assess the performance of planning authorities and to intervene where this is unsatisfactory. The Bill would introduce a statutory requirement for all planning authorities to submit an annual performance report in a form prescribed by Scottish Ministers, it is presumed from the detail available that this would be a document similar in nature to the existing annual Planning Performance Framework submission. The draft legislation also makes provision for Scottish

Ministers to appoint a person who will monitor the performance of planning authorities and how they carry out their functions as well as providing advice on ways in which they might improve their performance. Provision is also made for the appointment by Scottish Ministers of a person to undertake an audit of a planning authority and to prepare a performance assessment report for submission to and publication by Scottish Ministers. The appointed person would have wide ranging powers of access to the premises and information held by a planning authority and the Bill intends to support this by making it an offence where any person fails to co-operate with any request to provide information or evidence. Scottish Ministers would also gain statutory powers which would require planning authorities to implement improvement actions identified in the performance assessment report.

- 4.14 The final section of the Bill relates to the provision of an infrastructure levy to help the provision of necessary services and amenities to enable land to be developed, or provide the infrastructure necessary to serve the additional growth within an area. The levy would be designed to capture a proportion of the land value uplift associated with the development. The infrastructure levy will be established through Regulations, and these will be developed once further work on levels and viability has been done. The Bill provides that the Regulations may give local authorities the power to waive or reduce the infrastructure levy for development within their areas. The intention is that local authorities will be responsible for collecting and spending this levy at a local level.

## **5.0 CONCLUSION**

- 5.1 The proposed Bill is based on the Review of the Planning System which has been ongoing since September 2015, and which has been subject to several rounds of consultation. The proposals contained in the Bill are largely as anticipated, having been trailed in the Scottish Governments Position Statement which was published in the summer of 2017. The Council has participated both directly and indirectly through CoSLA and HOPS, in responding to these consultations.
- 5.2 Much of the detail of the Bill and its ultimate effect on the delivery of the planning system will be contained in Regulations which will follow. In general the direction of travel is supported, however the resourcing implications set out in the associated financial memorandum are unlikely to be as quantified, particularly for smaller rural authorities with dispersed and island communities such as Argyll and Bute.

## **6.0 IMPLICATIONS**

- |               |   |
|---------------|---|
| 6.1 Policy    | None immediately  |
| 6.2 Financial | The Bill lacks sufficient detail to accurately determine the financial implications. There are Potential planning application fee increases, and additional costs associated with greater public consultation, preparation of SDZ's, and Evidence Report and Gate check stage |



	of LDP. Analysis of the Financial Memorandum which accompanies the Bill concludes the savings identified may be too optimistic and at best likely to be cost neutral.
6.3 Legal	New Planning Act to be taken cognizance of.
6.4 HR	None
6.5 Equalities	None
6.6 Risk	Uncertainty over level of resource need to deliver
6.7 Customer Service	Increase in level of customer expectation for involvement in process e.g. Local Place Plans, longer consultation period on Proposed Plan.

**Executive Director of Development and Infrastructure: Pippa Milne**  
**Policy Lead Cllr David Kinniburgh**  
24-01-18

**For further information contact:** Mark Lodge ex 4280

## **APPENDICES**

Appendix 1- Argyll and Bute Council Response to Planning (Scotland) Bill

Appendix 1 – Argyll and Bute Council Response to Planning (Scotland) Bill

The Committee invites views on any aspect of the Bill but it would be helpful if written submissions could address the following questions:

***1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?***

The need to balance the views of communities, protection of the built and natural environment and to accommodate new development is one of the main principles of the planning system. Overall the proposed changes will help to simplify the system and to make it more transparent. Moving to a 10 year review cycle could result in plans becoming dated and out of touch with the communities they seek to serve. It is important that the flexibility to promote mid-term amendments as proposed in the Bill is retained. The hierarchy of plans in the Development Plan should also be clearly set out

***2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?***

The promotion of higher levels of housebuilding is a key issue at both a national and local level. The role of the development plan in coordinating and supporting the delivery of infrastructure on a planned basis to support development may help to do this. However, the planning system is only part of a complex process of housebuilding supply and demand. Changes proposed in the Bill such as a 10 year time span for local development plans, and strengthening the role of action programmes by changing them to delivery programmes can help, by providing more certainty and confidence to housebuilders. Simplified Development Zones where they are established to support housing development may also help. However in many areas the economic viability of housebuilding requires to be taken into consideration. This can be significantly influenced by the requirement for infrastructure investment, for smaller schemes and in remoter rural and island areas the costs of these can be considerable. The proposed infrastructure levy may act as a disincentive in such areas, and there could be a real challenge in achieving enough contributions to recover the costs of administering such a system, let alone provide funding to make a meaningful contribution to infrastructure investment.

***3. Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?***

It's not clear how the removal of SDP's and their replacement with a requirement to contribute to a new National Planning Framework will operate, nor how regional partnership approaches will operate. There may be increased resource implications for those authorities which are not currently part of SDP areas, and a risk that those outwith former SDP areas will not be able to fully participate at a National or regional level. Further detail is required on how regional partnerships should operate and consideration given as to

how those authorities who may fall between two or more regional partnerships should be best represented.

***4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?***

The move to a ten year cycle of plan replacement may help to refocus development planning from the process of plan preparation to delivery. The requirement for an Evidence Report and for that to be gatechecked prior to commencement of preparation of the proposed plan, and the proposals to move from an Action Programme to a Delivery Programme will help to place more emphasis on monitoring of the plan and its implementation. Greater corporate ownership of the Local Development Plan with approval required by full Council and Chief Executive, and the requirement for the LDP to reflect the local outcome improvement plans should help to ensure local authority priorities as they relate to land use are reflected in the LDP. It should be recognised however that LOIP and potentially Local Place Plans can, or could, reflect broader community planning proposals which extend beyond land use planning and these may not readily be reflected in the LDP. There is a risk that by moving to a ten year review period that LDP's will not be able to reflect current Corporate or Community Planning initiatives. There will also be potential issues with expectations as to how Local Place Plans are to be reflected in an LDP given the potential 10 year timescale for replacement LDP's. The ability to make amendments to an LDP may help to address this, however further detail in the Regulations should clearly set out how each should relate to the other. Moving to a ten year timescale, will help to provide greater certainty for both communities and developers and will allow infrastructure delivery to be better planned and coordinated. However there is a risk that without flexibility, the ability for LDP to anticipate the economic climate and development requirements over a ten or so year period, may mean that change is less easily accommodated. In this regard the ability of a planning authority to amend or if necessary prepare a new Local Development Plan within the ten year period will be crucial.

***5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?***

SDZs are given particular prominence within the Bill with more detail and prescription than any other topic. Presumably this signals a step change in direction by the Scottish Government to focus on growth and investment areas in order to support development.

The idea of SDZs to replace SPZs is supported, but the rate of take up is uncertain, given the relatively few SPZs designated under the current system. In principle the designation of new development zones could help to support the delivery LDP strategies and particular local priorities by highlighting those areas which are "development ready". However it is considered that such a designation would also need to be supported by a commitment from key agencies via the LDP to support the delivery and co-ordination of the provision of infrastructure and services within the SDZ area.

Widening the scope of SDZ's to include conservation areas, green belts and national scenic areas is supported, provided that recognition of appropriate standards and types of schemes which would be eligible for SDZ status within such areas made clear. Including the potential for other consents such as road construction consents, listed building consent, conservation area consent, and advertisement consent to be covered by such a scheme is also supported, however it should be recognized that not every scheme will be suitable for such a blanket approach to consents.

***6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?***

Removing the Main Issues Report stage will potentially reduce the opportunities for early engagement in the plan process. However having undertaken two cycles of plan preparation, experience has shown that public involvement at the MIR stage can be varied. In general communities become more involved when there are specific proposals affecting their communities and where more details of proposed developments are available. MIR has not therefore been as effective as it might have been in generating public interest the local development plan system.

Going to a proposed plan stage, providing for a longer statutory consultation period, and enabling planning authorities to make minor modifications to the proposed plan, in response to the consultation exercise, before proceeding to an examination, should help to secure more effective and meaningful community involvement in the process. Enabling the planning authority to make modifications to the proposed plan in response to representations will allow authorities to demonstrate their public accountability and transparency.

Making provision for Local Place Plans prepared by communities themselves to be recognised as part of the development plan, and for these to be reflected in the Local Development Plan could enable greater community involvement in the plan process. However, this is not without its challenges. There will be significant resource implications both for communities preparing Local Place Plans, and for planning authorities in supporting and responding to them. This will be particularly so where there are numerous communities within the planning authority's area, and where smaller communities may require more professional support to prepare Place Plans. The Bill provides no detail on the financial and technical support that will be required in order to enable local place plans to be prepared, and further detail in regulations and other guidance will be required in order to explain how it is envisaged they will be carried out. The availability of skills within communities themselves and/or professionals to support them in the preparation of Local Place Plans could result in a broad range of approaches to them, and regulations will be required in order to establish a minimum requirements in order to for the planning authority to give due consideration with regard to the Local Development Plan.

***7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?***

The increase in the fine level is welcomed; however planning enforcement should be about resolution rather than punishment. Clarity and consistency in the application of the enforcement service and compliance monitoring will have a far greater impact on public confidence in the planning system than increasing the level of fines.

The changes proposed in the Bill to strengthen enforcement powers will help but further changes in the following areas, as part of a wider review of enforcement processes could help further:

**Environmental Courts**

Consideration should be given to establishing a separate specialist environmental court which has the expertise to deal with the offences (This could also include other environmental matters from SEPA/SNH). Although the issue of environmental courts was looked at some time ago and rejected it has been successful in other countries and the case for them should be re-examined.

**Fixed penalty fines**

The use of fines is not considered to be a sustainable, long term solution as a workable enforcement tool. Even at the increased rates fines are still relatively low and an offender may choose to pay it to be immune from further enforcement action. A solution may be to allow the planning authority to impose repeat/increasing fines until the breach has been remedied. At the same time planning authorities may need additional powers to make it easier to recoup any unpaid fines.

**Planning Contravention Notices- PCN/S.272 notices**

Under existing legislation the failure to comply with PCN/s.272 notices should be referred to Procurator Fiscal, but in practice this is not a realistic option as it is not seen as a serious offence. Without proper sanctions, PCN's/S.272 are ignored which slows up the investigation process and can cost taxpayer money as the planning authority has to gather the necessary information itself. A possible solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.

**Retrospective applications**

Circular 10/2009 suggests that we should be seeking retrospective applications for breaches that require permission but are otherwise generally acceptable. Where a planning authority has already spent resources investigating alleged breaches then it should be allowed to charge a higher fee for such applications in order to cover its costs. The fact that the offender has to regularise the unauthorised development (at a higher than normal fee) may also help to improve public confidence in the system.

### **Powers to decline to determine a retrospective application**

Some offenders submit retrospective applications when enforcement action is being taken. In some circumstances, the offender can be playing the system to prolong the unauthorised use/development. To prevent this, the planning authority should have the discretionary power to refuse to accept applications where enforcement action has been taken.

***8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?***

The principle of an infrastructure levy is supported, however there are concerns that economically fragile and rural areas may not be able to support a levy at rates which would be sufficient to deliver the infrastructure required by new developments. This is particularly the case in sparsely populated rural areas and on islands where the costs of infrastructure provision are considerably higher on a pro rata basis and where the scale of development and rates of completion are low. Consideration would need to be given to the potential to vary the rate of contribution to the infrastructure levy, and it would also need to be applied to both large scale and small scale developments.

***9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?***

Yes all councillors who sit on Planning Committees or Local Review Bodies should receive mandatory training. In particular, the introduction of a national training agenda and examination/course completion for councillors is supported. It will ensure national consistency, and will provide a comprehensive training manual which will be kept up to date. This national standard of training should also be supplemented by local training, illustrated by local examples and case studies to provide practical and be more meaningful examples to councillors.

For those councillors involved in Local Review Bodies additional and more detailed training should be provided. There are specific and unique differences between a member being part of a planning committee and a member being on the LRB.

***10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?***

Local Authorities are currently preparing Planning Performance Frameworks and submitting them on an annual basis to Scottish Ministers. These provide annual monitoring of performance against key indicators, and have helped to deliver performance improvements. The role of the proposed independent co-ordinator and independent assessors will be crucial to the success of promoting performance improvements, and should be seen as part of an ongoing and two way process. It will be important that the new procedures identify

improvements and enhancements against a jointly agreed set of indicators. Measures such as quality of design and places, community engagement, and quality of outcome should be taken into account as well as more traditional measures such as speed of planning decisions.

It will also be important to recognise that other factors can influence the performance of planning authorities, and it may be appropriate to extend the assessment by the independent assessors to include other stakeholders in the system such as the key agencies, the business and development industry, housebuilders and Homes for Scotland, and also the DPEA and Scottish Ministers where they are also involved in the process.

***11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?***

Planning fees should seek to move the operation of the planning system towards full cost recovery, in order to ensure that sufficient resources are available to deliver an effective high quality planning service. There should be scope for authorities to adopt a more flexible fee structure that could involve charging for some discretionary services, and waiving the fee, or providing for reduced rates in some circumstances. Consideration should be given to ring fencing planning fees to fund planning services. Both Heads of Planning Scotland (HOPS) and the Royal Town Planning Institute in Scotland (RTPI) have recently published background papers and survey data in 2013, 2014 and 2015. Figures provided by HOPS indicated that, in 2015, planning fees covered only 63% of the cost of handling applications.

***12. Are there any other comments you would like to make about the Bill?***

The proposed changes to pre –application consultation (PAC) detailed in section 12 of the Bill are welcomed. These could help to streamline the current process by removing the need for further PAC, should a new application be needed to address, relatively small but material changes to a scheme. However, come more effective evidence of public engagement and relevance to the application would be demonstrated to the application if the requirement to submit this was within 12 months of the PAC rather than 18 months as proposed.

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Argyll and Bute Council  
Planning and Regulatory Services

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

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**Reference No:** 17/02949/PP

**Planning Hierarchy:** Local Development

**Applicant:** Infinergy Ltd

**Proposal:** Erection of metrological mast (80 metres high) for a temporary period of 3 years

**Site Address:** Land Approximately 1,593m North West of Craigendive, Loch Striven

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## **DECISION ROUTE**

### **(i) Local Government Scotland Act 1973**

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#### **(A) THE APPLICATION**

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

- Erection of meteorological mast (80m to top) for a temporary period of 3 years
  - Mast involves the installation of a 79.5m mast with 0.5m of equipment on top,
  - Ten guy wires with six at a 50m radius point and four at 25m

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

- Installation will be via mobile plant and ATV with no requirement for a fixed access track.
  - Removal will be via the same method.
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#### **(B) RECOMMENDATION:**

It is recommended that the application is approved subject to the conditions and reasons appended to this report.

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

There is no history on this particular site and a wind farm has been proposed adjacent:

16/03257/SCRSCO – EIA Screening and Scoping opinion request for proposed wind farm responded on 28/2/17

17/02486/PAN - Proposal of Application Notice for proposed erection of up to 8 wind turbines and associated ancillary infrastructure submitted 19/9/17

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**(D) CONSULTATIONS:**

Glasgow Prestwick Airport, Email received 21/11/17

There is no objection to the proposal.

National Air Traffic Services (NATS) Safeguarding, Email received 23/11/17

NATS raise no safeguarding objection to the proposal.

SNH, Email received 27.11.17

The application falls below the threshold for consultation with SNH.

Royal Society for the Protection of Birds (RSPB), Email received 21/12/18

There is no objection to the met mast subject to conditions relating to the installation of bird flight diverters and the timing of works.

Argyll Raptor Study Group, Email received 22/12/17

The area between Cruach Mhor Wind Farm and the B836 is the most important area for Hen Harrier in Cowal. Should the mast be approved then a condition should be attached requiring bird deflectors to the cables supporting the mast to increase visibility and decrease the risk of collision.

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**(E) PUBLICITY:**

The proposal has been advertised in terms of regulation 20, closing date 22/12/17.

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**(F) REPRESENTATIONS:**

There have been 24 objections. Of these 4 have been submitted without a postal address and a further 2 have made comments only relating to a windfarm which is not part of this planning application.

Angela King, Hillhouse, Loch Striven, Dunoon, PA23 8RG (19/12/17)

Adrian Robertson, Hillhouse, Loch Striven, Dunoon PA23 8RG (16/12/17)

David Eaglesham, Ardachuidh, Colitraive, PA22 3AR (1/12/17)

Bruce Chambers, Auchnabreck Farm, Colintraive, PA22 3AH (4/12/17)

Karen Scotland, Caol Ruadh, Colintraive, PA22 3AR (15/12/17)

James Murray, Underwood Cottage, Main Road, Sandbank, PA23 8PD (16/12/17)

Froukje van Bommel, Stronafian House, Colintraive, PA22 3AH (16/12/17)

Frans van Bommel, Stronafian House, Colintraive, PA22 3AH (16/12/17)

Sylvia Anne Hoskins, Craigshannoch Lodge, Midmar, Inverurie, Aberdeenshire, AB51 7LX (16/12/17)

Jacob Sim, Anchorage House, Tighnabruaich, PA21 2DX (16/12/17)

Nigel Sim, Anchorage House, Tighnabruaich, PA21 2DX (16/12/17)

Johanne Sim, Anchorage House, Tighnabruaich, PA21 2DX (16/12/17)

Joshua Sim, Anchorage House, Tighnabruaich, PA21 2DX (16/12/17)

Reg MacDonald, Colbruach, Loch Striven, PA23 8RG (13/12/17)

Pieter van der Werf, Tigh na Ceardaich, Colintraive, PA22 3AH (22/12/17)

Fiona Page, Tigh na Ceardaich, Colintraive, PA22 3AH (20/12/17)

Gillian Brereton-Smith, Inverneill, Colintraive, PA22 3AU (22/12/17)

Danielle de Bisschop, 2 Ferrybank Cottages, Colintraive, PA22 3AR (10/1/18)

No address provided

Rod Ferguson, No address (16/12/17)

Jamie Pastori, No address (22/12/17)

Barbara Crawford Howson, No address (21/12/17)

Norma Murray, No Address (19/12/17)

Comments about wind farm only

Kathleen Halley, No address (16/12/17)

Jim Halley, No address (16/12/17)

**(i) Summary of issues raised**

- Objection on the basis that the applicant must already have the meteorological data they need for the proposed wind farm.  
Comment: Whether or not the applicant has the necessary data is not a material planning consideration.
- General comments about a potential wind farm and what impact this application might have on that.  
Comment: Every planning application must be assessed on its own merits therefore comments regarding any potential windfarm cannot be considered material to the determination of this application.
- The mast will be visible for miles.  
Comment: Landscape and visual concerns are addressed in appendix A below.
- This application should not be considered until the wind farm application has been determined.  
Comment: Every planning application must be assessed on its own merits therefore comments regarding any potential windfarm cannot be considered material to the determination of this application.
- The mast represents a threat to protected bird species especially with a SSSI nearby for eagles.  
Comment: Potential impact on avian species is considered in Appendix A below. However it should be noted that there is no SSSI specifically for Golden Eagles rather the area is part of their range.
- Concerns over how the site will be accessed and the permanence of any access.  
Comment: The site will be accessed using existing forest roads and an ATV. There will be no new access arrangements.
- Proposal is not consistent with the Landscape Capacity Study as it is some 60m taller than the hill summit and the capacity study states a maximum height for turbines of 50m.  
Comment: The Wind Energy Landscape Capacity Study relates to wind turbine development and not meteorological masts.
- Concerns over landscape and visual impact given it lies within an APQ and is adjacent an NSA.  
Comment: Matters of landscape impact are assessed in Appendix A below.
- Concerns over impact on tourism.

Comment: It is not anticipated that the met mast will have an adverse impact on tourism given its remote location.

- The mast is an unnecessary way to gather data when another wind farm is so close.  
Comment: This is not a material planning consideration.
- Concerns over low flying craft with no illumination on the top of the mast.  
Comment: There has been no objection from National Air Traffic Services or Glasgow Prestwick Airport in relation to aircraft safety.
- The mast is not in the location of the proposed turbines.  
Comment: This is not a material planning consideration in the determination of this application.

**(G) SUPPORTING INFORMATION**

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

- |       |  |            |
|-------|--|------------|
| (i)   | <b>Environmental Statement:</b>  | <b>No</b>  |
| (ii)  | <b>An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b>   | <b>No</b>  |
| (iii) | <b>A design or design/access statement:</b>  | <b>No</b>  |
| (iv)  | <b>A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | <b>Yes</b> |

Met Mast Specifications sheet

**(H) PLANNING OBLIGATIONS**

- |     |   |           |
|-----|---|-----------|
| (i) | <b>Is a Section 75 obligation required:</b> | <b>No</b> |
|-----|---|-----------|

- |     |   |           |
|-----|---|-----------|
| (I) | <b>Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:</b> | <b>No</b> |
|-----|---|-----------|

**(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 (March 2015)

LDP STRAT 1 – Sustainable Development  
 LDP DM 1 – Development within the Development Management Zones  
 LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 6 – Supporting the Sustainable Growth of Renewables  
 LDP 9 – Development Setting, Layout and Design  
 LDP 10 – Maximising our Resources and Reducing our Consumption

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

SG LDP ENV 1 - Development Impact on Habitats, Species and our Biodiversity  
 (i.e. biological diversity)  
 SG LDP ENV 12 - Development Impact on National Scenic Areas (NSAs)  
 SG LDP ENV 13 - Development Impact on Areas of Panoramic Quality (APQs)  
 SG LDP – Sustainable Siting and Design Principles

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

Scottish Planning Policy (2014)  
 Consultation responses  
 Third party representations raising material planning considerations relevant to this application

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

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

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

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

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

The proposal raises no complex issues that would benefit from consideration at a discretionary hearing. The issues raised by the proposal means that there would be no added value from such a process.

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

The application site relates to a remote area of localised open ground within an extensive area of moorland to the north of the B836. According to the Wind Energy Landscape Capacity Study 2017 the landscape character type is 'Steep Ridgeland and Mountains'. Planning permission is sought for the erection of a narrow profile triangular lattice construction mast 80m high for a temporary period of three years. The mast will be made up of a lattice tower measuring 79.5m with meteorological equipment on top bringing the overall height to 80. There will be ten guy wires set in pairs positioned at 15m intervals. Six of these will be set at a 50m radius from the base of the mast whilst the remaining four will be at 25m.

In terms of the principle of development, this application represents small-scale, temporary, renewable energy related proposal within an area designated as 'Very Sensitive Countryside' by the Development Plan. Policies LDP STRAT 1 and LDP DM 1 offer broad encouragement to such proposals. In areas of Very Sensitive Countryside without the need for an Area Capacity Evaluation (ACE) broad encouragement is offered to renewable energy related development.

The construction and operation of the mast are such that there are no infrastructure or servicing implications for the development, and the location is sufficiently remote that there are no relevant considerations with regard to the impact on neighbouring land uses. As such, the key issues in the assessment of this application are visual and landscape impact and biodiversity.

There have been 24 objections. Of these 4 have been submitted without a postal address and a further 2 have made comments only relating to a windfarm which is not part of this planning application. There have been no objections from consultees subject to conditions.

The application is recommended for approval subject to conditions relating to lifespan of the development, timing of works and the fixing of bird deflectors to the guy wires.

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

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**(R) Reasons why planning permission or a Planning Permission in Principle should be granted**

The application is for an 80m tall lattice work meteorological mast in a remote area south of Cruach Mhor wind farm and north of the B836. The application must be assessed on its own merits and cannot consider any potential future related wind farm development. The site is an area of open moorland with land rising to the east and falling away to the west. Views from public areas will generally be very limited as a result of the distance and the landform. Lattice work towers such as this are difficult to view at distance on anything other than a clear day. The main issues with this application are landscape and biodiversity. Given the landscape character, temporary nature of the development and the distance from public views the application is considered consistent with the provisions of policies LDP STRAT 1, LDP DM 1, LDP 6, LDP 9, LDP 10, SG LDP ENV 12, SG LDP ENV 13 and SG LDP – Sustainable Design Principles.

The proposal could have the potential to increase avian casualties given the use of the site by various protected bird species especially Hen Harrier. To this end a planning condition is attached requiring the application of bird flight diverters and a limit to the timing of the works. With this in mind a condition is attached and therefore the proposal is consistent with the provisions of policies LDP 3 and SG LDP ENV 1.

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

N/A

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

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**Author of Report:** David Love

**Date:** 2<sup>nd</sup> February 2018

**Reviewing Officer:** Sandra Davies

**Date:** 2<sup>nd</sup> February 2018

**Angus Gilmour**  
**Head of Planning, Housing and Regulatory Services**

**CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 17/02949/PP**

1. The development shall be implemented in accordance with the details specified on the application form dated 13/11/2017 and the approved drawing reference numbers:  
Plan 1 of 4 Location Plan  
Plan 2 of 4 Site Plan  
Plan 3 of 4 Site Plan  
Plan 4 of 4 Mast Plan and Mast Elevation

unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).

*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 above, bird flight diverters (BFDs) shall be fitted to all of the proposed guy wires at intervals of 2.5 metres for the first 20 metres from the ground and then at 5 metre intervals for the remaining height. The BFDs shall be fixed to the guy wires before the erection of the mast and thereafter maintained for its lifetime, unless any written agreement otherwise has been obtained in advance from the Planning Authority.

*Reason: In the interests of natural heritage, in order to reduce the potential for avian casualties.*

3. No works shall be carried out during the bird breeding season, March to September inclusive, unless a pre-commencement survey for ground nesting birds is carried out and submitted to the planning authority for approval prior to the commencement of development.

*Reason: In the interests of conserving ground nesting birds and ensuring their protection.*

4. The planning permission hereby granted shall be for a limited period of 3 years from the date upon which development works commence. The wind monitoring mast and supporting guy wires (and any base and associated fencing) shall be completely removed and the site reinstated within one month of this planning permission expiring, unless a further permission for an extended period is obtained from the Planning Authority.

*Reason: In order to define this temporary permission, in order that the Planning Authority may review the circumstances pertaining to the development within a reasonable time period and in the interest of visual amenity.*



**NOTE TO APPLICANT**

- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), 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 (as amended) 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 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).]

**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 17/02949/PP**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A. Settlement Strategy**

The site is located within the Very Sensitive Countryside development management zone. Policy LDP DM 1 (Development within the Development Management Zones) states under section (f) that "...encouragement will only be given to specific categories of development on appropriate sites. These comprise:

- (i) Renewable energy related development"

Given the meteorological mast is for gathering data in connection to wind energy development it is consistent with the provision of LDP DM 1. Therefore, the principle of the application within this development management zone is consistent with this policy.

**The proposal is consistent with policy LDP DM 1 by virtue of section (f) as the development is related to renewable energy.**

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

The site is located north west approximately one mile from Craighendive which itself is at the head of Loch Striven and adjacent the B836. The area is sparsely populated with Clachan being the nearest settlement which is some five miles as the crow flies to the south east and Sandbank at eight miles. Cruach Mhor wind farm is some one and a half miles to the north. The site itself is within an area of open moorland which flattens out to the north. The highest points nearby are Cruach nan Cuilean to the north east at 432m AOD and A'Chruach to the south east at 365m AOD. The site sits at around 310m AOD. Generally the land rises to the east but falls to the west and south west. Some 800m to the west lies a considerable area of plantation style forestry.

Planning permission is sought for the erection of a narrow profile triangular lattice construction mast 80m high for a temporary period of three years. The mast will be made up of a lattice tower measuring 79.5m with meteorological equipment on top bringing the overall height to 80. There will be ten guy wires set in pairs positioned at 15m intervals. Six of these will be set at a 50m radius from the base of the mast whilst the remaining four will be at 25m.

**Given the remoteness of the site, the distances from receptors and the slim line nature of the tower there will be a neutral impact by the development and it is considered that the application is consistent with policy SG LDP – Sustainable Siting and Design Principles.**

**C. Natural Environment**

The site itself is not designated for any natural heritage reasons but the Argyll Raptor Group (ARG) and the RSPB has offered comment that the area is important to several species afforded protection by virtue of EU legislation.

According to both organisations species at risk include Golden Eagle, Hen Harrier, Merlin and Short Eared Owl. Of particular importance is the potential for risk to Hen Harriers given the decline in numbers over recent years. There has been no comment from SNH as the development falls below their consultation threshold and given the site itself is not under a designation for the protection of avian species it is considered appropriate to accept the reasoning of RSPB and ARG and their recommendation that should the application be approved then the mast's guy wires are fitted with bird flight diverters

(BFDs). This will increase visibility and reduce the collision risk. Another condition, as recommended by RSPB, will restrict works to outwith the bird breeding season to further lessen the risk of avian casualties.

Although SNH did not comment formally they were asked advice on the timings of the works and the status of Golden Eagles in the area. It was confirmed that there are no SSSIs in the area for Golden Eagles but it does form part of their range. The met mast itself will not adversely impact on Golden Eagles. They have agreed with the two conditions to cover BFDs and the timing of works.

**Considering the above the proposal is consistent with the provisions of policies LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment and SG LDP ENV 1 - Development Impact on Habitats, Species and our Biodiversity (i.e. biological diversity).**

#### **D. Landscape Character**

The landscape character type is ‘Steep Ridgeland and Mountains’. This upland landscape comprises steep-sided, craggy-topped mountains and sharp ridges deeply cut by the long, narrow sea lochs of Cowal. The site lies within the Bute and South Cowal Area of Panoramic Quality (APQ) whilst the Kyles of Bute National Scenic Area (NSA) is to the west. Policy SG LDP ENV 13 (Development Impact on APQs) requires “any significant adverse effects on the landscape quality for which the area has been designated are clearly outweighed by social, economic or environmental benefits of community wide importance”. In this instance the development is a tall slim lattice work tower. Views of the mast will be limited due to the distances involved from receptors and the slim line design of the lattice work tower. The nearest public view will be from the B836 south of Craighendive where the road levels out after a steep climb up from the head of Loch Striven but still some 1.4 miles away. Views will be partially restricted by the taller landform but some 25m will be still visible. With this in mind the mast is expected to have a neutral impact on the qualifying interests of the APQ.

To the south west of the site lies the Kyles of Bute NSA. This is some two miles away from the site with key viewpoints all facing west towards to the Kyles of Bute. Views of the met mast will generally be from significantly lower elevations and views obscured. Therefore, there is not expected to be any adverse impact on the qualifying interests on the Kyles of Bute.

**Considering the above the proposed met mast will have a neutral effect on the APQ and no impact at all on the NSA. The slim lattice style tower will be difficult to see from accessible viewpoints and during poor weather it is not expected to be visible at all. With this in mind the application is consistent with policies LDP 9 – Development Setting, Layout and Design, SG LDP 12 – Development Impact on National Scenic Areas and SG LDP 13 – Development Impact on Areas of Panoramic Quality.**

#### **E. Infrastructure**

The applicant does not intend to construct any access tracks or compound area. Access will be achieved via an ATV or similar using an existing forestry track from the A886 up through Cruach Mhor wind farm and then directly onto the site. Maintenance and removal will also be achieved in this manner. There will be no requirement for a permanent access track or site compound.

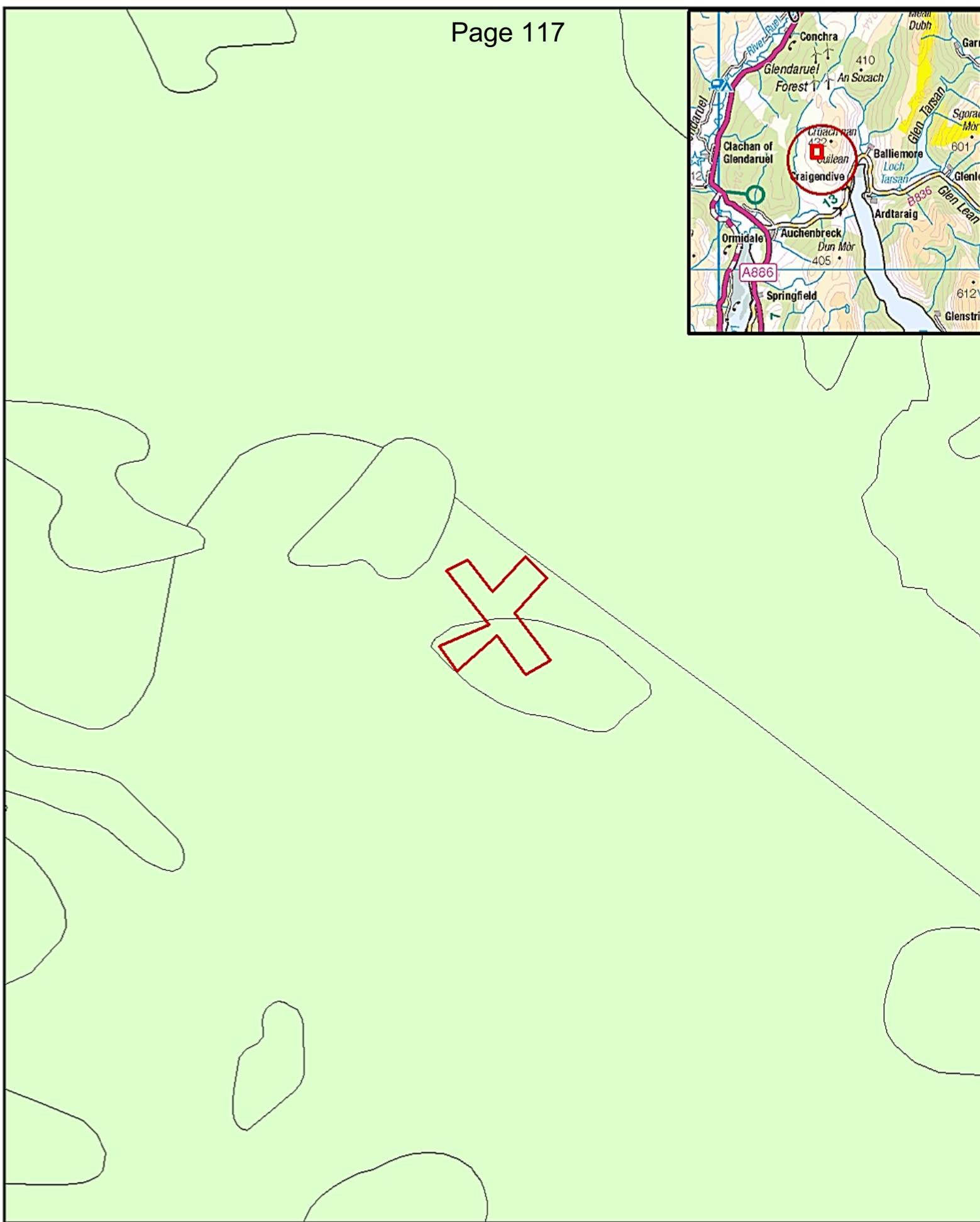
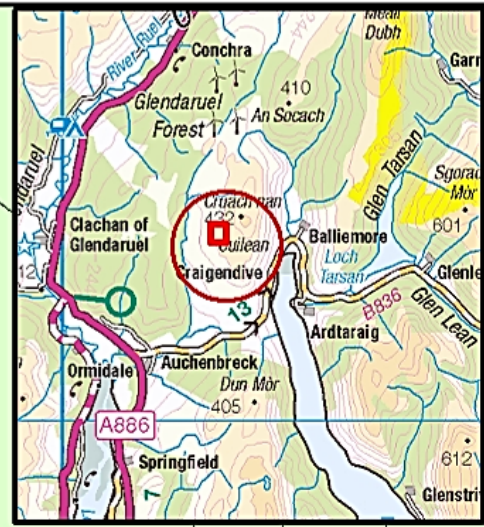
#### **F. Conclusion.**

The proposal is for an 80m tall lattice work tower in a remote area of Cowal. The nearest public view points are considerable distances away and lattice work towers are usually difficult to see on anything other than a clear day. Given the distance to public viewpoints, temporary nature of the development and the landscape character it is considered that the application is consistent with development plan policy relating to landscape and renewable energy development.

Although no official comments have been received from SNH the local ARG and RSPB has advised that the area is well used by Hen Harrier and that the proposal could increase avian casualties via collision risk. To this end, and with their recommendation, a condition is attached requiring bird flight diverters to be attached to the guy wires and maintained for the lifespan of the development. Another condition will limit works to outwith the bird breeding season. Officers approached the local SNH office for advice and they have agreed with the above approach.

Officer support for this proposal should not be considered as support for any future wind farm submission. Each application must be considered on its own merits and cannot consider what may or may not be proposed at a future date.

In conclusion the proposal, with conditions, is considered consistent with development plan policy.



**Location Plan relative to Planning Application**  
**Ref No: 17/02949/PP**

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**Argyll and Bute Council  
Development and Infrastructure Services**

**PROPOSAL OF APPLICATION NOTICE (PAN)**

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**Reference:** 18/00007/PAN

**Applicant:** Defence Infrastructure Organisation

**Proposal:** Notice for proposed submarine training facility

**Site Address:** Land North of the Sports Pitches, HM Naval Base Clyde, Faslane

---

**1.0 BACKGROUND**

A Proposal of Application Notice (PAN) has been submitted to the Planning Authority which took effect from 22<sup>nd</sup> December 2017. In order to allow for a minimum of 12 weeks community consultation in accordance with the relevant legislation no formal planning application can be submitted until the 16<sup>th</sup> March 2018.

The proposal is for the erection of a Submarine Training Facility (SMTF). The proposed development would be located within the secure area of HM Naval Base Clyde and would be sited immediately adjacent to a recently approved Submarine Escape Rescue Abandonment Survivability (SMERAS) (17/00814/PP) facility. This proposal forms part of the Maritime Change Project which will culminate in the entire UK submarine fleet being based at Faslane by 2020.

The agent for this application has advised that HMNB Clyde is the second biggest, single-site employer in Scotland with direct employment at the base currently around 6,500 with many more thousands dependent on the base for jobs through the extended supply chain. It is thought that around 11,000 are directly and indirectly reliant on the base. By 2020 all Royal Navy submarines will be based at Faslane and this will see the number directly employed at the base rise to 8,200 due to proposed investment works including the SMTF.

**2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

The proposed SMTF will provide essential training for the Royal Navy which will deliver the new generation of submarines. The proposed development will incorporate the following elements:

- Meeting rooms;
- Storage rooms;
- Classrooms;
- Plant rooms;
- Toilet and shower areas.

The Gross Internal Floor Area will be approximately 13,221sqm over a five storey building. As the building would be developed on sloping ground there would be some split level elements to the building. While the external materials are still under consideration, the agent has advised that this is likely to feature a mixture of brickwork and cladding materials. The roof is likely to be a standing seam with single ply membrane in the flat areas for rooftop plant.

### 3.0 SITE DESCRIPTION

The development would be located within the secure area of HMNB Clyde. The site measures approximately 0.52ha. It would be located on the eastern side of this area close to the boundary with the A814. As previously noted it would be located adjacent to the recently approved SMERAS facility. Provision of access to the site via a road, civil engineering infrastructure (electricity, water and sewerage), site clearance and ground works will be completed for the SMERAS development, which will enable the SMTF site development.

### 4.0 DEVELOPMENT PLAN POLICY

Relevant Policies which will require to be considered include:

#### **Argyll and Bute Local Development Plan adopted March 2015:**

- LDP DM1 – Development within the Development Management Zones
- LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
- LDP 5 – Supporting the Sustainable Growth of Our Economy
- LDP 9 – Development Setting, Layout and Design
- LDP 10 – Maximising our Resources and Reducing our Consumption

#### **Supplementary Guidance:**

- SG LDP ENV 1 – Development Impact of Habitats, Species and Our Biodiversity (i.e. biological diversity)
- SG LDP ENV 6 – Development Impact on Trees / Woodland
- SG LDP ENV 7 – Water Quality and the Environment
- SG LDP ENV 14 –Landscape
- SG LDP ENV 15 –Development Impact on Historic Gardens and Designed Landscapes
- SG LDP ENV 16(a) – Development Impact on Listed Buildings
- SG LDP BUS 1 – Business and Industry Proposals in Existing Settlements and Identified Business and Industry Areas
- SG LDP BUS 4 – Strategic Industrial and Business Locations
- SG LDP BAD 1 – Bad Neighbour Development
- SG LDP Sustainable - Sustainable Siting and Design Principles
- SG LDP SERV 1 – Private Sewerage Treatment Plants and Wastewater (i.e. drainage) systems
- SG LDP SERV 2 – Incorporation of Natural Features / Sustainable Systems (SUDS)
- SG LDP SERV 3 – Drainage Impact Assessment (DIA)
- SG LDP SERV 5(b) – Provision of Waste Storage and Collection Facilities within New Development
- SG LDP SERV 6 – Private Water Supplies and Water Conservation
- SG LDP SERV 8 – Development in the Vicinity of Notifiable Installations
- SG LDP SERV 7 – Flooding and Land Erosion – The Risk Framework for Development
- SG LDP CC 1 – Climate Change and Sustainable Buildings
- SG LDP Sust Check – Sustainability Checklist
- SG LDP TRAN 2 - Development and Public Transport Accessibility
- SG LDP TRAN 3 – Special Needs Access Provision
- SG LDP TRAN 6 –Vehicle Parking Provision

**Note:** The Full Policies are available to view on the Council's Web Site at: [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

It is considered that the main determining issues relating to this proposal will include:

- Landscape and visual impact;
- Roads Issues, in particular parking;



- Private sewage and water capacities;
- Requirements relating to the MOD safeguarding zone;
- Drainage.
- Economic Impact

**Note:** *The above is not an exhaustive list and it has been provided in this report to give Members a flavour of the main issues which will require consideration when determining this Major planning application.*

## **5.0 CONCLUSION**

The report sets out the information submitted to date as part of the PAN. Summarised are the policy considerations, against which any future planning application will be considered as well as potential material considerations and key issues based upon the information received to date. The list is not exhaustive and further matters may arise as and when a planning application is received and in the light of public representations and consultation responses.

## **6.0 RECOMMENDATION**

It is recommended that Members consider the content of the report, and provide such feedback as they consider appropriate in respect of this PAN to allow these matters to be considered by the applicant in finalising any future planning application submission.

**Author of Report:** Sandra Davies

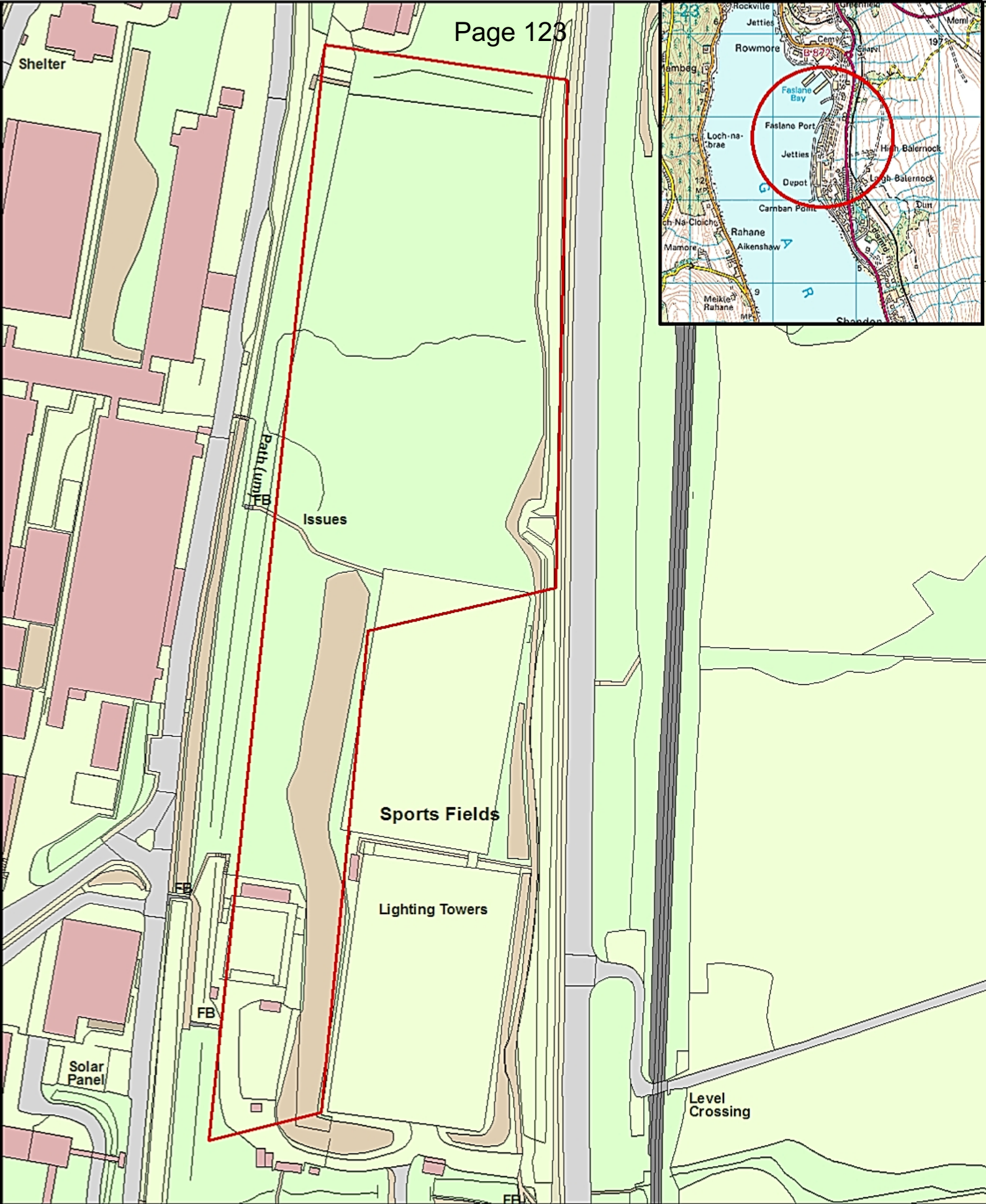
**Date:** 31/1/18

**Reviewing Officer:** Angus Gilmour

**Date:** 31/1/18

**Angus Gilmour**  
**Head of Planning, Housing and Regulatory Services**

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<b>Location Plan relative to Planning Application</b>		N ▲
<b>Ref No: 18/0007/PAN</b>		
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Argyll and Bute Council  
Planning, Housing and Regulatory Services

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE - 21<sup>st</sup> February 2018

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## UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISIONS

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### A) INTRODUCTION

This report summarises the outcome of recent appeal decisions by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) relative to the cases set out below.

### B) RECOMMENDATION

It is recommended that Members consider the implications of the Reporter's decision(s).

### C) DETAILS OF APPEAL DECISIONS

#### Case 1

<b>Planning Authority:</b>	Argyll and Bute Council
<b>Planning application reference:</b>	17/02117/HH
<b>Planning appeal reference:</b>	HHA-130-3
<b>Proposal:</b>	High Hedge
<b>Location:</b>	127 and 127A East Princes Street Helensburgh
<b>Date of decision:</b>	18 <sup>th</sup> January 2018
<b>Decision:</b>	Appeal Allowed

#### 1.0 INTRODUCTION

The purpose of this report is to advise members of the recent decision made by the Planning and Environmental Appeals Division regarding an appeal by Mr & Mrs Struzzi of 129 East Princes Street, Helensburgh against the refusal of a high hedge application at 127 and 127A East Princes Street.

#### 2.0 BACKGROUND

An application was made by Mr & Mrs Struzzi, 129 East Princes Street to reduce the height of their neighbours hedge which lines both side of a lane leading to 127 and 127a East Princess Street. Mr & Mrs Struzzi allege the hedge causes significant overshadowing upon their garden ground and require a reduction in height. The trees forming the hedge measure between 5 and 9m in height.

The Council assessed the application and concluded the hedge did not appear as a solid green wall, the rear windows of the applicant's property were a sufficient distance and height away to not be affected by loss of daylighting and the matter was considered a straightforward assessment of overshadowing. The Council stated that some overshadowing already occurred over Mr & Mrs Struzzis garden created by the house and if the hedge was to be

replaced by a domestic size fence there would still be a level of overshadowing. The application was refused for the following reason:

- The trees forming the hedge are not of a significant height to cause a reduction of daylight to the rear habitable rooms of 129 to 131 East Princes Street.
- The trees forming the hedge do not create an unacceptable level of overshadowing upon the rear gardens of 129 East Princess Street to that already occurring by the dwellinghouse.

### **3.0 CONCLUSION**

The Reporter considered that each of these lines of trees forms a barrier to light and although there would be no loss of daylight in the habitable rooms at the rear of numbers 129 and 131 East Princes Street, the loss of light in the appellants' garden area during afternoons and summer evenings resulting from these barriers to light is such that the enjoyment of the garden would be significantly reduced.

The Reporter concluded that the presence of the two high hedges adversely affects the enjoyment of the domestic property at 129 East Princes Street which occupants of that property could reasonably expect to have; that both hedges should be reduced to a height of 2m in relation to the ground level on which they are located and that the hedges should be maintained thereafter to achieve this height after the initial reduction. The notice comes into effect on 16 February 2018 with a compliance period which must be taken between 1 and 30<sup>th</sup> September 2018. Members are advised that an enforcement monitoring case has been opened to ensure compliance with this notice.

### **4.0 RECOMMENDATION**

It is recommended that Members consider the implications of the Reporter's decision.

### **5.0 IMPLICATIONS**

**Policy:** None

**Financial:** None.

**Personnel:** None

**Equal Opportunities:** None

### **Case 2**

<b>Planning Authority:</b>	Argyll and Bute Council
<b>Planning application reference:</b>	15/00205/PP & 16/01448/PP
<b>Planning appeal reference:</b>	PPA-130-2059 & PPA-130-2060
<b>Proposal:</b>	Erection of a wind farm comprising 13 wind turbines (maximum height of 100 metres) together with ancillary infrastructure building and access road,
<b>Location:</b>	Eascairt Farm, Skipness
<b>Date of decision:</b>	11 January 2018
<b>Decision:</b>	"Notice of Intention" to Allow Appeal(s)

### **1.0 INTRODUCTION**

The substantive appeal (PPA-130-2059) relates to the refusal of planning permission for a windfarm comprising 13 wind turbines(maximum height of 100 metres) together with

ancillary infrastructure including a permanent wind monitoring mast, access tracks, crane hard-standings, substations, control building, temporary construction compound and borrow pit search areas. The second appeal (PPA-130-2060) relates only to the access track to serve this development.

Members are requested to note that the document(s) issued are a “Notice of Intention” clarifying why the Reporter is minded to allow the appeal(s) and grant permission following the signing and registering of a Planning Obligation under section 75 of the Town and Country Planning (Scotland) Act 1997. This Section 75 will secure; a bond in respect of a restoration, a habitat management plan, and red throated diver surveys. This Section 75 Planning Obligation is required to be agreed and signed by parties within a period of 16 weeks before formal appeal decision(s) will be issued by the Reporter. Members’ attention is drawn to the fact that the Reporter clarifies that:

*If, by the end of that period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.*

It is also requested that Members note that a separate, but related determination which deals only with access to the windfarm has also been issued by the same Reporter under appeal (PPA-130-2060). This determination is referenced, and its relationship to the windfarm Notice of Intention (PPA-130-2059) clarified in the main appeal determination. It is therefore not considered necessary in such circumstances to report the appeal relating to only the access track separately to Members, as the primary matters of interest relate to the “Notice of Intention” issued in respect of the windfarm development itself under PPA-130-2059, which this report primarily addresses.

## **2.0 BACKGROUND**

Planning permission was refused for the development on the basis of significant and adverse visual impact/effect on the receiving landscape and cumulative harm when viewed in association with other existing windfarms in the area.

An additional reason relating to unacceptable vehicular access was also part of the reason for refusal of the windfarm application. The Reporter agreed that the proposed access under the windfarm application was not acceptable, and in this respect the Reporter has upheld one of the Councils stated reasons for refusing planning permission under appeal PPA-130-2059. However in the parallel appeal determination (PPA-130-2060) he has have found that alternative access arrangements would be acceptable, subject to conditions. Accordingly he considers on the basis of the amended access proposals that the proposed wind farm would be able to provide a suitable access.

In respect of the main windfarm appeal ( PPA-130-2059) the Reporter summarises Scottish Government planning policy approach, stating that:

*“Current Scottish Planning Policy (SPP) supports a transformational change to a low carbon economy and sets targets for energy from renewable sources. SPP also expects the planning system to facilitate positive change while maintaining and enhancing distinctive landscape character. The appeal site is not in a designated area for its distinctive character or quality. Spatially, the appeal site would be in an area with potential for wind farm development, as defined by SPP. In terms of development management, SPP encourage careful siting and design to minimise adverse impacts.”*

The reporter noted that “*Policy LDP 6 supports such development where, amongst other things, there would be no unacceptable significant effects on landscape character or visual amenity*”. The Reporter commented that the Argyll and Bute Landscape Wind Energy Capacity Study (LWECS) provides a strategic assessment, but must, in his view, be subject to an assessment of the actual impacts on the ground. On this basis he considered that the LWECS study does not count against the development proposed.

In respect of potential Cumulative Impact and views from Arran, the reporter did not consider the appeal site to be a particularly key part of the views from Arran. In his judgement, the existing turbines, even though they are a feature of the landscape, do not interrupt the panorama or appreciation of the topography. On this basis he did not consider that the current proposal would significantly alter this relationship or disproportionately contribute to cumulative impacts.

### **3.0 CONCLUSION**

The Reporter accepted that the scale of the turbines would influence the character of the adjoining landscape character types as set out in LWECS and that the applicant’s Environmental statement accepts there will be significant localised effects. However he concluded that, the existing landscape character would be clearly seen between and around the proposed turbines and as a result its wider impact would not be so significant to refuse permission. He also concluded that the design of the wind farm would reflect the scale and character of its location in the landscape and visual impacts would be, on balance, acceptable. The Reporter also noted the positive policy framework in respect of such proposals to meeting Scottish Government targets in respect of sustainable energy production.

### **4.0 RECOMMENDATION**

It is recommended that Members consider the implications of the Reporter’s decision(s).

### **5.0 IMPLICATIONS**

**Policy:** None. However future appeal decisions will be monitored.

**Financial:** None.

**Personnel:** None

**Equal Opportunities:** None

**Authors and Contact Officers:** Case 1: Howard Young. 01436 668884  
Case 2: Arlene Knox. 01546 604847

**Angus J Gilmour**  
**Head of Planning, Housing and Regulatory Services**



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