

Argyll and Bute Council  
Internal Audit Report  
May 2019  
Final

# Traffic Regulation Orders

Audit Opinion: **Substantial**

	High	Medium	Low
Number of Findings	0	1	1

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## 1. Executive Summary

### Introduction

1. A review of Argyll and Bute Council's (the Council) approach to Traffic Regulation Orders (TRO's) has been planned to assess relevant council policies, compliance with them and inform a response to a complaint received by the Council in relation to a TRO relating to Off Street Parking – Isle of Mull (Mull TRO).
2. The Council responded to the complaint on 26 March 2019. A copy of the response is included as Appendix 3 to this report.
3. The audit was conducted in accordance with the Public Sector Internal Audit Standards (PSIAS) with our conclusions based on discussions with council officers and the information available at the time the fieldwork was performed.
4. The contents of this report have been agreed with the appropriate council officers to confirm factual accuracy and appreciation is due for the cooperation and assistance received from all officers over the course of the audit.

### Background

5. TROs are made under the Road Traffic Regulation Act (RTA) 1984 and the Local Authorities' Traffic Orders (Procedures) (Scotland) Regulations 1999. The RTA 1984 permits the Council to make traffic regulation orders with respect to any road in order, for example, to:
  - avoid danger to persons or any traffic using the road or any other road or for preventing the likelihood of any such danger arising
  - prevent damage to the road or any building on or near the road
  - facilitate the passage of vehicular or pedestrian traffic on the road or any other road.
6. The legislation sets out three main stages prior to implementation of a TRO:
  - consultation 1
  - consultation 2
  - public notification.
7. In cases where the TRO is straight forward consultation 1 and 2 can be combined.
8. Consultation 1 must run for a minimum of 14 days to allow consultation to take place and may take longer if significant comments are submitted. Consultation 2 runs for a minimum for 21 days and may take longer if significant comments are submitted. Consultation 2 includes further statutory consultees along with additional ones that the Council may consider appropriate to include.
9. The publication notification stage runs for 21 days and any person, group or organisation may submit objections to the TRO. These objections must be dealt with in line with the legislation including correspondence between the Council and the objector(s) to try and resolve the objection(s). It is then the responsibility of the relevant area committee to consider any

objections and decide whether to dismiss them or amend the TRO. The committee also has the power to drop the TRO completely.

10. Once the area committee approves a TRO it is passed to the Head of Legal Services for signing. The TRO is then advertised for a further period allowing for any objections on procedural grounds to be submitted (e.g. legislation has not been complied with). Where no objections are made during this stage the TRO is made and comes into effect six weeks after signing.

### Scope

11. The scope of the audit was to assess the policies and controls in place in regard to the implementation of TROs. In particular to:
  - assess the relevant Council policies and procedures in relation to TROs to ensure they are consistent with relevant legislation
  - assess the Council's compliance with these policies and procedures.

### Risks

12. The risks considered throughout the audit were:
  - **Audit Risk 1:** the Council's TRO policies and procedures do not reflect relevant legislation
  - **Audit Risk 2:** the Council implement TROs which could be subject to legal challenge due to lack of compliance with Council policy and procedures
  - **Audit Risk 3:** reputational damage to the Council

### Audit Opinion

13. We provide an overall audit opinion for all the audits we conduct. This is based on our judgement on the level of assurance which we can take over the established internal controls, governance and management of risk as evidenced by our audit work. Full details of the five possible categories of audit opinion is provided in Appendix 2 to this report.
14. Our overall audit opinion for this audit is that we can take a substantial level of assurance. This means that internal control, governance and the management of risk is sound. However, there are minor areas of weakness which put some system objectives at risk and specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.

### Key Findings

15. We have highlighted one medium priority recommendations and one low priority recommendations where we believe there is scope to strengthen the control and governance environment. These are summarised below:
  - clarity is required over the need for pre-TRO investigation work and the documentation of this work should be improved
  - the TRO Procedure should be subject to periodic review to ensure they continue to reflect appropriate guidance and legislation.

16. Full details of the audit findings, recommendations and management responses can be found in Section 3 of this report and in the action plan at Appendix 1.

## 2. Objectives and Summary Assessment

17. Exhibit 1 sets out the control objectives identified during the planning phase of the audit and our assessment against each objective.

### Exhibit 1 – Summary Assessment of Control Objectives

	Control Objective	Link to Risk	Assessment	Summary Conclusion
1	The Council has TRO policies and procedures that are aligned to relevant legislation.	Audit Risk 1	Substantial	The Council has a detailed service procedure (the Procedure) which is aligned to current legislation and identifies the stages officers should follow during a TRO process. There is no process to ensure the Procedure is subject to periodic review to ensure it continues to reflect legislation.
2	The process followed by Council officers to draft TROs complies with established policies and procedures and/or relevant legislation.	Audit Risk 2 Audit Risk 3	Substantial	The Council predominantly complies with the Procedure however clarity over the performance of investigation work prior to determining the requirement for a TRO, and the manner in which key evidence is documented and filed, could be improved.
3	Draft TROs are appropriately advertised during the TRO public notification stage.	Audit Risk 2 Audit Risk 3	High	The Council fully complied with the Procedure in relation to advertising TRO's during the public notification stage.
4	Objections to the public notification stage are managed in compliance with established policies and procedures.	Audit Risk 2 Audit Risk 3	High	The Council fully complied with the Procedure in relation to handling objections received during the public notification stage.
5	TROs are subject to consideration and approval by the appropriate area committee and Head of Legal Services.	Audit Risk 2 Audit Risk 3	High	The Council fully complied with the Procedure in relation to the consideration and approval by area committee and the Head of Legal services.

18. Further details of our conclusions against each control objective can be found in Section 3 of this report.

### 3. Detailed Findings

#### The Council has TRO policies and procedures that are aligned to relevant legislation

19. The Procedure clearly identifies the stages council officers should follow during the implementation of a TRO. It was last updated and approved in March 2018. To support this update a working group was established consisting of the Traffic and Development Manager, Traffic and Development Technician, Roads and Amenities Performance Manager and a senior solicitor. Part of their remit was to ensure the Procedure was consistent with the relevant legislation.
20. We reviewed the work carried out by the working group, particularly in regard to whether the Procedure was aligned to relevant legislation such as the Local Authorities' Traffic Orders (Procedures) (Scotland) Regulations 1999 and concluded their work was carried out professionally and that the Procedure appropriately reflects relevant legislation.
21. In addition we concluded the Procedure is comprehensive in relation to establishing the:
  - roles and responsibilities of Council officers and elected members
  - delegated responsibilities to Area Committees in a manner consistent with the Council's constitution
  - timescales for each TRO stage.
22. The Council has no process for the Procedure to be subject to periodic review to ensure it continues to reflect Government guidance and legislation. This, however, has no impact on TROs processed in the previous 14 months as the process applied is consistent with the legislation as it is currently drafted and, as per paragraph 19, the Procedure was updated in March 2018.

#### Action Plan 2

#### The process followed by Council officers to draft TROs complies with established policies and procedures and/or relevant legislation

23. To review the Council's compliance with the Procedure, a sample of five TROs were selected for audit. One of the five was the Mull TRO referenced at paragraph 1. The other four were selected at random.
24. The Procedure requires the Council, prior to determining the requirement for and the extent of a TRO, to undertake an investigation of existing TRO's, patterns of parking movements and parking trends and a study of accidents covering the previous three years. We concluded that the level of investigation varied depending on the type of TRO being proposed and there needs to be clearer guidance about when investigation work should be carried out and the extent of it. We also concluded that, where such work was carried out, there should be improvements in the way supporting evidence is documented and filed.

#### Action Plan 1

25. The Procedure requires the Council to inform all relevant statutory consultees of the impending TRO to enable them to make representation prior to implementation. Statutory consultees as per the Procedure are:
  - Police Scotland
  - Scottish Fire & Rescue

- Scottish Ambulance Service
- Chair of Area Committee for information
- Public Transport Officer
- Strategic Transport and Infrastructure Manager
- Development Policy and Housing Strategy Manager.

26. The Council was compliant with its duties regarding statutory consultation for all sampled TROs.

27. The Procedure also requires the Council to ensure that affected businesses and residents are consulted to ascertain their opinion on an impending TRO. We confirmed that local bodies and businesses were invited to respond to impending TRO's however there was no documented explanation of the criteria applied to determine which local businesses should be consulted. Discussions with management confirmed there is no statutory requirement to consult with local businesses and consequently this requirement will be removed from the Procedure at the next review. However where a TRO does effect a local business management have confirmed they will be consulted. As this is not a statutory requirement and the Procedure is to be amended to remove the reference to a requirement no audit point has been raised.

28. On completion of the consultation stage the Council is required to prepare a draft TRO detailing the order and statement of reasons and make these available via a public notice on the Council's website. The Council complied with this requirement for all sampled TROs.

#### [Draft TROs are appropriately advertised during the TRO public notification stage](#)

29. The Procedure outlines the required steps in relation to advertising TRO's for the public notification stage:

- use of an approved advertising agency
- authorisation of the approved advertising agency's proof copy of the draft TRO
- draft TRO advertised on Council website and made available for inspection at specified locations
- draft TRO forwarded to statutory consultees
- public notification stage to run for 21 days to allow any person, group or organisation to submit objections to the TRO
- letters of objection sent to the Council's Head of Governance and Law to be forwarded to the Traffic and Development Manager at the end of the consultation period
- correspondence received by the Traffic and Development Manager to be forwarded to the Head of Governance and Law.

30. The Council complied with these requirements for all TROs sampled.

#### [Objections to the public notification stage are managed in compliance with established policies and procedures](#)

31. The Procedure outlines the required steps in relation to managing objections received during the public notification stage:

- letter of acknowledgement to be sent to all objectors
- list of all names and addresses of objectors to be forwarded to the Traffic and Development Manager
- objections to be replied to in order to try and address them.

32. Objections were received for three of the five sampled TROs. This included the Mull TRO which received 258 objections. We confirmed all objectors were acknowledged by the Council and the Traffic and Development Manager was advised of the names and addresses of all objectors.
33. A sample of 17 objections from the 258 received in regard to the Mull TRO were reviewed and all six objections received for the other two TROs were reviewed. We confirmed that, in all 23 cases, the Council replied in an attempt to address the objection.

**TROs are subject to consideration and approval by the appropriate area committee and Head of Legal Services**

34. The Procedure outlines the required steps for the consideration and approval of a TRO by the appropriate area committee and Head of Legal Services:
- area committee report is prepared detailing sustained objections, a summary of objections and a request that the committee considers the objections and decides whether or not the TRO proposal should proceed
  - area committee considers the report and determines the course of action to be followed
  - area committee contacts objectors and Police Scotland advising them of the decision
  - introduction of the TRO is agreed by the relevant officer
  - effective date is a minimum of six weeks from the date of the order advert to allow objections on procedural grounds and give time for signs/lines to be arranged
  - Council prepare a public notice which invites objections on procedural grounds and send a copy to the Approved Advertising Agency indicating the date and local newspaper in which it should be advertised
  - Head of Governance and Law signs the agreed TRO
  - copy of final TRO is forwarded to relevant personnel and appropriately displayed.
35. For all four completed TROs sampled (the Mull TRO is still to be considered by the area committee) the Council was fully compliant with all these requirements.



## Appendix 1 – Action Plan

	No.	Finding	Risk	Agreed Action	Responsibility / Due Date
Medium	1	<p><b>Pre-TRO Investigation Work</b></p> <p>The TRO Procedure requires the Council, prior to determining the requirement for and the extent of a TRO, to undertake an investigation of existing TROs, patterns of parking movements and parking trends and a study of accidents covering the previous three years.</p> <p>The level of investigation varies depending on the type of TRO being proposed and there needs to be clearer guidance about when investigation work should be carried out and the extent of it.</p> <p>Where such investigative work is deemed necessary the evidence to support any conclusions reached should be documented and filed appropriately.</p>	Failure to maintain accurate and complete records may lead to the misreporting or misinterpretation of data resulting in ineffective decision making.	<p>There is no statutory requirement placed upon the Council to undertake the specific investigations as specified in the TRO Procedure. The Procedure will be amended ensure it reflects those investigations required to demonstrate that a TRO is compliant with the relevant sections of the Act.</p> <p>Evidence in regard to investigations will be properly documented and filed appropriately.</p>	<p>Traffic and Development Manager</p> <p>30 June 2018</p>
Low	2	<p><b>Review of TRO Procedure</b></p> <p>There is no process for the TRO Procedure to be subject to periodic review to ensure it continues to reflect appropriate guidance and legislation.</p>	The TRO process followed may not comply with legislation potentially leading to legal challenges.	The TRO Procedure will be amended to include a review date.	<p>Traffic and Development Manager</p> <p>30 June 2018</p>

In order to assist management in using our reports a system of grading audit findings has been adopted to allow the significance of findings to be ascertained. The definitions of each classification are as follows:

Grading	Definition
<b>High</b>	A major observation on high level controls and other important internal controls or a significant matter relating to the critical success of the objectives of the system. The weakness may therefore give rise to loss or error.
<b>Medium</b>	Observations on less significant internal controls and/or improvements to the efficiency and effectiveness of controls which will assist in meeting the objectives of the system. The weakness is not necessarily substantial however the risk of error would be significantly reduced if corrective action was taken.
<b>Low</b>	Minor recommendations to improve the efficiency and effectiveness of controls or an isolated issue subsequently corrected. The weakness does not appear to significantly affect the ability of the system to meet its objectives.

## Appendix 2 – Audit Opinion

Level of Assurance	Definition
<b>High</b>	Internal control, governance and the management of risk are at a high standard. Only marginal elements of residual risk have been identified with these either being accepted or dealt with. A sound system of control designed to achieve the system objectives is in place and being applied consistently.
<b>Substantial</b>	Internal control, governance and the management of risk is sound. However, there are minor areas of weakness which put some system objectives at risk and specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.
<b>Reasonable</b>	Internal control, governance and the management of risk are broadly reliable. However, whilst not displaying a general trend, there are a number of areas of concern which have been identified where elements of residual risk or weakness may put some of the system objectives at risk.
<b>Limited</b>	Internal control, governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and placing system objectives are at risk. Weakness must be addressed with a reasonable timescale with management allocating appropriate resources to the issues raised.
<b>No Assurance</b>	Internal control, governance and the management of risk is poor. Significant residual risk and/or significant non-compliance with basic controls exists leaving the system open to error, loss or abuse. Residual risk must be addressed immediately with management allocating appropriate resources to the issues.

## Appendix 3 – Response to Complaint

Dear Iona Community Council,

### **Stage 2 Complaint (ref 190307-000998)**

I am writing to respond to your complaint regarding Parking Charges on Mull: Argyll and Bute Council (Off-Street Parking Places and Charges) (Isle of Mull), Traffic Regulation Order (TRO) 201. I will refer to this as the Mull TRO201 throughout this response.

I have completed my audit review with the terms of reference being those e-mailed to you on 14 March 2019. As per those terms my review focused on providing assurance that the Council's policies and procedures for implementing TROs are consistent with relevant legislation and were applied in relation to the Mull TRO201.

The terms of reference identified five control objectives, however as control objective 5 refers to consideration and approval by the Area Committee this is not applicable at this stage as Mull TRO201 is still to be presented to the Oban, Lorn & The Isles Area Committee.

Outlined below are my conclusions for the four applicable control objectives in relation to the Mull TRO201.

#### **Control Objective 1 - The Council has TRO policies and procedures that are aligned to relevant legislation**

The Council has a detailed service procedure (the procedure) in place which clearly identify the stages council officers should follow during the implementation of a TRO. The procedure was updated and approved in March 2018. To support this update a working group was established consisting of the Traffic and Development Manager, Traffic and Development Technician, Roads and Amenities Performance Manager and a senior solicitor. Part of their remit was to ensure the procedure was consistent with the relevant legislation.

My audit reviewed the work carried out by the working group, particularly in regard to whether the procedure was aligned to relevant legislation such as the Local Authorities' Traffic Orders (Procedures) (Scotland) Regulations 1999 (R1999). I have concluded that their work was carried out professionally and that the procedure appropriately reflect the relevant legislation.

In addition I have concluded that the procedure is comprehensive in relation to the:

- roles and responsibilities of Council officers and elected members
- delegated responsibilities to Area Committees being consistent with the Council's constitution
- timescales for each TRO stage being clearly identified.

I have noted the Council has no process for the procedure to be subject to periodic review to ensure it continues to reflect Government guidance and legislation. I will highlight this as a recommendation for improvement in the audit report which I will be submitting to the Audit and Scrutiny Committee on 18 June 2019. This, however, has no impact on the Mull TRO201 as the process applied to it is consistent with the legislation as it is currently drafted and the procedures have relatively recently been updated in March 2018.

**Control Objective 2: The process followed by Council officers to draft TROs complies with established policies and procedures and/or relevant legislation**

The Council is required to inform all statutory consultees of the impending TRO to enable them to make representation prior to implementation. Statutory consultees as per the Council's procedure are:

- Police Scotland
- Scottish Fire & Rescue
- Scottish Ambulance Service
- Strathclyde Partnership for Transport
- Local Multi Ward Elected Members
- Chair of Area Committee for information
- Public Transport Officer
- Strategic Transport and Infrastructure Manager
- Development Policy and Housing Strategy Manager.

I confirmed the Council was compliant with its duties regarding statutory consultation.

The TRO procedure requires the Council to undertake an investigation of existing TRO's, patterns of parking movements and parking trends and a study of accidents covering the previous three years.

I confirmed that, prior to preparing the draft Mull TRO201, the Council considered previous TRO's and there were no recorded incidents within the Fionnphort, Craignure, Bunessan or Ledaig car parks during the last three years.

In relation to parking movement and parking trends I confirmed that a range of information was considered including:

- increase in traffic volume arising from the introduction of Road Equivalent Tariff (based on vehicle figures using the ferry as it is not possible to relate these to car parks as there are no counters at the car park access/egress points)
- complaints regarding the impact of the Mull Music Festival on Ledaig Car Park
- representation from local groups and Elected Members including the Mull Community Council's Community Participation Request
- reports of abandoned cars and trailers within Ledaig Car Park and Craignure Lorry Park
- assessment of Craignure Lorry Park
- consideration of alternate layouts and permitted vehicles to suit each car park
- feedback from a variety of council officers including Traffic & Development Officer, inspectors, parking wardens, parking supervisor, and the Network & Standards Manager.

Whilst I confirmed this information was considered to inform the draft Mull TRO201 I have formed the opinion that the Council should improve the way supporting evidence of this nature is documented and filed. This will be a recommendation in the audit report which I will be submitting to the Audit and Scrutiny Committee on 18 June 2019. It does not, however, create a material concern in relation to the legality of the Mull TRO201 but will improve the way the Council is able to evidence its considerations.

The Council is required to ensure affected businesses and residents are consulted to ascertain their opinion on the impending TRO. I confirmed that the following local bodies and businesses were invited to respond:

- Royal Mail

- Scottish Water
- British Telecom
- Scottish and Southern Electricity Network
- Mull Community Council
- Scottish Taxi Federation
- Forest Enterprise
- National Farmers Union
- Tobermory Harbour Association
- SW Mull and Lorn Development.

No responses were received from any of these bodies. The only responses received during the consultation stage were from two elected members who requested the Council consider a period of free parking at each car park. This request was reflected in the draft Mull TRO201.

The Council are required, on completion of the consultation stage, to prepare a draft TRO detailing the order and statement of reasons with these made available via a public notice on the Council's website. I concluded the Council complied with this requirement.

**Control Objective 3: Draft TROs are appropriately advertised during the TRO public notification stage**

The TRO procedure outlines the following required steps in relation to advertising the TRO for the public notification stage:

- use of an approved advertising agency
- authorisation of the approved advertising agency's proof copy of the draft TRO
- draft TRO advertised on Council website and made available for inspection at specified locations
- draft TRO forwarded to statutory consultees
- public notification stage to run for 21 days to allow any person, group or organisation to submit objections to the TRO
- letters of objection sent to the Council's Head of Governance and Law to be forwarded to the Traffic and Development Manager at the end of the consultation period
- correspondence received by the Traffic and Development Manager to be forwarded to the Head of Governance and Law.

I confirmed that the Council complied with all these requirements.

**Control Objective 4: Objections to the public notification stage are managed in compliance with established policies and procedures**

The TRO procedure outlines the following required steps in relation to managing objections received during the public notification stage:

- letter of acknowledgement to be sent to all objectors
- list of all names and addresses of objectors to be forwarded to the Traffic and Development Manager
- objections to be replied to in order to try and address them.

A total of 258 objections were received over the 21 day consultation period and I confirmed that all 258 were acknowledged by the Council. The Council reviewed these and identified 22 recurring themes. A sample of 17 objections were reviewed as part of my audit and I confirmed the Council replied to the objections in an attempt to address them.

## Other Issues

As has been discussed during previous e-mail exchanges I recognise that your complaint raised some issues which have not been considered by my audit. My e-mail dated 18 March 2019 set out the reasons for this, with the predominant reason being that they are objections to the TRO proposal rather than an issue related to the Council's compliance with their internal processes or whether those processes are fit for purpose.

I have included the views I expressed on the 18 March 2019 e-mail in this response so as to provide a single formal response to the complaint.

Those issues, and my response are set out below.

### **Issue - There has been no meaningful engagement or consultation with the communities involved about the introduction of car parking charges and the consequences.**

Response - The TRO procedure involves a consultation stage which provides the opportunity for any member of the community, including, but not limited to, statutory consultees and community groups to identify matters that may need to be addressed in the development of the proposal. Following this is a public notification stage which provides the opportunity for any party to raise objections. The Council then has a duty to manage these objections appropriately. My audit has reviewed the Council's approach to the Mull TRO201 in relation to the consultation phases and managing the objections and I have concluded that the Council has complied with their procedure. I am of the view that the process followed has provided the opportunity for all interested parties to engage with the consultation whether that be through the first consultation phase or the public consultation phase. There has been no restrictions placed on any interested parties and objections have been managed appropriately. The submissions by the Iona Community Council in terms of your correspondence is evidence that stakeholders have been afforded the opportunity to raise issues or concerns regarding draft proposals and have these considered by the Area Committee when it comes to making its decision.

### **Issue - There was no context-specific impact assessment, nor is there any other evidence base to inform the TRO and the risks and harmful impacts it might entail.**

Response - The decision to proceed with the TRO was taken prior to Part 1 of the Equality Act 2010 coming into force on 1 April 2018 and before the enactment of the Islands (Scotland) Act 2018. Part 3 of the Act which relates to island impact assessments is yet to come into effect. More importantly, the specific process and criteria for carrying out an Island Impact Assessment has not been developed as yet or consulted on by the Scottish Government. Therefore the Council carries out a more generic impact assessment on new areas of policy that meet our duties under the Equality Act 2010 and the Fairer Scotland Duty which give regard to affected communities. In carrying out the generic impact assessment however, and in the spirit of the Act, due regard is being given to the impact on island communities of the draft proposal so that the Area Committee is aware of these aspects when reaching its decision. Whilst I recognise the point you make about the minutes of the Islands Strategic Group meeting in October 2018 the fact that there is no current published island impact assessment process means it is not possible for me to offer an audit judgement on the performance, or otherwise, of one. This is an issue which, should the community be minded to, should be raised as objection to the TRO so that it can be considered by the elected members when they make their democratic decision at an area committee. As such I see this as an objection to the TRO proposal rather than an issue related to the Council's compliance with process which I can review as part of my audit.

Equality and Socio-Economic Impact Assessments are carried out in relation to policy proposals which enable the officers who are designing a new proposal to check that they have given due regard to all equalities implications, including socio-economic inequalities, as well as impacts on island communities. A further Equalities and Socio-Economic Impact Assessment has been undertaken in relation to the Mull TRO.

I also note that the Scottish Government wrote to Mull and Iona Community Trust regarding the Islands (Scotland) Act 2018 in relation to the Mull TRO with a copy of the letter forwarded to the Council. The Scottish Government have offered to assist the Council with any assessment. The Council have replied to the Scottish Government setting out that the TRO was part of a Council decision in February 2018 and was subject to an Equalities Impact Assessment at that time. Subsequently an Equality and Socio-Economic Impact Assessment has been completed. Whilst the Equality and Socio-Economic Impact Assessment has highlighted some issues these have been mitigated as much as is possible by offering discounted rates for annual parking permits.

**Issue - There was no recognition of how car parks are used currently by locals at a ferry port, nor the lifeline nature of the provision of car parks, nor use by visitors to an exceptionally remote location with direct resultant implications for a fragile visitor economy.**

Response: As I have detailed in my response to control objective 1 there was evidence that consideration was given to a range of information relating to parking movement and parking trends and I refer you back to the conclusions documented in that part of this response. The wider issues relating to the lifeline nature or impact on the economy are an extension of the impact assessment point so my response is similar to the one I have documented above. As such I see this as an objection to the TRO proposal rather than an issue which I can review as part of my audit and be considered as part of the complaints process.

**Issue - A Community Participation Request was misused to present a belated rationale and appearance of consultation, and the Council has persisted in misusing this CPR for this purpose when its weaknesses have been confirmed by a number of organizations.**

Reply: As part of my audit I considered the use of the CPR in terms of it informing the drafting of the TRO although I should stress this was done as part of a wider consideration of the extent to which the Council has considered all relevant consultation. As detailed above I am of the view that the process followed has provided the opportunity for all interested parties to engage with the consultation whether that be through the first consultation phase or the public consultation phase. The CPR has been used to inform the TRO, as is appropriate, however I have found no evidence that it was 'misused.' The output from a CPR should be considered in much the same way as any correspondence should be considered.

**Issue - Imposition of car parking charges on Mull is completely counter to the Council's policies on economic development, supporting tourism and sustaining island communities.**

Response: I see this as an extension of your objection to the draft TRO so my response is similar to the one I have raised above. This is an issue which will be referred to as an objection to the TRO so that it can be considered by the elected members when they make their democratic decision at an area committee. As such I see this as an objection to the TRO proposal rather than an issue related to the Council's compliance with process which I can review as part of my audit and be considered as part of the complaints process.



**Issue - The Council is acting contrary to its policy commitments to implement not only those parts of the Islands Act in force but the spirit of the Act, and it is acting inconsistently through participating in a fuel poverty ICIA whilst rejecting an ICIA on the TRO.**

Response: Refer to my comments above regarding the carrying out of an island impact assessment.

I also noted you are looking for confirmation that the Area Committee will not consider or make a decision on the TRO until it can take account of the outcomes of an investigation that address your complaint. Where a complaint relates to process and has been investigated with the conclusion being the issues are unfounded there should be no barrier to members making a decision. The findings of my audit will be made available to elected members on the Area Committee prior to them considering the draft TRO. If you are not satisfied with this complaint conclusion you are entitled to raise this with the Area Committee members and it would be a matter for them to consider whether they wish to make a decision on the TRO or not. In essence they may consider the potential grounds for challenge and weigh up what the implications might be if they continue and make a decision which may be the subject of a successful challenge.

### **Conclusion**

Based on the audit I have carried out and the responses provided above in relation to the issues not addressed by my audit I would advise that your stage 2 complaint is not upheld.

If you are not satisfied with this response then you have the right to ask the Scottish Public Service Ombudsman (SPSO) to consider your complaint. The SPSO is the final stage for complaints about most organisations providing public services in Scotland including councils and the service is independent, free and confidential.

SPSO's contract details are:

Freepost SPSO Freephone: 0800 377 7330

Online: [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

Mobile site: <http://m.spsso.org.uk>

Scottish Public Services Ombudsman, Bridgeside House, 99 McDonald Road, Edinburgh EH7 4NS

The SPSO cannot normally look at complaints:

- where the customer has not gone all the way through the council's complaints handling procedure;
- more than 12 months after the customer became aware of the matter they want to complain about; or
- that have been or are being considered in court.

Yours sincerely



Laurence Slavin  
**Chief Internal Auditor**