

Dear Pippa

It was agreed at the last Duchess Wood Local Nature Reserve Joint Committee in August that a sub group consisting of representatives of Luss Estates, Friends of Duchess Wood, Lomond School and myself, would meet to discuss the report by TD Trees as well as matters around the ongoing closure of the wood and the impact this is having with partners and the wider community.

The meeting took place at 10.30am on 25th September at the Lomond Arms Hotel. In attendance, apart from myself was, Stewart Campbell, Martin Grafton and David Lewin from FoDW, Keith Robertson – Estate Manager of Lomond School and Patrick Colquhoun – director of Luss Estates and Sean McCay Land Agent for Luss Estates.

Below are the main issues raised by Luss Estates and the FoDW. Lomond School have been unable to access the grounds for maintenance work all summer and are now unable to carry out full outdoor curricular activities (Luss Estates - points 7-8 below). Discussion around the possible opening of the woods in relation to the points recapped by Luss Estates (points 2-3) and FoDW (points 3-6) were discussed at length. Discussion focused around the fact that people in the community are still using the wood and that there is no signage indicating closure or risk/hazard.

There was also a lot of positive discussion in the report regarding the overall information we now have on the wood that will be valuable for future maintenance and management.

As Chair of the committee I ask that the severity of the risk/hazard be revisited in light of the points below so that the wood can be opened, and certain areas accessed asap.

Yours Sincerely



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Lorna Douglas

Chair of the DWCT

Luss Estates - point of view regarding closure of Duchess Wood

1. We are not entirely unsympathetic to the Council's position here. We undertake regular tree surveys and if we had found an area with a high level of access was unsafe we would have closed access off while remedial works were undertaken. We also recognise that the cost of dealing with that many defective trees and the Council's procurement rules mean that immediate action would not have been feasible – however we are very disappointed that over 3 months on, apart from the WIG grant there has been no action taken to resolve this.

2. FoDW's research suggests that the Council have been somewhat overzealous in their approach. The Council are ultimately responsible for the health and safety of users of the wood under the terms of the management agreement, so we recognise that they have to manage the risk appropriately. They do however also have a responsibility under the Land Reform (Scotland) Act 2003 to uphold access rights and they

need to balance these two interests, which is not being done at present – the latter seems to be being ignored completely.

3. Given that many members of the public are outright ignoring the closure of the woods, FoDW's suggestion of signage informing visitors of the risks, urging people not to use the woods at high risk times such as in high winds etc. sounds like a pragmatic solution.

4. That said, our view is that the Council still need to carry out the works identified in the tree survey at the earliest opportunity and certainly before the end of the management agreement next year. While the full closure of the wood may be disproportionate, the report has identified 97 hazardous trees that should not be left for longer than they have to be.

5. We have given consent to the Council's WIG application although this was held up by delays in the Council's legal department giving us assurances that we would be fully consulted on the terms of the WIG contract, which we will be bound by if it proceeds. We understand that this has been successful and look forward to receiving the contract to review in due course.

6. With regards to Lomond Schools' position – their lease of the playing fields grants them rights to use and access them. In our view Management Agreement does not take precedence over the lease and does not give the Council power to deny Lomond Schools use of their let ground. I have asked our solicitors to give an opinion on the matter.

7. Luss Estates' priorities are:

- Lomond Schools should have use of the ground that they rent from us
- That the closure of the woods to the general public should go on for no longer than is absolutely necessary
- That the hazardous trees should be dealt with by the Council at the earliest opportunity and certainly before the end of the management agreement.

FODW - point of view regarding closure of Duchess Wood and report by TD Trees

1. FODW recognises that there is a great deal of information in the hazard analysis section which will prove helpful now and in the future. As far as we can see the marking and identification of the trees is accurate and this is valuable data.

2. However we do not think that the report deals properly with the question of risk, nor do we believe that the substance of the report justifies the continuing closure of the Wood. The wood should be formally re-opened as soon as possible (see below).

3. FODW notes that the report quotes the Occupiers Liability (Scotland) Act 1960 and the HSW Act 1974 as the legal basis for their recommendations, but gives no detailed legal rationale for their recommendations. FODW notes that the Occupiers Liability (Scotland) Act 1960 allows access to areas of risk where the risk is understood by visitors to the premises. FODW has examined the guidance from the Health and Safety Executive, and the extensive guidance from the National Tree Safety Group (NTSG) (published by the Forestry Commission); none of this guidance is referenced in the TD Trees report, but we believe it should have been. The guidance states that *"Each year between 5 and 6 people in the UK are killed when trees or branches fall on them. Around 3 people are killed each year by trees in public spaces. Thus the risk of being struck and killed by a tree or branch falling is extremely low (in the order of one in 10 million for those trees in or adjacent to areas of high public use). However the low level of overall risk may not be perceived in this way by the public, particularly following an incident. The average risk is firmly in the "broadly acceptable" region of the tolerability of risk triangle published in HSE's "Reducing Risks Protecting People". However, "Reducing Risks, Protecting People" explicitly states that "broadly acceptable" is a general guide and*

not a definitive statement of what is reasonably practicable in law ... the law requires that where reasonably practicable measures are available, in individual cases, they should be taken." The extensive NTSG guidance emphasises that *"the evaluation of what is reasonable should be based upon a balance between benefit and risk. This evaluation can be undertaken only in a local context, since trees provide many different types of benefit in a range of different circumstances"*. It continues *"Safety is but one of the many goals to which we aspire; the mistake that is often made is to focus on safety as if it is the only goal"*. It is striking that given the importance of the local context that neither the Duchess Wood Local Nature Reserve Committee nor FODW were consulted during the preparation of the survey nor in the drafting of its conclusions, which ignores community knowledge and undermines the report's understanding of community concerns. As far as we can tell the Council's own occupational health and safety advisers were not consulted during the preparation or consideration of this report, and it would also be helpful to take their views into account.

4. The TD Trees report and therefore the recommendations are narrowly focused on hazard and appear to regard the wood as a "park". It is not a park, it is a natural woodland. The report recommends the removal of dead trees and deadwood, when it is well understood that the health of a woodland relies upon both standing and lying deadwood. Indeed one of the information boards in the wood produced as a result of the previous Forestry Commission grant over ten years ago emphasises the importance of deadwood in a living woodland. FODW is concerned that the recommendations in relation to some of the oldest trees in the wood will remove old and interesting trees from the wood when we should be trying to preserve and protect them.

5. The report and recommendations do not appear to take into account issues such as the wood's biodiversity and the "right to roam", nor in general the practicalities of attempting to "close" what is a natural woodland with many access points. The Council's attempts to close the wood have not been successful, mainly it seems because visitors apply common sense to the risk of access and have concluded that it is at a level they are happy to tolerate, particularly when they see the conditions which are tolerated in other public access areas.

6. Although the list of dangerous trees in the report is extensive, and FODW agrees that they should be managed properly, FODW is concerned that many trees are omitted from the report which FODW's own work suggests need to be dealt with. These include some obviously precarious trees near paths, large trees within a short distance (ie within the fall distance) of housing boundaries, and many sycamore and ash trees near the east and north paths which are multi stemmed and showing signs of rot in their bases. The original WIAT application (which has now been "parked" in order to deal with the trees identified in the report) was aimed at dealing with all unwanted/hazardous trees in a managed way over a staged period of years followed by their replacement by more suitable trees to return the wood to a more native mix in line with the Management Plan for the wood. FODW has also carried out a trial exercise which demonstrated that the cost of at least some of this work could be defrayed by the commercial value of the timber.

7. FODW believes that the recommendations from the TD Trees survey should be reconsidered in the light of the HSE and NTSG guidance, and the wood formally re-opened to the public as soon as a relatively small number of trees and branches have been dealt with (see para10 below). An extended warning notice should be posted at each of the main entrances and delivered to all neighbouring households saying "The wood is a natural area, with fallen trees, steep banks, open edges, ponds and burns, mud and the occasional midgie; bear this in mind, especially when walking with children, but use the wood to build an understanding of natural play. Please do not visit the wood when gales are forecast as trees may shed branches or fall. A recent survey has identified a number of dead trees and dead branches which will be managed systematically in future."

8. FODW understands that the revised WIAT application has now been processed and that a grant of over £11,000 has been approved to support the work recommended in the TD Trees report. This is unlikely to be sufficient funding to complete the recommended work. FODW believes that a prioritised approach is essential, so that the main problem trees can be dealt with quickly and the wood re-opened while the other trees are dealt with in the medium term. At the same time it is

essential that the earlier WIAT application is revised and resubmitted so that the more extensive work foreseen in the DW Management Plan can be planned. When tree work is done it is essential that the contract is managed by someone with experience in this kind of work, that it takes into account the need to offset costs by managing felled timber for sale, and that arrangements are made to deal with the brash produced by tree management operations. We regard it as important that FODW are explicitly involved in the planning of any woodland management work.

9. In summary we believe that a more pragmatic approach should be taken to management of risk, taking in to account guidance provided by HSE and NTSG, and that a phased approach should be taken with those trees contributing the highest risk dealt with first so that access to the wood may be restored quickly.

10. In para 7 above we refer to a small number of trees and branches which needed to be dealt with before the wood is re-opened, and this is our suggested list, based on FODW experience. Most of these are in the TD Trees report, and most are trees which FODW has already raised concerns about, that is, from the common sense point of view of an informed visitor.

T4 – large beech with extensive damage, and crack in trunk – do not fell completely but manage to conserve as much as possible of the tree.

T5 – large beech - remove hanging failed branch and manage other deadwood, but do not fell completely.

T14 – dead sycamore, but do not fell completely – reduce to approx. 3m in height and remove lower branches.

T32, T33, T36 – goat willows – all need multi stemmed felling.

T55 another willow – fell, and close to it is another substantial dead tree close to path which could be trimmed of branches and reduced in height at the same time.

Unmarked rowan near bench at corner of ravine – fell.

T44 – can't see marker but presume this is the birch which has fallen over to about 30' (with another part tree lying beside).

T59 – goat willow needs felled.

T69, T73 – goat willows adjacent to garden of 22 Duchess Park – a variety of trees and branches have fallen into this garden in the last ten years, so a thorough tidy up of the boundaries would be helpful.

T84, T88 – and other smaller trees overhanging garages – council committed to this work some time ago but only a few were dealt with. FODW paid to have one dealt with.

T81 – dead sycamore in car park – fell

T96 – dead pine, on own – fell. Another dead pine at T95 is held up at present by another tree – could wait or could be done at same time. (couldn't identify a number of marked trees in this area).

Trees T5, T32, T44, T59, T81, T95 and T96 are graded 1 in the TD Trees report. The others are graded 2, or not identified.

Kind Regards

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