

Report to Argyll and Bute Council

ROAD TRAFFIC REGULATION ACT 1984

Report by Mike Croft, a reporter appointed by Argyll and Bute Council

- DPEA case reference: TRO-130-2.
- Site address: Luss, Alexandria.
- Promoting authority: Argyll and Bute Council.
- The order sought: Argyll and Bute Council (Various Streets, Luss) (Traffic Management) Order 202_.
- Objectors: see appendix 5 below.
- Date case received by DPEA: 19 October 2021.
- Date of hearing session: 23 August 2022.
- Dates of site visits: 4 and 5 June and 22 and 23 August 2022 (unaccompanied).
- Reporter's recommendation: that the order be submitted with this report and other appropriate documents to Scottish Ministers for their consent, and that that consent be subject to the TRO being modified as stated in this report.

Date of this report and recommendation: 12 October 2022.

Scottish Government
Planning and Environmental Appeals Division
Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DPEA case reference: TRO-130-2

Chief Executive
Argyll and Bute Council

Dear Sir

ARGYLL AND BUTE COUNCIL (VARIOUS STREETS, LUSS) (TRAFFIC MANAGEMENT)
ORDER 202_

I refer to the above draft Traffic Regulation Order (TRO) and to the Council's email of 19 October 2021 referring the matter to the Scottish Government's Planning and Environmental Appeals Division (DPEA). I also refer to the Council's minute dated 24 March 2022 appointing me as the reporter to hold a public hearing into objections made against the TRO and to report to the Council. I am a member of a panel of self-employed reporters who are allocated this category of work by DPEA. I interpret my brief broadly: to examine the draft TRO in the light of the objections made against it and not withdrawn, whether those objections are pursued at the hearing or by written submissions, and to report with recommendations to the Council.

The draft TRO is promoted by Argyll and Bute Council under various powers, including powers within the Road Traffic Regulation Act 1984 as amended by the Roads (Scotland) Act 1984. It relates to various roads within the parish of Luss on the western side of Loch Lomond. It includes provisions for the prohibition of driving, for various prohibitions of waiting and loading, and for parking places.

The Council advertised the draft TRO in April-May 2021, and objections to it were received. Amongst these objections were objections to its charge for on-street parking permits and one objection to its prohibition of driving on various roads. The Council's Helensburgh & Lomond Area Committee agreed in September 2021 that the proposed charge for on-street parking permits should be reduced from £98 (as in the draft TRO) to £45 per year, it maintained its position with regard to all other elements of the order, and referred the objection to the prohibition of driving to an independent reporter. My appointment as above followed.

In accordance with my minute of appointment, I held a public hearing on 23 August 2022. I also sought and obtained further written submissions from the parties, and I carried out unaccompanied site inspections on 4 and 5 June and 22 and 23 August 2022. I am very grateful for the help provided by Ms Fran Millar, an officer with the Council but with no previous connection with the case, who acted very carefully and effectively as my Programme Officer. My thanks are also due to Ms Sonia Lindsey, another officer with the

Council with no previous connection with the case, who acted ably when Ms Millar was absent.

This report is directed towards whether, arising from my examination of the draft TRO in the light of the objections made against it, the Council should, or should not, carry forward the TRO, and if so, what (if any) modifications to it should be made. My report provides

- a brief background to the draft TRO (chapter 1);
- a summary of the objections, the Council's cases in relation to them, and my assessments (chapter 2);
- a commentary on modifications to the TRO not arising directly from objections (chapter 3); and
- my overall conclusions and recommendation (chapter 4).

My report is perhaps more comprehensive than the Council immediately requires. That is deliberate on my part - on the basis that the Council may wish to submit it in due course to Scottish Ministers.

Yours sincerely

Mike Croft

Reporter

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Abbreviations		
Council	Argyll and Bute Council	
DPEA	Planning and Environmental Appeals Division	
DVLA	Driver & Vehicle Licensing Agency	
Regulations	The Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999	

<p>TRO or draft TRO</p> <p>1984 Act</p>	<p>The draft Argyll and Bute Council (Various Streets, Luss) (Traffic Management) Order 202_, ie the draft order that is the subject of my examination (Note: the only references in this report to a “TRO” are to that specific draft order; I refer to any other order as an “order”.)</p> <p>Road Traffic Regulation Act 1984</p>		

CHAPTER 1. BACKGROUND

1.1 After referring to my appointment, this chapter provides some context about Luss and its traffic, indicates how the TRO developed into its present form, and summarises how it was processed.

My appointment and the need for Scottish Ministers' consent

1.2 I was appointed by Mr Douglas Hendry, Executive Director, Argyll and Bute Council on 24 March 2022 to hold a public hearing into objections made against the TRO and to report to the Council. I am a member of a panel of self-employed reporters who are allocated this category of work by DPEA.

1.3 I note, through the minutes of the Helensburgh & Lomond Area Committee on 16 September 2021, that the Council's decision on my role had been more restricted and was *"to refer the objection to the Prohibition of Driving to an Independent Reporter."* I have raised this difference with the Council. In response, the Council has stated that it *"remains concerned that there is a risk that, should the hearing be limited in scope to a single objection on the prohibition of driving, Scottish Ministers might not be satisfied that there has been full compliance with the provisions set out in the Road Traffic Regulation Act 1984 or the Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999 in that the hearing was not held into the order as a whole as opposed to a specific part of it. The council wishes to avoid increasing the risk of Scottish Ministers deciding to "require" the council to hold a further hearing by withholding their consent until such a (further) hearing had been held by the council into the entire order"*. The Council therefore wished me to adopt the remit set out in the minute of appointment. My full dialogue with the Council on this point is reproduced in appendix 1 to this report.

1.4 I interpret my brief broadly: to examine the TRO in the light of the objections made against it and not withdrawn, whether those objections are pursued at the hearing or by written submissions, and to report with recommendations to the Council.

1.5 The matter of securing Scottish Ministers' consent for the TRO also arose in another context. It is usual for a hearing of the sort I held to take place following the submission to Scottish Ministers of a draft order that requires their consent, with the reporter being appointed by Scottish Ministers. This case is proceeding differently, with a hearing being held before submission of the draft TRO to Scottish Ministers. I pursued a dialogue by correspondence with the Council on this matter in April-May 2022. That dialogue is reproduced in Appendix 2. I concluded that the TRO could proceed to a hearing in line with current legislation. But the requirement to obtain Scottish Ministers' consent remains.

Luss and its traffic

1.6 The village of Luss, with a population of about 120 residents and a number of businesses, lies between the old A82 road on the west and the western shore of Loch Lomond on the east. It is within the Loch Lomond and the Trossachs National Park. The village core, made up of Church Road, Murray Place, Pier Road and School Road, extends as far as its pier, from which loch cruises may be taken. There are beaches north and south of the pier. The village core forms a conservation area, and there are 42 listed structures. Luss Primary School is just to the west of the old A82 road, off a short cul-de-sac section of School Road.

1.7 Luss is a honey-pot destination, with the village reportedly receiving about 750,000 visitors each year. No data source for this figure is known, but participants at the hearing I held did not dispute the reasonableness of that estimate. Nor do I. The busyness of the area in summer and at weekends is not generally disputed. It is a popular destination because of its access to the loch shore in conjunction with its proximity to the central belt, the driving time from central Glasgow being of the order of 45 minutes.

1.8 Two off-street car parks, with a capacity of 250 cars each, are available outwith the village core. One of these is Council-owned and -managed, and is long-established. It is just to the north-west of the village core, with pedestrian access off Murray Place, although vehicular access is from the old A82 road only. Between 0900 and 1800 hours every day it is operated on a pay-and-display basis. Charges are 30p for 15 minutes, 50p for 30 minutes, 80p for 45 minutes, and £1.00 per hour for one hour or more. Parking is free between 1800 hours and 0900 hours the next day. Permits for the longer-term use of the car park cost £139 for three months, £258 for six months, £371 for nine months, and £489 for 12 months.

1.9 The second car park, owned by Luss Estates Company (a local company with a wide range of interests), was opened in the spring of 2021. It lies south-west of the village core, a little further from the core than the Council-owned car park, and is operated on a pay-on-exit basis. The parking cost here, applying 24 hours per day and 7 days per week, is £1.20 per hour. Mr Miller, the company's Chief Executive Officer, informed the hearing I held that the company currently offers one free annual parking permit there to each resident household in Luss, and a discounted permit to each Luss business.

The Council's general view of Luss's traffic problems

1.10 Notwithstanding the two car parks, there have been long-standing traffic-related issues within Luss village which have worsened as visitor numbers have increased. The core village roads are generally narrow, and most are without footways. Their geometry is poor in relation to modern standards. Residents and businesses in the village need access along these roads, and they have limited or no off-street parking. The limited on-street parking space that exists within the village core has been regularly over-subscribed, and residents and businesses have often found it impossible to park near their properties because of visitors parking there. This reduces the carriageway width to single lane and further impacts already congested and narrow streets. Many of the core village properties front directly to the carriageway with no pedestrian refuge. So inappropriate parking can limit or prevent safe and convenient access to these properties.

1.11 Visitors unfamiliar with the village layout have often struggled to navigate around the narrow streets, contributing towards congestion and conflict between vehicles and pedestrians. There is no formalised turning area enabling larger vehicles (such as cars towing caravans or trailers, or motorhomes) to turn safely within the village, and that has added to the circulating traffic. The high volume of circulating traffic has had a substantial and significant impact on the residents of the village and on the character of the roads and adjoining properties.

1.12 Traffic issues in Luss have remained a cause of concern in the absence of a proportionate, balanced and sustainable solution for residents, businesses and visitors.

Preludes to this TRO

1.13 The local community have raised concerns about traffic issues over a number of years. In 2016-17, the Council attempted to promote two proposals. One was for speed limits on the old A82 road. This generated 289 formal objections, most on the principle of the proposals. A particular point of concern was that the speed limit changes should have included the core village roads. The other Council proposal then was to limit parking to one per residence or business in the village core, with limited visitor parking on Church Road and Pier Road. This generated 292 objections, again mainly objections in principle. Particular points of concern were disabled access to the village core and the cost of permits. Neither of these proposals was taken forward in their existing form. In December 2017 the Council's Helensburgh & Lomond Area Committee noted that the real issue in the village centre is traffic movement through the village streets and the limited number of on-street parking spaces available. It also noted the legal difficulties in restricting access to a public road to certain classes of road users. Around the same time alternative proposals had been produced by consultants acting for Luss Estates Company. But no traffic regulation order was progressed at that time.

1.14 Between 2018 and 2020 Argyll and Bute Council engaged with the community by means of meetings with the Luss and Arden Community Council, Police Scotland, MSPs and others. These meetings culminated in heads of terms which were based on principles which had been broadly agreed between those attending the meetings. The heads of terms resulted in two separate draft traffic regulation orders, one of which in due course became the draft TRO before me.

1.15 The other proposal emerging from the two years of dialogue was The Argyll and Bute Council, (Old A82, Various Streets, Luss) Speed Limit Order 202_. This is intended to reduce speeds on the old A82 road and the core village roads variously to 20, 30 and 40 mph. That order can now be made, as there are no extant objections. However, the Council considers benefit would be maximised by implementing it and the TRO before me together. If the TRO before me does not proceed, the Council still intends to proceed with the speed limit order.

1.16 The Council also agreed to amend an existing order relating to its off-street car park: the Argyll and Bute Council (Off-Street Parking Places and Charges) (Luss) (Amendment) Order 2021 was introduced to provide short-term, free parking for the businesses fronting the car park and to reduce inappropriate parking on the old A82 road.

1.17 When the early Covid-19 lockdown restrictions were eased in May 2020, Luss village started to see a renewed influx of visitors which heightened the pressures referred to above. Therefore in June 2020 the Council made a temporary traffic regulation order, to be effective from July 2020 until January 2022. This allowed parking in the village core only on display of a permit obtainable by local residents and businesses. By September 2020 the Council's Executive Director with Responsibility for Roads and Infrastructure Services was able to report to the Helensburgh & Lomond Area Committee that this temporary order "*has fulfilled its primary purpose of providing a mechanism to manage the visitor traffic into the village ...*". That order has provided an opportunity to test proposals in a live environment, and it is the Council's view that it has demonstrated the need for parking controls within the village core. Although the temporary order has worked reasonably well, the considerable number of penalty charge notices issued has been taken by the Council to indicate that

people's understanding of the restrictions needed to be improved. When the temporary order expired in January 2022, a second temporary order (with no significant differences) became effective for a further period extending to May 2023.

The emergence of this TRO

1.18 As indicated in paragraph 1.14 above, the precursor of the TRO before me emerged out of two years of dialogue. That precursor had been produced by lawyers acting for Luss and Arden Community Council, with input from Argyll and Bute Council. Its details were reported to the latter's Helensburgh & Lomond Area Committee in September 2020, with officers regarding it as a proportionate, balanced and sustainable solution to the recurring traffic issues in Luss.

1.19 That precursor is essentially made up of four elements, as summarised below.

- A parking zone where parking would be limited to a restricted range of vehicles. This would substantially cover the core village streets, ie all of Pier Road, Church Road (except for 86 metres where no waiting of any vehicle would be allowed), all of Murray Place, and that part of School Road east of the old A82 road. Prohibition of waiting would apply to all vehicles except for a range of exceptions including vehicles displaying valid permits, blue badge holders, emergency services, mail deliveries, undertakers, local authority activities and furniture removal. Up to two permits would be obtainable by each resident household and business in the parish of Luss for £20 per year each.
- Prohibition of driving. This would prevent any vehicle being driven along the core village streets, subject to a number of exceptions, including permit holders, emergency services, blue badge holders, and for the delivery of goods. This prohibition would be enforceable by Police Scotland, not by the Council.
- Prohibition of waiting and loading at any time. This would apply to (a) both sides of the old A82 road from a point close to its north junction with the A82(T) road for about 800 metres southwards to the access to the Luss Highland Games field and (b) the 86 metres stretch of Church Road referred to above. This restriction would be subject to a number of exceptions and exemptions including emergency services, delivery of mail, undertakers, local authority activities and furniture removal.
- On-street parking places (stay limited to 30 minutes between 0800 and 2000 hours). Seven bays would be marked out on the old A82 road for this purpose near Luss Primary School. These places would be mainly to allow school pupils to be dropped off and picked up, but they could also be used for other short stops, for example to make purchases at the village shop nearby.

1.20 The September 2020 Committee endorsed the work carried out to that date, and agreed that the draft order that had been submitted to it should form the basis of an order to be taken forward through the statutory process. The Committee delegated authority to the Head of Roads and Infrastructure Services to make appropriate and competent technical changes to the order before advertising it within the statutory process. The Committee itself specifically required the £20 permit charge per year to be adjusted in line with the Council's current scheme of fees and charges. The draft TRO as subsequently advertised provides for a permit charge of £98 per year. This is the same as the 2020-21 charge for the only

other residents' on-street permit scheme in Argyll and Bute – in Oban. In addition, prior to advertisement, a 37 metres cul-de-sac length of School Road west of the old A82 road was also added to the roads designated for prohibition of waiting and loading at any time.

1.21 My summary of the TRO appears at Appendix 3.

1.22 The draft speed limit order was also broadly agreed at the same Committee meeting.

The statutory basis for this TRO

1.23 A traffic authority, such as the Council, may make a traffic regulation order under section 1(1) of the 1984 Act where it appears to the authority that it is expedient to make it, on the basis of seven possible reasons for so doing. These are:

“(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or

(b) for preventing damage to the road or to any building on or near the road, or

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or

(f) for preserving or improving the amenities of the area through which the road runs, or

(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).”

1.24 In correspondence with me prior to the hearing, the Council referred to the first six of these as their reasons for expediency in this case. In discussion at the hearing, I suggested that reasons (a) and (b) might be relatively less important in this case and that reasons (d) and (f) might be relatively more important. The Council agreed.

1.25 The section 1(1) reasons for expediency are to be understood against the wider requirements of section 122 of the 1984 Act. This requires the Council to exercise its functions conferred on it by the Act *“to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the road”*. This duty is a qualified duty in that the Council must comply with it *“so far as practicable”*, having regard (in summary) to (retaining the letter references of section 122):

(a) the desirability of securing and maintaining reasonable access to premises,

(b) the effect on the amenities of any locality affected and the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run,

(bb) the national air quality strategy,

(c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles, and

(d) any other matters appearing to the Council to be relevant.

1.26 The Council confirmed in its statement of case that it had had regard to its duty under section 122. I do not doubt this.

The process for this TRO

1.27 The procedure for making an order such as this is contained in The Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999. Regulations 4 and 6 specify consultation requirements. Regulation 5 requires publication of the proposals by (at least) notice in a local newspaper. Regulation 7 enables objections to be made in response to the regulation 5 notice. Regulation 8 provides that, before making an order, the authority may hold a hearing in connection with it, and provides that the authority shall hold such a hearing before making an order in certain specified cases. Prior to the hearing I held I discussed with the Council, through correspondence, whether the hearing should be regarded as discretionary or mandatory. Nothing of substance turns on the outcome of this: the important point is that the hearing has been held. The material points of the correspondence are reproduced at Appendix 4.

1.28 Regulation 8 also requires hearings to be conducted by an independent person (referred to as "the reporter") appointed by the authority from a list of persons compiled by the Scottish Ministers for that purpose. Regulation 9 specifies requirements for notice of the hearing, and regulation 10 specifies procedure at the hearing. Regulation 11 refers to the consent of Scottish Ministers being necessary in certain cases.

1.29 Where a hearing has taken place, regulation 12 requires the authority, before making the order, to consider the report and recommendation made by the reporter. Regulation 14 makes provision for the transmission of documents to Scottish Ministers if the authority decides to make the order in a form which includes any provision at variance with the recommendations of the reporter. Regulation 15 requires the authority to prepare and keep a map in connection with the order. Regulation 16 relates to the date of the order and specifies a time limit for making it.

1.30 In this case the Council has confirmed that it carried out consultation as required by regulation 4, and has provided consultation record sheets. In line with regulation 5, it advertised the TRO on 22 April 2021, seeking objections by 14 May.

1.31 The results of the consultation and advertisement processes were reported to the Council's Helensburgh & Lomond Area Committee in September 2021. It was reported that 73 objections had been received from 91 objectors, but two of the objections had been

withdrawn. 73 representations were provided to me¹, and these 73 are listed and summarised at Appendix 5. 68 of the 73 consist of, or include, a uniform template text which included an objection to the charge for a parking permit. One of the 73, the objection from the Argyll Community Housing Association, had been withdrawn in June 2021. It also appeared to me that the submission from Police Scotland was not an objection to the TRO before me but to other orders which the Council was promoting at the same time. Police Scotland confirmed in correspondence in June 2022 that that was the position. That left 71 objections.

1.32 The September 2021 Committee agreed one change, and one change only, to the TRO as advertised: this was to reduce the proposed charge for on-street parking permits from £98 (as in the order) to £45 each year. Arising from this the Council wrote to objectors in May 2022 referring to that proposed reduction and asking each of them if they wished to withdraw their objection in the light of that. The same letter also gave notice, as required by regulation 9(1), of the intention to hold a hearing and asking each objector whether s/he wished to participate.

1.33 Six of the objections which solely concerned the on-street parking charge were withdrawn in May/June 2022, as indicated in Appendix 5, in response to the Council's letter². I was therefore left at that point with 65 objections. Seven replies to the Council's letter were received indicating a wish to participate in the hearing discussion.

1.34 In the stages leading up to the hearing, and at the hearing itself, I followed the Code of Practice – Annex F (Hearings) to Circular 17/1998 insofar as its general principles could be applied. At my request the Council set up a page on its website in March 2022 to contain documentation relating to the TRO. In order to assist the prospective hearing participants, in June 2022 I issued a guidance note on written statements for the hearing. It was also clear to me that objectors who did not wish to participate in hearing sessions should have the opportunity of making further written submissions. I therefore issued a guidance note on further written submissions on non-hearing objections at the same time. I allowed three weeks for statements and submissions to be made, and then two weeks for written comments to be made by the Council on objectors' statements and submissions and two weeks for written comments to be made by objectors on the Council's statements and submissions.

1.35 The Council responded to these requests, but of those objectors who had indicated a wish to participate in the hearing only two of them (Ms Ferguson and Ms Stalker) submitted statements. In the event, personal circumstances prevented Ms Stalker from participating in the hearing, and her place was taken by another objector, Ms Webster.

1.36 I issued the hearing agenda in July 2022, reflecting the written documentation that I had received up to that point. The Council sent the hearing agendas formally to all objectors, thus meeting the requirements of regulation 9(2). It also published a newspaper notice of the hearing, as required by regulation 9(3).

¹ I regard a single communication signed by two or more people as a single objection.

² The on-street parking charge element of one further objection (by Mr and Mrs Potter) was also withdrawn, but their objection remained extant on other grounds. A further person, Norman MacLeod, responded to the Council's letter, but no objection from him was put before me and he took no further part in the process: I do not count or list him as an objector.

1.37 The Council confirmed at the hearing that all of the statutory procedures related to the TRO had been complied with. I have no reason to doubt this.

1.38 The hearing was held at the Sutherland Suite, Loch Lomond Arms Hotel, Luss on 23 August 2022. I carried out the hearing in accordance with regulation 10.

1.39 I made unaccompanied site inspections on 4 and 5 June and 22 and 23 August 2022.

1.40 The main participants in the hearing are listed at Appendix 6.

1.41 Documents are listed at Appendix 7.

CHAPTER 2. THE OBJECTIONS, THE COUNCIL'S CASES, AND MY ASSESSMENTS

2.1 My task is to examine the TRO in the light of the objections and to assess whether the making of the TRO is expedient in the circumstances. Taking account of environmental, social and economic factors as necessary, I assess whether the public benefits of the TRO in relation to the restrictions it includes outweigh the public or private disbenefits alleged in the relevant objections.

2.2 Objectors' cases are derived mainly from their objections made during the advertisement period, the hearing statement from Ms Ferguson, comments on the Council's statement from Ms Butler, Mr Henderson and Mr and Mrs Pretswell, and from contributions during the hearing.

2.3 The Council's cases are derived mainly from the reports to Committee in September 2020 and September 2021, its hearing statement and further written submissions, its response to objectors' submissions, and from its contributions during the hearing.

Households, businesses, permits and spaces: some statistics

2.4 In advance of the hearing, and in order to provide factual background to some of the arguments being made, I sought from the Council and was provided with the following statistics:

Previous and present temporary traffic regulation orders

Number of resident households in village core: 67.

Maximum number of permits valid at any one time issued to resident households in village core: 89.

Number of businesses in village core: 19.

Maximum number of permits valid at any one time issued to businesses in village core: 3.

Draft TRO

Number of resident households in parish: 187.

Number of businesses in parish: 154.

Some businesses have multiple listings.

2.5 During the hearing, the Council indicated that it assessed the safe parking capacity of the village core as "at least 60 spaces".

A base-line

2.6 The temporary orders (see paragraph 1.17 above) form something of a base-line for considering the TRO before me. That is because, during my consideration of the TRO before me, they provided an important basis for the present character of driving and parking in Luss. The differences between the temporary orders and the TRO indicate the direction and extent of changes that the Council proposes from the present position. The main differences between the temporary order and the draft TRO before me are shown in the following table:

	Temporary orders	Draft TRO
Prohibition on driving	Not included	Included
Charge for residents' and businesses' on-street parking	Not included	Included
Maximum on-street parking permits per business	One	Two
Availability of permits for residents and businesses	In village core only	Whole parish

General propositions by the Council

2.7 Growing visitor pressures on unsuitable village roads have become unacceptable. There has been no solution so far to this which is proportionate, balanced and sustainable.

2.8 The TRO seeks, as far as practicable and with necessary exceptions, to remove non-essential traffic from the core village roads. It is proposed to do this by controlling access to parking through a driving prohibition and a requirement to display a parking permit. Permits, available at a fair and reasonable cost, would be restricted to a maximum of two per business and resident household located in Luss parish. The restrictions would maintain safe, reasonable and effective management of the road space to benefit those who need it most, whilst mitigating against the impact of circulating traffic and irresponsible parking.

2.9 The Council's statement of reasons for proposing to make the TRO says it is required in the interests of road safety and local amenity for seven reasons. I summarise those reasons here:

- Preserve and improve the amenities of the area and improve road safety by providing new traffic management measures.
- A driving prohibition within the village core would prohibit all vehicles except for access mainly by residents and business owners.
- Waiting of all vehicles unless displaying a permit available to residents and business owners would be prohibited within the same area.
- These arrangements are required to support local residents and the local economy, safeguard access for blue badge holders and deliveries, and to maintain access for emergency services vehicles, as well as ensuring road safety.
- Parking (waiting and loading) would also be prohibited on the old A82 road, except within short-stay parking bays adjacent to Luss Primary School and local shops.
- Visitors could park in either of the off-street car parks.
- Parking (waiting) would also be prohibited on a substantial further length of the old A82 road to address inappropriate parking and support road safety³.

2.10 The objections demonstrate that there is very little, if any, dispute as to the need for a traffic solution for Luss. The template objections indicate strong support for the proposals, with the exception of the proposed permit cost. Each says: *"I believe that these proposals give us the best chance of dramatically reducing circulating traffic in the heart of the village and will restrict the access of tourist's [sic] cars to the heart of the village."* Much of the rest of the TRO is unopposed. The prohibition of driving measure has only one objector.

2.11 The draft TRO, with the proposed speed limit order (see paragraphs 1.15 and 1.21 above) and the off-street parking amendment order (see paragraph 1.16 above), contain a

³ The Council amended the full wording of this reason after the hearing.

range of provisions within the powers available to the Council that, when taken as a whole, present a balanced solution to the issues at hand when considered against the mixed views within the community, including businesses.

2.12 Any satisfactory solution will need a degree of compromise from the various parties.

Procedural irregularities

The objector's case

2.13 Ms Ferguson says that the TRO is underpinned by pervasive, disquieting issues. These involve procedural irregularities going back to 2015 involving Luss Estates Company and Luss and Arden Community Council. Appropriate declarations of interest failed to be made to the community council. Lawyers acting for the community council drafted the TRO before me. There is catalogue of inappropriate behaviour by the community council. The format of the TRO *“does not allow modification in response to the Consultation process.”*

The Council's case

2.14 The Council has already made its position clear through the decisions of its Conduct Review Panel when in November 2021 it investigated Ms Ferguson's concerns about the community council. Members of Argyll and Bute Council have been well aware of the history of problems in the village. Their abandonment of earlier orders in the face of large numbers of objections shows their responsiveness to the local community, as does their widespread consultation on the TRO before me.

My assessment

2.15 It is not within my remit to consider procedural irregularities that may, or may not, have been committed by the community council or others during the period leading up to first consideration in September 2020 of the order that, with very little amendment, became the TRO before me. Ms Ferguson also took the opportunity to raise procedural questions during public question time at the Committee meeting in September 2021. Moreover, the Conduct Review Panel in November 2021 upheld none of her complaints. So the alleged irregularities have been well aired previously, and the case for them has been found wanting.

2.16 Argyll and Bute Council does not deny that in September 2020 it substantially took on board a draft order which had been produced by lawyers acting for the community council. I see nothing untoward in that. From paragraph 2.15 above it seems unlikely that the origins of the TRO – before September 2020 – were materially tainted with procedural irregularity. September 2020 marked the beginning of what in effect was a new process. At that point, Argyll and Bute Council had the ability to amend the text of the order that had been produced for the community council, and it did so (see paragraph 1.20 above) before taking the matter further. The TRO was then at the beginning of a statutory process involving specific consultation requirements and the right to object. It became subject to the requirements of the 1999 Regulations. The Council has confirmed (see paragraph 1.37 above) that all the statutory processes required by the regulations have been carried out. Ms Ferguson has not challenged that in any particular, and did not do so when invited to do so at the hearing. I have no concerns with regard to compliance with the statutory requirements. I am able to examine the TRO as objectively as I can in the light of the

evidence that is put before me, including the evidence from Ms Ferguson. Recommendations for modifications are well within my remit.

2.17 I have one qualification to add. Without in any way suggesting that there is a statutory requirement on the matter, the Council may wish to consider whether its post-implementation monitoring arrangements should include consultation with the all the businesses in the area.

The proposed on-street parking charge

The objectors' case

2.18 Numerically this is the most frequently made objection, predominantly by means of the uniform template text⁴. The proposed on-street parking charge, stated by objectors to be £90 per year, is opposed. Through a previous TRO proposal in 2016, the Council had been proposing a fee of £40. The income that the Council receives *“from penalty charge notices and parking income from Luss exceeds the combined income from these two sources in the whole of Argyll & Bute”*. Mr Pretswell regards the cost to the Council of providing free parking permits to residents as trivial in the light of this. There is no reason for such a high charge for on-street permits. It would be wrong to impose such a financial penalty on residents in a mainly social housing area. Some objectors seek no charge at all, either because most residents are pensioners or on the basis that there would often be occasions when no parking spaces would be available. At the hearing, Ms Webster added that there is no guarantee of enforcement either. She also said that the free parking available for resident households at the Luss Estate Company's car park is not as beneficial as being able to park nearer home.

The Council's case

2.19 Following the receipt of the objections, the Council agreed in September 2021 to reduce the proposed permit cost from £98, as stated in the TRO, to £45 per year. It asks me to recommend modifying the TRO to achieve that. The Council currently has only one other area (Oban town centre) where on-street permits are available, and that is at £98 per year. The proposed £45 charge would cover administration and system costs, making the proposed permit system self-financing. This is a reasonable and fair charge. To reduce the permit cost to nil would introduce an unreasonable burden on public funds.

2.20 The Council provides information on the factors affecting its parking charges. On-street parking income is allowed by section 55 of the 1984 Act to be used to provide and maintain off-street parking. But there are numerous limitations, including the need not to go beyond the stipulations in section 122 of the 1984 Act, on the Council's discretion to allocate any surpluses from off-street parking for other uses. In any case, the surplus arising from the Council's off-street car parks throughout its area is not large.

2.21 The Council's acceptance (see paragraph 2.42 below) that some parking permits could be tied to addresses rather than (as in the TRO itself) vehicles only, means that some permits (those tied to addresses and therefore transferable from one vehicle to another) would need to be issued in hard copy, and that would impose some additional costs not foreseen when the TRO was drafted.

⁴ This text lists three orders in its heading – the one I am dealing with and two others. I take no account of any points that do not relate to the TRO before me.

My assessment

2.22 As I indicated in paragraph 1.33 above, very few of the objections on this point have been withdrawn in response to the Council's changed stance that the annual charge for permits should be £45. It has to be acknowledged, therefore, that the concern, about even that reduced charge, is widespread in Luss.

2.23 The Council pointed out at the hearing that its practice is to seek on-street parking provision breaking even in financial terms. It asserted that the proposed scheme in Luss, at £45 per permit annually, would do that. It seems to me that, given the likelihood of economies of scale, the number of permits issued would be influential in determining whether that break-even position would be achieved. Nevertheless, the aim of breaking even seems reasonable and well in line with the various requirements of the 1984 Act. The £45 charge is certainly supportable to that extent. I also accept the Council's point (paragraph 2.21 above) that hard copy transferable permits would add somewhat to its costs, although I doubt that the addition would be large.

2.24 I interpret objectors' argument about the income from "*penalty notices and parking income from Luss*" exceeding "*the combined income from these two sources in the whole of Argyll & Bute*" as meaning that that income exceeds the corresponding income from the rest of Argyll and Bute. The Council accepted at the hearing that that claim was "*not untrue*". But it seems to me equally valid that the existence of the Council's off-street car park provides huge benefits to Luss's residents and businesses in non-financial terms – the benefits that derive from effectively taking a considerable amount of traffic off the village's roads. In these circumstances, I am not satisfied that the residents and businesses should derive a financial benefit as well. I note also the limitations on the Council's discretion to allocate an off-street parking surplus to making good an on-street parking scheme loss. No objector has challenged the details of the Council's post-hearing information on this point.

2.25 As I pointed out at the hearing, if the charge for on-street parking permits in Luss were to be reduced below £45, perhaps to zero, then obviously someone, somewhere, would lose the amount that the residents and businesses of Luss would gain. The Council was quite clear at the hearing that if on-street parking permits were to be free in Luss, the cost would fall on the residents of Oban, already paying £98 annually for each on-street permit. Taking that point at its face value, I see no reason why those in Luss should gain at the expense of those in Oban.

2.26 It is important to note that there is no innate right for anyone to park on the road near their own home or business. Those in Luss who would pay £45 each year would still not have that as a matter of right. As the Council pointed out at the hearing, no parking scheme will carry a guarantee of a space always being available. But it seems to me that permit holders in Luss would have a considerable prospect of being able to park on the road reasonably close to their own premises. I say this in the light of the figures I quote in paragraph 2.4 above. They show that, under the current temporary order regime, the maximum number of on-street parking permits held at any one time by the 86 resident households and businesses in the village core has been 92. Demand for parking space at any one time can reasonably be taken to be less than 92.

2.27 It may be that more permits would be issued under the TRO than are issued under the existing temporary order regime. This is because under the TRO before me businesses

would be able to obtain more than the one permit each allowed by the temporary order, and households and businesses in the outer parts of Luss parish could obtain permits (whereas they cannot under the present temporary order regime). The Council's "best guess" at the hearing was that 200 residential permits might be applied for under the TRO, with business permits bringing the overall total to 300-400. These figures seem high to me in the light of the data given at paragraph 2.4 above, but irrespective of that, what is not known is the maximum demand for actual use of permit spaces at any one point in time: that is likely to be less, perhaps considerably less, than the 200, 300 and 400 figures quoted by the Council. I accept that it may well be above the Council's estimate of at least 60 spaces safe parking capacity in the village core given at the hearing. But that is not a matter I can take further on the basis of information currently available.

2.28 In the context of other objections the Council refers to post-implementation monitoring. This may lead to a much clearer estimate of parking demand in Luss than has been provided so far. There are clear gaps in the current state of knowledge, and my recommendation in response to this group of objections (as with others) is made on the assumption that such monitoring is actively pursued in line with a clear programme.

2.29 The danger of insufficient enforcement also concerns me. When I walked round the core of the village on Sunday morning, 5 June (during the Jubilee holiday week-end, in warm sunny weather), I found that roughly 40% of the cars parked within the current temporary order restricted area were parked without displaying permits. This observation over a very short period of time may not, of course, be typical. But the Council indicated at the hearing that it would be unreasonable to expect an increase in enforcement action above the present level. My fear therefore is that there is a danger of under-enforcement, and that could make it more difficult for those who would purchase permits being unable to find a parking space. It therefore seems to me that the post-implementation monitoring to be carried out by the Council should include monitoring of enforcement. This should indicate the need or otherwise for enforcement improvements. It may also have a bearing on the proper level of charges for permits in Luss in the future.

2.30 With these reservations, therefore, my overall view is that the Council's current proposal to charge £45 per year for each permit should be accepted, and therefore that, bearing in mind these objections, the TRO should be modified as follows:

Location of text in TRO	Modification
Schedule 6, " <i>Resident Parking Permit</i> " line	Delete the figure "£98" and substitute for it the figure "£45".
Schedule 6, " <i>Business Parking Permit</i> " line	Delete the figure "£98" and substitute for it the figure "£45".

Priority for residents as opposed to businesses

The objector's case

2.31 Ms Walker says the interests of residents should be put first, as 90% of them make no living from tourism, yet still have to endure the detrimental effects of huge numbers of visiting tourists. Businesses should not have more than one permit each. Nowhere else do businesses expect their staff to be able to park next to their place of work, and the position should be no different here. Two permits are insufficient for residents as some families have more than two cars. Tourist accommodation without off-street parking also needs an extra permit.

The Council's case

2.32 It is reasonable to allow businesses two permits. In particular, that would maintain reasonable access, including access for staff members.

2.33 However, a limit on the number of permits is needed to minimise the risk of over-subscription of parking availability within the core village roads and therefore undermining the whole purpose of the TRO. Allowing unrestricted permit numbers may have the unwanted impact of re-introducing circulating traffic as permit holders look for an on-street space. Notwithstanding this, the Council has made a commitment to post-implementation monitoring: amongst other possibilities, this monitoring could lead to a loosening of restrictions, allowing more permits for village core properties, or offering off-street permits at a reduced rate.

My assessment

2.34 From the figures I give in the table in paragraph 2.4 above, it is clear that under the present temporary order regime, Luss's businesses present extremely limited demand for on-street parking spaces. Even with the TRO's increase in business permit availability to two per business (in contrast to the temporary order's one per business), it is likely that a far greater demand would come from residents. I doubt that many of the businesses in the outlying parts of Luss that would become eligible for on-street permits under the TRO (unlike the temporary order) would want to use parking spaces in the village core frequently rather than near their business locations. Limiting the number of business permits to one per business would therefore create little practical benefit. But it could harm some businesses which may have a need for more than one on-street space, and there are separate objections that go to that very point.

2.35 I agree with the Council that a limit to the number of permits is required. This is so because there is a far from unlimited supply of on-street parking spaces in the village core - "at least 60 spaces" as indicated at paragraph 2.5 above. That supply may not be much more than 60 spaces. Subject to other considerations, the probability of permit-holders driving around the village looking for vacant spaces when none might exist needs to be minimised. I draw attention also to the offer of free parking in the Luss Estates Company car park at a not unacceptable distance from the village core. In my view that should be acceptable, for instance, for families with more than two cars.

2.36 I welcome again the Council's commitment to post-implementation monitoring in relation to this objection. My remarks at paragraph 2.28 above are applicable here too.

2.37 My overall view is that the TRO should not be modified in the light of this objection.

Residents' visitors' parking

The objector's case

2.38 Ms Stalker objects to the lack of consideration for residents' visitors' permits.

The Council's case

2.39 Visitors' parking has been considered, but provision is not made for it in the TRO as there is insufficient on-street parking opportunity within the village to be able to accommodate residents and businesses as well as their visitors.

2.40 There is sufficient provision of off-street parking (the Council-operated north car park and the privately operated south car park), and this is where residents' visitors should park. The inclusion of visitor parking within the permit scheme would risk over-subscription of parking availability on the core village roads, and it might re-introduce circulating traffic as permit holders look for an on-street space.

2.41 In advance of the hearing, the Council considered that position, to be fair and reasonable in all the circumstances, but it is committed to keeping the matter under post-implementation review.

2.42 However, after the hearing, and in the light of my suggestion there, the Council has confirmed a willingness for the second resident permit to be tied to the resident's address rather than a vehicle. This would not add to the maximum number of residents' permits for each resident household. The Council therefore suggests a modification which would add these words to article 34.1: "*or alternatively, one permit for a vehicle under their ownership or control and a second permit registered to their address for use by visitors.*" The Council also suggested, after the hearing, a consequential modification to article 35.2 to make reference to permits that are tied to addresses.

My assessment

2.43 The comments at paragraph 2.33 above apply very much here: given the very limited supply of on-street parking space I see no justification for a blanket addition to the number of permits that should be issued to allow for residents' visitors.

2.44 However, the Council's post-hearing position would not make such an addition. Each resident household would still have a maximum of two permits, with the second permit being used by visitors.

2.45 In my view, a more flexible arrangement would be to allow the second permit to be used at the discretion of the resident. In practice I expect this would mean use either by the resident (as in the TRO) or by a visitor (as in the Council's suggested modification). But the resident would have the choice. This could be achieved in the text of the TRO (at article 34.1) by simply tying the second permit to the address without requiring it to be used by visitors. In addition, it is necessary to provide for the availability of permits for non-car owning households who may wish to have a permit for a visitor.

2.46 Consequential modifications would need to be made to Articles 35.2, 37.4 and 38(c), and my suggested wording is below. In article 38(c) I adopt the word "replacement" instead of the Council's word "new" as a permit holder's replacement vehicle, which is the subject matter of Article 38(c), might be a second-hand vehicle.

2.47 I deal with numbers and flexibility of permits for businesses at paragraphs 2.70-84 below.

2.48 My view is that, bearing in mind this objection, the TRO should be modified as follows:

Location of text in TRO	Modification
Article 34.1	Delete the whole text and substitute for it the following text: <i>"Any resident who resides at premises situated within the parish of Luss, such area shown outlined in red on Plan Reference No. 1, is a qualifying person and may apply to the Council for the issue of a maximum of two Resident Permits per household for vehicles in their ownership or control; or one permit for a vehicle in their ownership or control and one permit registered to their address."</i>
Article 35.2	After the words <i>"nominated vehicle"</i> add the words <i>"or address"</i> .
Article 37.4	Delete the whole text and substitute for it the following text: <i>"A Parking Permit issued under the provision of Article 35.2 will be valid only if it is placed on the vehicle or motorcycle in the relevant position"</i> .
Article 38(c)	Delete the whole text and substitute for it the following text: <i>"If a Permit Holder acquires a replacement vehicle or motorcycle, he may make an application for a Parking Permit for that vehicle or motorcycle on surrender to the Council of an existing Parking Permit relating to another vehicle or motorcycle."</i>

The driving prohibition

The objector's case

2.49 Ms Ferguson's concerns, in this as well as in other matters below, relate to her business, the Coach House Coffee Shop, which was established on Church Road within the village core in 1998. The business offers high quality catering and "colourful and quirky" retail, sourcing from Scottish suppliers. Her staff are year-round staff, augmented by local students in summer. She has about 30 staff in all, mainly part-time, amounting to the equivalent of about 18 full-time staff. The Coach House is open 364 days each year. Covid was devastating, with the business closed for 8½ months. Recovery is now being attempted in the face of higher prices and staff shortages. The TRO would make this difficult situation worse, because it would not take account of Ms Ferguson's business's needs: it would severely restrict access to her premises; and so it would damage the local economy.

2.50 So far as the driving prohibition is concerned, Ms Ferguson makes a general point first. She says the driving prohibition is not required to resolve parking issues. There is currently very little access to the west shore of Loch Lomond, and it should not be further restricted for the benefit of a very small number of people. Ms Ferguson understands that a traffic regulation order's access restrictions generally relate to safety issues, but she is unaware of any traffic-related incidents within the village core in the last 25 years. Cars do not move at speed in the village. It is pedestrians that predominate.

2.51 With the TRO in place, elderly people could not be dropped off at the Coach House. Tradesmen (plumbers, engineers etc.) would similarly be unable to attend. Emergency vehicles and parish residents living outside the village would be unable to drive around the village. Traffic could be effectively reduced in the village core by appropriate "local access only" and "no parking within village" signs without causing an issue for the Coach House business, although Ms Ferguson has a concern that signs could deter access for dropping off car passengers.

2.52 Police Scotland would struggle to enforce the prohibition.

The Council's case

2.53 Although it is not legally competent to restrict road access to individuals defined by address or any other method, it is competent to restrict access to specific classes of vehicle. The driving prohibition in the TRO does not restrict access to individuals but to specific classes of vehicle.

2.54 This prohibition is intended to reduce the number of vehicles accessing the core village roads unnecessarily. It would lead to a reduction in circulating traffic, increase road safety for road users, help to protect and maintain access to residential and commercial premises, have a positive effect on the environment, and reduce local residents' anxiety levels.

2.55 The driving prohibition would not prevent loading or unloading of goods or people. But it does seek, as far as possible, alongside the permit parking zone provisions, to encourage visitors and others to make use of the available off-street car parking.

2.56 There would be significant exceptions to the driving prohibition, and these are stated in TRO article 5. They are summarised as follows:

- Vehicles with a valid permit.
- Vehicles being used for conveying goods or people to or from premises.
- Vehicles displaying a valid disabled person's badge and being used by disabled persons.
- Vehicles being used for fire brigade, ambulance, police force or coast guard purposes.
- Vehicles being used for necessary local authority statutory powers or duties.
- Vehicles being used for the removal of furniture to or from an office, house or depository.
- Vehicles being driven by a medical practitioner attending an emergency or hosting a scheduled surgery.

2.57 These exceptions would allow elderly people, blue badge holders, and those without a blue badge but with mobility difficulties to drive or be driven to and from any premises in the parking permit zone. Other visitors should make use of the off-street car parks. All local residents – those living within the extensive parish – would be allowed access and parking within the village core.

2.58 On access for tradesmen, their equipment could be loaded and unloaded at any property in the permit zone, but vehicles should then park within the off-street car parks. Where works are longer term or more complex, a temporary relaxation of restrictions could be applied for. Trades vehicles could also make use of any off-street parking available at the business premises.

2.59 Although there are no recorded incidents within the last five years of data, minor or slight incidents are not generally reported to Police Scotland. The TRO would make Luss village a safer place for all road users.

2.60 Therefore, the proposed prohibition, with its proposed exceptions, is fair and reasonable in all the circumstances.

My assessment

2.61 No objector has raised questions about the legal competence of the driving prohibition, and I have no reason to doubt the Council's explanation on the point.

2.62 I regard the Council's responses to Ms Ferguson's specific objections as generally sound. The categories of people that Ms Ferguson fears would be unable to have vehicular access to the Coach House with the driving prohibition in place would all, as a matter of fact, have such access as exceptions stated within the text of the TRO. As the Council points out, the list of exceptions in paragraph 2.56 above would mean that elderly people, blue badge holders, those without a blue badge but with mobility difficulties, people living within the parish but outside the village core, and tradesmen with their equipment would have such access. Those central points of Ms Ferguson's objection therefore have no proper basis.

2.63 I understand Ms Ferguson's concern that the signs that would indicate the driving prohibition might discourage those people who could properly proceed into the village core (as valid exceptions to the prohibition) from doing so. However, the driving prohibition does not stand on its own within the TRO, but accompanies a range of waiting restrictions. Ms Ferguson accepts that there are parking issues to be resolved, and there is no objection (including none from Ms Ferguson) to the principle of there being parking restrictions in the village core. So the likelihood is that the necessary signs would need to indicate a range of exceptions to restrictions whether they are restrictions on driving and parking or merely restrictions on parking. The need here is for careful sign design, and that is a matter that goes beyond my remit. The Council indicated at the hearing that they could achieve satisfactory sign design.

2.64 Ms Ferguson's assertion that Police Scotland would struggle to enforce the driving prohibition falls on the basis that Police Scotland does not object to this TRO.

2.65 Ms Ferguson's assertion that there is currently very little access to the west shore of Loch Lomond generally may be correct. But it results from the local topography and from the human responses to that topography over the centuries. It tells me little about how I should respond to the Council's current specific proposals for a particular area on the west shore and the objections to them.

2.66 On the other hand, I generally agree with Ms Ferguson's comments on road safety. There is nothing before me that suggests there is a major safety issue in the village core. The only professional evidence before me – from a road safety review of earlier traffic management proposals – says that there was no recorded casualty collision within Luss in the 10 years 2008-2017 and that *"This is an excellent record."* That was brought home to me during my visit to Luss on the sunny Saturday afternoon during a holiday week-end that I mention in paragraph 2.29 above: there was little car movement through the village core then, certainly none at speed, and it was also the case that pedestrians predominated, sometimes in quite large groups. This, of course, was with the temporary order in place, ie with parking restrictions but without a driving prohibition. I accept that I was making observations over a short period of time, but it was sufficient time for me to reasonably assume that Luss was then more or less at its busiest. The Council has presented no survey information to set against my own observations.

2.67 Nor does the Council itself make a particularly strong case for inclusion of the driving prohibition within its TRO. The view of the Council's own Executive Director is, as stated in paragraph 1.17 above, that the temporary order "*has fulfilled its primary purpose of providing a mechanism to manage the visitor traffic into the village ...*". I therefore asked the Council at the hearing how a driving prohibition would assist in managing visitor traffic management when the mechanism already in place – the temporary order – does so without a driving prohibition. The Council's response was that the TRO would help. However, it was not made clear in any detail how this would be. The temporary order may have demonstrated the need for parking controls within the village core, but that is not the same as demonstrating a need for a driving prohibition.

2.68 My conclusion is two-fold. Given that there are to be parking restrictions in the TRO, it seems to me that the driving prohibition adds little, if anything, to the means of managing traffic in Luss. On the other hand, for that very same reason – because it does add little to the means of managing traffic in Luss – it would do little or no harm to the private interests of the single objector to it. In the end, given that there are to be restrictions that prevent vehicles from parking on certain stretches of road, there is a certain logic in preventing those vehicles from being driven to and from those same stretches of road when there is no other reason for them to be there. In resolving this dichotomy, I note that the driving prohibition would not extend anywhere beyond roads that would be subject to restricted waiting. My conclusion is that, on a very fine balance, I should support the driving prohibition. That conclusion would seem to be supported by most of those Luss residents who have expressed a view on the matter.

2.69 My overall view, therefore, is that the TRO should not be modified in the light of this objection.

Additional on-street business parking permits

The objector's case

2.70 The points made in paragraph 2.49 above apply here also.

2.71 Ms Ferguson says the two-permits allocation is inadequate for the operation of the Coach House business. With inadequate public transport, cars are essential for staff to get to work. Additional transferable permits at a nominal charge would be an option to resolve the issue. Staff have parked for 23 years (maximum 4-5 cars) close to the Coach House, where there is adequate space for street parking. It is already difficult to attract staff, so the TRO's effect on the business is potentially dramatic. The off-street car park provides no solution, because of its high charges.

2.72 In addition, tradesmen (eg electricians, plumbers) also need to park outside the Coach House, as they have done for 23 years. Parking in the car park is not practical for them because constant access to vehicles and tools is needed. In addition, the two-space parking bay within the Coach House curtilage is already well used by Ms Ferguson herself and one of her managers.

2.73 The Coach House is the biggest business in the village core and the furthest from the off-street car parks. Six permits are sought to meet the needs above, to add to the two that the TRO proposes at this stage.

The Council's case

2.74 The Council resists additional business permits because the limit on the number of permits is needed to minimise the risk of over-subscription of parking availability on the core village roads. There is, however, the potential to amend this in the future, depending on post-implementation use with respect to the capacity of the available road space.

2.75 Any equipment required by tradesmen can be loaded and unloaded at the Coach House, but vehicles should then park within the off-street car parks. When works are longer term or more complex, a temporary relaxation of restrictions can be applied for, and this can be granted quickly by telephone if necessary. Increasing the number of exemptions within the TRO may undermine the desired outcome of parking control within the village core.

2.76 The objector has a two-space parking bay within the curtilage of her property, and this could be used for parking by tradesmen.

2.77 After the hearing, and in line with its acceptance that one of each resident household's potential two permits should be available for visitors (see paragraph 2.42 above), the Council has submitted a suggested modification to the TRO to indicate that one of any business's potential two permits may be registered to the business address rather than to a specific vehicle. But the Council has also pointed out, after the hearing, that Church Road has particular capacity problems.

My assessment

2.78 I link this with the comments made by Mr and Mrs Potter (see paragraphs 2.98-99 below) about their business parking needs. I am somewhat concerned about the scarcity of factual evidence about the varying off-site parking needs of the businesses in Luss. Ms Ferguson has produced some evidence since the hearing. There is none from the Council.

2.79 The TRO proposes the same maximum number of parking permits for each and every business in Luss. The Council pointed out at the hearing that to vary the maximum for a single business, through a modification, might be unfair and potentially challengeable. It suggested at the hearing that the TRO's uniform approach should be maintained, and possibly varied only in the light of post-implementation monitoring. It seems to me that the TRO's uniform approach is perhaps partly the result of the absence of in-depth information on the specific, and potentially different, parking needs of all the individual businesses in Luss. I accept the Council's caution about modifying the maximum number of permits for a single business. But that does not prevent me considering a different maximum for all the businesses.

2.80 I agree with the Council that more use might be made by visiting tradesmen of the two-space parking bay within the Coach House curtilage. But I also recognise Ms Ferguson's difficulties on the matter of staff parking as she has a substantial part-time staff component. Paying the charges for off-street parking might well be difficult for some part-time staff. The offer by Luss Estates Company of a discount for a business permit for the southern off-street car park is a limited one. I am therefore drawn towards thinking that Ms Ferguson's request for extra on-street permits has some merit.

2.81 I couple this with the fact that only three businesses in the village core have an on-street parking permit under the existing temporary order regime (see paragraph 2.4 above).

There is nothing to suggest that any of the other businesses in the village core would require an on-street parking permit under the TRO regime. Without treating Ms Ferguson's business as an exception, I could therefore recommend a modification providing for a limited increase in the maximum number of on-street parking permits per business in the expectation that the effective total requirement would not be increased to any material degree.

2.82 This might not go near Ms Ferguson's request for an extra six permits for her business alone. But I regard the view I express in paragraph 2.81 above as a reasonable approach in the light of the objections. To go beyond a limited increase in the maximum number of parking permits per business would bring me up against the severe capacity limit to on-street parking. In those circumstances, I do not believe it would be right to increase the maximum number of business permits beyond four, compared with the TRO's two.

2.83 I also note the Council's acceptance (paragraph 2.77 above) that one of the two permits per business in the draft TRO could be registered to the business address rather than to a specific vehicle. It seems to me that that would add flexibility to the proposed business parking permit system. Following through my comment above that there is scope to increase the allowable number of business permits from the TRO's two to four, that flexibility would be enhanced by allowing three of the four permits to be tied to the business address rather than to specific vehicles. I accept that, given the particular capacity problems of Church Road, as pointed out by the Council, it may well be that the need for authorised parking in connection with the Coach House business would have to be met away from Church Road.

2.84 My view is therefore that, bearing in mind this objection, the TRO should be modified as follows:

Location of text in TRO	Modification
Article 34.2	Delete all the words after the word " <i>Council</i> " and substitute for them the following words: " <i>for the issue of a maximum of four Business Permits in respect of vehicles required for the operation of the business. Three of those permits may be registered to the business address.</i> "
Schedule 6, " <i>Business Parking Permit</i> " line	Delete the figure "2" and substitute for it the figure "4".

Provision of parking space on Church Road

The objector's case

2.85 The points made in paragraph 2.49 above apply here also.

2.86 Ms Ferguson asks for a marked space to be specifically allocated for the Coach House on Church Road for delivery vehicles and customers. She submits a plan showing a proposed loading bay: it should be as close as possible to the Coach House, and certainly not on the 86 metres length of Church Road where there would be no exceptions to the no-waiting restrictions. It is difficult for delivery vehicles to find space and unload safely. The police have had to be called here when access to the premises has been obstructed. On customer parking, there has been provision over last 24 years for customers to park close to the shop, especially in winter and for disabled customers who do not have a blue badge.

The Council's case

2.87 The TRO has exceptions to allow loading and unloading of goods or people. Ms Ferguson would be able to receive goods delivered to her business premises under the exception to the waiting restrictions in article 11, unless she wishes to have deliveries to the less suitable 86 metres length of Church Road. Provided that no obstruction is caused, a vehicle would be able to stop and load or unload outside the Coach House. No loading bay is provided anywhere on the core roads in the village at present, and the Council is not aware of that causing any significant issues. A marked loading bay might appear out of place within the conservation area. Anyone with a blue badge would be able to park within the village core, and anyone with reduced mobility but without a blue badge could be dropped off or collected at the Coach House by a vehicle. Beyond Luss, it is normal practice for customers to use off-street car parks.

2.88 However, following the hearing, the Council has suggested a modification to the TRO's schedule 4. Schedule 4 lists sections of road designated "*Prohibition of waiting at any time*". The modification – adding to schedule 4 a 12 metres stretch of Church Road near the Coach House – would provide some assistance to Ms Ferguson with regard to access protection, loading and unloading. It is a pragmatic solution.

My assessment

2.89 As the Coach House is the largest business in Luss, Ms Ferguson regards it as a special case for which special provision should be made. That argument has some merit, but the context is against it: that context is the simple shortage of safe on-street parking spaces in relation to the demand. Ms Ferguson wants the space to be available for waiting, loading or unloading for her business, but others wanting to wait or load or unload would be excluded from it.

2.90 Ms Ferguson accepts that with the TRO in operation, deliveries could still be made to her premises without a marked space. Coupled with the Council's points made in relation to customer parking, I do not believe a cogent case for a marked space near the Coach House has been made. However, I agree with the helpful pragmatic nature of the Council's post-hearing suggestion for an addition to the TRO's schedule 4 (prohibition of waiting at any time): this would prohibit waiting across the service access to the Coach House. I accept the Council's suggested wording for the relevant modification.

2.91 My view, therefore, is that, bearing in mind this objection, the TRO should be modified as follows:

Location of text in TRO	Modification
Schedule 4	Add a further line consisting of the following text: first column: "5"; second column: " <i>Church Road</i> "; third column: " <i>From a point 29 metres or thereby south-east of its eastern junction with U233 Pier Road, south-easterly for a distance of 12 metres or thereby</i> "; and fourth column: " <i>South-western</i> ".

2.92 In turn, this would require a modification of one of the plans prepared in connection with the TRO, as follows:

Plan	Modification
Drawing LUSSTRO-TM 2021/01 "Layout (indicative)"	Show the part of Church Road referred to in the modification to Schedule 4 as "No Waiting/No loading restriction" instead of "Restricted waiting with exemptions".

A holiday/seasonal problem

The objectors' case.

2.93 Mr Ross and Ms Sinclair say that traffic issues in Luss are mainly a holiday/seasonal problem, and should be treated as such with regard to street parking.

The Council's case

2.94 It is accepted that there is a reduction in visitor numbers to Luss in the "off" season, but that is not such as to obviate the need for the TRO. In addition, the Council is aware of other instances where seasonal implementation of parking restrictions has caused confusion amongst users. The Council is not persuaded that it would be appropriate to modify the TRO to make it applicable for only part of the year. Instead, it considers that it is appropriate, fair and proportionate to maintain the TRO's applicability throughout the year.

My assessment

2.95 I agree with the objectors to the extent that the many visitors during the summer months add significantly to the traffic problems of the area. But the demand for parking that arises from within the village itself also poses problems in relation to the available on-street space. To that extent the year-round character of the TRO is justified. I do not believe that the objectors make a cogent case for a modification.

2.96 My view, therefore, is that the TRO should not be modified in the light of this objection.

Parking charges in the Council's car park

The objectors' case

2.97 The points made in paragraph 2.49 above apply here also.

2.98 Ms Ferguson (Coach House Coffee Shop), and Mr and Ms Potter (Luss Village Shop and Post Office) object to the £489 annual charge for business permits in the Council's off-street car park⁵. Ms Ferguson says that £489 is far too much for her staff. It also disadvantages all independent businesses. It is already difficult to attract staff, so the effect on the Coach House business is potentially dramatic. The car park makes a very considerable profit, and perhaps a small portion of that could be ring-fenced to support local tourism businesses. The permit discount offered to businesses for the Luss Estates Company car park is very small.

2.99 Mr and Mrs Potter's business employs nine staff who would all require individual permits. They say that a reasonable charge for non-transferable business permits would be £90 each.

⁵ Mr and Mrs Potter refer to a charge of £498, but the charge is actually £489.

The Council's case

2.100 Although not within the scope of the TRO the Council acknowledges these as relevant objections. This is because the Council's car park provides the only other permit option available locally under the Council's control. Notwithstanding this, the cost of the off-street permits is contained within a separate order and can only be amended by a separate process, either by an amendment order or by a variation of charges notice arising from a change in the Council's fees and charges.

My assessment

2.101 I confirm the Council's view that the cost of off-street permits is not within the scope of the TRO. It is also clear that the charges for off-street parking by Luss residents is of considerable concern. I simply say this: given that concern it would be appropriate in my view for the Council to include a review of those charges in any post-implementation monitoring of the TRO.

2.102 My view is that the TRO should not be modified in the light of these objections.

CHAPTER 3. MODIFICATIONS NOT ARISING DIRECTLY FROM OBJECTIONS

3.1 In correspondence and at the hearing I raised a number of other matters not arising directly from objections which appeared to be suitable subjects for potential modification of the TRO. The Council and I were agreed on the outcome of this process. I provide an explanation of these modifications below.

Section 3 of the 1984 Act

3.2 Section 3 says that a traffic regulation order shall not be made which limits access for vehicles for more than eight hours in any period of 24 hours unless the authority making the order is satisfied, and that it is stated in the order, that these restrictions should not apply for at least one of five specified reasons. The reasons are specified in section 3(2) of the Act. They are:

“(a) for avoiding danger to persons or other traffic using the road to which the order relates or any other road, or

(b) for preventing the likelihood of any such danger arising, or

(c) for preventing damage to the road or buildings on or near it, or

(d) for facilitating the passage of vehicular traffic on the road, or

(e) for preserving or improving the amenities of an area by prohibiting or restricting the use on a road or roads in that area of heavy commercial vehicles.”

3.3 The TRO includes restrictions which bring it within the ambit of section 3, but it includes no statement that indicates that the Council is satisfied that the restrictions should not apply for at least one of the five specified reasons.

3.4 The outcome of my discussions with the Council in correspondence and then at the hearing was a form of words to be added to the TRO text. My view therefore is that the TRO should be modified as follows:

Location of text in TRO	Modification
Article 2	After the word “ <i>hereto.</i> ” add the following text: <i>“The Council is satisfied that, for the reasons set out in section 3(2)(a), 3(2)(b), 3(2)(c), 3(2)(d) and 3(2)(e) of the Road Traffic Regulation Act 1984, it is required that section 3(1) of that Act should not apply to the Order.”</i>

Owners and registered keepers of vehicles

3.5 The TRO refers to the “owner” and “registered keeper” of a motor vehicle in articles 3(ii), 30(a), 30(b), 31, 32 and 34.1. It appeared to me that the references were confusing. In particular, I drew the Council’s attention to article 30(a) which refers to the Council making enquiry of the DVLA about ownership of a vehicle, whereas it is my understanding that the DVLA holds records of keepers of vehicles, not of owners. In addition, the reference in article 32 to the keeper receiving recompense from the driver for the imposition of a penalty charge notice is a matter for the two individuals concerned and not for the TRO.

3.6 My suggested modification of Article 34.1 at paragraph 2.48 above means that the problem outlined in paragraph 3.5 above is eliminated, and no further modification of that article is necessary in this connection. The Council and I are further agreed that no modification to article 31 is necessary in this connection. For the rest, the following modifications to the TRO would be appropriate in my view, and the Council concurs:

Location of text in TRO	Modification
Article 3(ii), definition of “owner”	Delete the entire text.
Article 3(ii), definition of “registered keeper”	Delete the sentence starting “ <i>The registered keeper is not necessarily ...</i> ”.
Article 30	Delete the heading and the entire text.
Article 32	Delete the sentence starting “ <i>If the keeper was not the driver ...</i> ”.

Furniture removals

3.7 The TRO refers in articles 5(f), 12, 22(vi) and 25.1(c) to furniture removals being exceptions to the driving prohibition and the loading and unloading restrictions if the removal is to or from an office, dwelling house or depository. In my view, there is no reason not to except furniture removal to or from any premises, rather than just to or from the three kinds of premises specified in the TRO. Arising from discussion at and after the hearing, the Council and I agreed that the following would be appropriate modifications:

Location of text in TRO	Modification
Article 5(f)	Delete the words “ <i>one office, dwelling house or depository</i> ” and substitute for them the words “ <i>any premises</i> ”.
Article 12	Delete all the words after “ <i>the removal of furniture to or from</i> ” and substitute for them the words “ <i>any premises adjacent to that restricted road from or to another premises.</i> ”
Article 22(vi)	Delete the words “ <i>one office, dwelling house or depository</i> ” and substitute for them the words “ <i>any premises</i> ”.
Article 25.1(c)	Delete the words “ <i>one office or dwelling house</i> ” and substitute for them the words “ <i>those premises</i> ”.

Other modifications

3.8 Arising mainly from my suggestions which I have put to, and which have been agreed by, the Council, nine other potential modifications simply correct an omission (article 2) and minor errors in the TRO’s text, as follows:

Location of text in Order	Modification
Article 2	Delete the words “ <i>To make provisions in relation to the on street parking within Luss,</i> ” and substitute for them the words “ <i>To make provisions in relation to driving and on-street parking within Luss,</i> ”
Article 3(ii), definition of “ <i>invalid carriage</i> ”	Delete the word “ <i>adopted</i> ” and substitute for it the word “ <i>adapted</i> ”.
Article 3(ii), definition of “ <i>motor cycle</i> ”	Insert the word “ <i>in</i> ” between the word “ <i>defined</i> ” and the word “ <i>Section</i> ”.
Article 3(ii), definition of “ <i>parking attendant</i> ”	Delete the word “ <i>by</i> ” between the word “ <i>defined</i> ” and the word “ <i>In</i> ”.
Article 3(ii), definition of “ <i>parking place</i> ”	Delete the words “ <i>Article 4</i> ” and substitute for them the words “ <i>Article 16, Schedule 5 and Schedule 8</i> ”.
Article 3(ii), definition of “ <i>Qualifying person</i> ”	Delete the words “ <i>a resident and business user that meet the eligibility criteria to apply for parking permit outline</i> ” and substitute for them the words “ <i>a resident or business user who meets the eligibility criteria to apply for a parking permit outlined</i> ”.
Article 5(a)	Delete the word “ <i>outline</i> ” and substitute for it the word “ <i>outlined</i> ”.
Article 34.2	Delete the word “ <i>are</i> ” and substitute for it the word “ <i>is</i> ”.
Article 40	Delete the figure “ <i>6</i> ” and substitute for it the figure “ <i>7</i> ”.

CHAPTER 4. OVERALL CONCLUSIONS AND RECOMMENDATION

4.1 The core of the Council’s case is that the TRO is part of a package of measures that balances the mixed views within the community of Luss. It is essentially a compromise. My examination of it provides a substantial level of support for it. Many of the modifications that I recommend have been agreed with the council during the course of my examination. The other modifications represent a compromise that is slightly different from the one favoured by the Council. The Council makes frequent reference to post-implementation monitoring, and I strongly support that: that monitoring should be soundly based and aimed at demonstrating whether any adjustments ought to be made to the TRO once it is in operation. In the meantime, I am satisfied that, on the evidence before me and subject to the modifications that I list, the public benefits of the TRO would outweigh the public and private disbenefits referred to by objectors.

4.2 If the modifications to the draft TRO that I put forward in chapter 3 above are made, they themselves necessitate some re-numbering of articles and cross-references to them. That means that consequential modifications are necessary. These consequential modifications are as follows:

Location of text in Order	Modification
“Arrangement of articles” at beginning of order	Delete the words “30. Power to dispose of abandoned vehicles”
“Arrangement of articles” at beginning of order	Delete the figure “31” and substitute for it the figure “30”, delete the figure “32” and substitute for it the figure “31”, delete the figure “33” and substitute for it the figure “32”, and delete and substitute in the same manner up to delete the figure “40” and substitute for it the figure “39”.
Article 3, definition of “Qualifying person”	Delete the figure “34” and substitute for it the figure “33”.
Article 5(a)	Delete the words “34 and 35” and substitute for them the words “33 and 34”.
Article 9.1(i)	Delete the figure “37.4” and substitute for it the figure “36.4”.
Article 31	Delete the figure “31” and substitute for it the figure “30”.
Article 32	Delete the figure “32” and substitute for it the figure “31”.
Article 33	Delete the figure “33” and substitute for it the figure “32”.
Article 34	Delete the figure “34” and substitute for it the figure “33”.
Article 34.1	Delete the figure “34.1” and substitute for it the figure “33.1”.
Article 34.2	Delete the figure “34.2” and substitute for it the figure “33.2”.
Article 35	Delete the figure “35” and substitute for it the figure “34”.
Article 35.1	Delete the figure “35.1” and substitute for it the figure “34.1”.
Article 35.2	Delete the figure “35.2” and substitute for it the figure “34.2”.
Article 35.3	Delete the figure “35.3” and substitute for it the figure “34.3”.
Article 35.4	Delete the figure “35.4” and substitute for it the figure “34.4”.
Article 36	Delete the figure “36” and substitute for it the figure “35”.
Article 37	Delete the figure “37” and substitute for it the figure “36”.
Article 37.1	Delete the figure “37.1” and substitute for it the figure “36.1”.
Article 37.2	Delete the figure “37.2” and substitute for it the figure “36.2”.
Article 37.3	(a) Delete the figure “37.3” and substitute for it the figure “36.3”. (b) In the text delete the words “Articles 34, 35 and 36 of this Order” and substitute for them the words “Articles 33, 34 and 35 of this Order”.

Location of text in Order	Modification
Article 37.4	(a) Delete the figure "37.4" and substitute for it the figure "36.4". (b) In the text delete the figure "35.2" and substitute for it the figure "34.2".
Article 37.5	Delete the figure "37.5" and substitute for it the figure "36.5".
Article 37.6	Delete the figure "37.6" and substitute for it the figure "36.6".
Article 38	Delete the figure "38" and substitute for it the figure "37".
Article 39	Delete the figure "39" and substitute for it the figure "38".
Article 40	Delete the figure "40" and substitute for it the figure "39".

4.3 I can now bring together all my views on the totality of the modifications that should be made, ie those in chapter 3 above and those in paragraph 4.2 above, for inclusion in my recommendation. My overall view is that the order is worthy of being made, subject to those modifications. If it were within the power of the Council now to make the order I would have recommended that it does so, subject to those modifications. However, as stated in paragraphs 1.3 and 1.5 above, it is not within the Council's power to make the order without the consent of Scottish Ministers.

4.4 I therefore **recommend**

(a) that the ARGYLL AND BUTE COUNCIL (VARIOUS STREETS, LUSS) (TRAFFIC MANAGEMENT) ORDER 202_, be submitted with this report and other appropriate documents to Scottish Ministers for their consent; and

(b) that that consent be subject to the TRO being modified as indicated in the table below:

Location of text in Order	Modification	See this report paragraph
TRO		
"Arrangement of articles" at beginning of order	Delete the words "30. Power to dispose of abandoned vehicles"	4.2
"Arrangement of articles" at beginning of order	Delete the figure "31" and substitute for it the figure "30", delete the figure "32" and substitute for it the figure "31", delete the figure "33" and substitute for it the figure "32", and delete and substitute in the same manner up to delete the figure "40" and substitute for it the figure "39".	4.2
Article 2	(a) Delete the words "To make provisions in relation to the on street parking within Luss," and substitute for them the words "To make provisions in relation to driving and on-street parking within Luss,". (b) After the word "hereto." add the following text: "The Council is satisfied that, for the reasons set out in section 3(2)(a), 3(2)(b), 3(2)(c), 3(2)(d) and 3(2)(e) of the Road Traffic Regulation Act 1984, it is required that section 3(1) of that Act should not apply to the Order."	(a) 3.8 (b) 3.2-4
Article 3(ii), definition of "invalid carriage"	Delete the word "adopted" and substitute for it the word "adapted".	3.8
Article 3(ii), definition of "motor cycle"	Insert the word "in" between the word "defined" and the word "Section".	3.8

Location of text in Order	Modification	See this report paragraph
Article 3(ii), definition of "owner"	Delete the entire text.	3.5-6
Article 3(ii), definition of "parking attendant"	Delete the word "by" between the word "defined" and the word "in".	3.8
Article 3(ii), definition of "parking place"	Delete the words "Article 4" and substitute for them the words "Article 16, Schedule 5 and Schedule 8".	3.8
Article 3(ii), definition of "Qualifying person"	(a) Delete the words "a resident and business user that meet the eligibility criteria to apply for parking permit outline" and substitute for them the words "a resident or business user who meets the eligibility criteria to apply for a parking permit outlined". (b) Delete the figure "34" and substitute for it the figure "33".	(a) 3.8 (b) 4.2
Article 3(ii), definition of "registered keeper"	Delete the sentence starting "The registered keeper is not necessarily ...".	3.5-6
Article 5(a)	(a) Delete the word "outline" and substitute for it the word "outlined". (b) Delete the words "34 and 35" and substitute for them the words "33 and 34".	(a) 3.8 (b) 4.2
Article 5(f)	Delete the words "one office, dwelling house or depository" and substitute for them the words "any premises".	3.7
Article 9.1(i)	Delete the figure "37.4" and substitute for it the figure "36.4".	4.2
Article 12	Delete all the words after "the removal of furniture to or from" and substitute for them the words "any premises adjacent to that restricted road from or to another premises."	3.7
Article 22(vi)	Delete the words "one office, dwelling house or depository" and substitute for them the words "any premises".	3.7
Article 30	Delete the heading and the entire text.	3.5-6
Article 31	Delete the figure "31" and substitute for it the figure "30".	4.2
Article 32	(a) Delete the figure "32" and substitute for it the figure "31". (b) Delete the sentence starting "If the keeper was not the driver ...".	(a) 4.2 (b) 3.5-6
Article 33	Delete the figure "33" and substitute for it the figure "32".	4.2
Article 34	Delete the figure "34" and substitute for it the figure "33".	4.2
Article 34.1	(a) Delete the figure "34.1" and substitute for it the figure "33.1". (b) Delete the whole text and substitute for it the following text: "Any resident who resides at premises situated within the parish of Luss, such area shown outlined in red on Plan Reference No. 1, is a qualifying person and may apply to the Council for the issue of a maximum of two Resident Permits per household for vehicles in their ownership or control; or one permit for a vehicle in their ownership or control and one permit registered to their address."	(a) 4.2 (b) 2.38-48

Location of text in Order	Modification	See this report paragraph
Article 34.2	(a) Delete the figure "34.2" and substitute for it the figure "33.2". (b) Delete the word "are" and substitute for it the word "is". (c) Delete all the words after the word "Council" and substitute for them the following words: <i>"for the issue of a maximum of four Business Permits in respect of vehicles required for the operation of the business. Three of those permits may be registered to the business address."</i>	(a) 4.2 (b) 3.8 (c) 2.70-84
Article 35	Delete the figure "35" and substitute for it the figure "34".	4.2
Article 35.1	Delete the figure "35.1" and substitute for it the figure "34.1".	4.2
Article 35.2	(a) Delete the figure "35.2" and substitute for it the figure "34.2". (b) After the words "nominated vehicle" add the words "or address".	(a) 4.2 (b) 2.38-48
Article 35.3	Delete the figure "35.3" and substitute for it the figure "34.3".	4.2
Article 35.4	Delete the figure "35.4" and substitute for it the figure "34.4".	4.2
Article 36	Delete the figure "36" and substitute for it the figure "35".	4.2
Article 37	Delete the figure "37" and substitute for it the figure "36".	4.2
Article 37.1	Delete the figure "37.1" and substitute for it the figure "36.1".	4.2
Article 37.2	Delete the figure "37.2" and substitute for it the figure "36.2".	4.2
Article 37.3	(a) Delete the figure "37.3" and substitute for it the figure "36.3". (b) In the text delete the words "Articles 34, 35 and 36 of this Order" and substitute for them the words "Articles 33, 34 and 35 of this Order".	(a) 4.2 (b) 4.2
Article 37.4	(a) Delete the figure "37.4" and substitute for it the figure "36.4". (b) Delete the whole text and substitute for it the following text: <i>"A Parking Permit issued under the provision of Article 34.2 will be valid only if it is placed on the vehicle or motorcycle in the relevant position"</i> .	(a) 4.2 (b) 2.38-48 and 4.2
Article 37.5	Delete the figure "37.5" and substitute for it the figure "36.5".	4.2
Article 37.6	Delete the figure "37.6" and substitute for it the figure "36.6".	4.2
Article 38	Delete the figure "38" and substitute for it the figure "37".	4.2
Article 38(c)	Delete the whole text and substitute for it the following text: <i>"If a Permit Holder acquires a replacement vehicle or motorcycle, he may make an application for a Parking Permit for that vehicle or motorcycle on surrender to the Council of an existing Parking Permit relating to another vehicle or motorcycle."</i>	2.38-48
Article 39	Delete the figure "39" and substitute for it the figure "38".	4.2
Article 40	(a) Delete the figure *40" and substitute for it the figure "39". (b) Delete the figure "6" and substitute for it the figure "7".	(a) 4.2 (b) 3.8
Schedule 4	Add a further line consisting of the following text: first column: "5"; second column: "Church Road"; third column: <i>"From a point 29 metres or thereby south-east of its eastern junction with U233 Pier Road, south-easterly for a distance of 12 metres or thereby"</i> ; and fourth column: "South-western".	2.85-91
Schedule 6, "Resident Parking Permit" line	Delete the figure "£98" and substitute for it the figure "£45".	2.18-30

Location of text in Order	Modification	See this report paragraph
Schedule 6, " <i>Business Parking Permit</i> " line	(a) Delete the figure "£98" and substitute for it the figure "£45". (b) Delete the figure "2" and substitute for it the figure "4".	(a) 2.18-30 (b) 2.70-84
Plan prepared in connection with TRO		
Drawing LUSSTRO-TM 2021/01 "Layout (indicative)"	Show the part of Church Road referred to in the modification to Schedule 4 as "No Waiting/No loading restriction" instead of "Restricted waiting with exemptions".	2.85-92

Mike Croft
Reporter

APPENDIX 1. DIALOGUE BETWEEN REPORTER AND COUNCIL ON REPORTER'S ROLE

Reporter's question to Council, 28 March 2022

My understanding had been that I am to consider the TRO in the light of all the remaining objections. That seemed to be the implication of the Council's emails of 19 October and 16 November 2021, the second of which referred to 89 extant objections (I appreciate that some of these may be withdrawn). Similarly, my minute of appointment is for me "to hold a public hearing into objections ...". I was therefore surprised to read from the minutes of the Helensburgh & Lomond Area Committee, 16 September 2021) that the Council's decision was "to refer the objection to the Prohibition of Driving to an Independent Reporter." That minute seems to imply that that is the only objection to be so referred and that I am therefore to consider the TRO only in the light of that particular objection on prohibition of driving. Can the Council clarify this as soon as possible?

Council's answer to question, 31 March 2022

The Council has now received advice from Brodies, its external legal agents, in relation to the point which you have raised regarding the extent of your remit.

The Council has previously considered some of the issues that arise around the extent of your remit in the Luss TRO hearing.

The Council remain concerned that there is a risk that should the hearing be limited in scope to a single objection to the prohibition of driving per the minutes of the Helensburgh & Lomond Area Committee of 16th September 2021, Scottish Ministers might not be satisfied that there has been full compliance with the provisions set out in the Road Traffic Regulation Act 1984 or the Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999 in that the hearing was not held into the order as a whole as opposed to a specific part of it.

The Council wishes to avoid increasing the risk of Scottish Ministers deciding to "require" the Council to hold a further hearing by withholding their consent until such a (further) hearing had been held by the Council into the entire order. This risk is heightened should the Council receive confirmation that objections are being maintained but the hearing has been restricted to consideration of a single objection to the prohibition of driving per the Committee minutes.

In those circumstances, we think the fairest approach is to adopt the remit set out in the Minute of Appointment.

We would be happy to address any follow-up queries you may have.

Reporter's response to Council's answer, 4 April 2022

I am content to pursue matters in line with the Council's response.

APPENDIX 2. DIALOGUE BETWEEN REPORTER AND COUNCIL ON THE NEED FOR SCOTTISH MINISTERS' CONSENT

Reporter's question to council, 11 April 2022

"The Reporter considers the following two matters fundamental in relation to the current processing of this Order.

The first point concerns Article 4 and Schedule 1 of the Order. Notwithstanding the exceptions in Article 5, these provisions appear to the Reporter to be of the kind referred to in the Road Traffic Regulation Act 1984, Schedule 9, paragraph 13(1), ie provisions "so prohibiting or restricting the use of a road as to prevent, for more than 8 hours in any period of 24 hours, access for vehicles of any class to any premises situated on or adjacent to that road or any other premises accessible for vehicles of that class from, and only from, that road". There is an objection (objection no 68 from Rowena Ferguson) to these provisions. Bearing in mind the existence of the objection, and reading Schedule 9 paragraphs 13(1) and 13(2) of the 1984 Act together, it appears to the Reporter that the Order is one that requires the consent of Scottish Ministers before it is made. The present arrangements, including the Council referring the Order direct to DPEA without reference to Transport Scotland, and the Reporter having been appointed by the Council to report to the Council, do not reflect the relevant legislative provisions. The Reporter would therefore be glad to have the Council's comments on his view that the Order requires the consent of Scottish Ministers before it is made and, if the Reporter's view is accepted, an indication of how the Council intends to proceed with regard to the existing draft Order and the present arrangements.

If the Council agrees with the Reporter's view that the Order does require the consent of Scottish Ministers, one course of action would be for it to refer the existing draft Order, as it stands, to Transport Scotland. However, the Reporter points out a further problematical element of the existing draft Order in those circumstances. That arises from sections 3(1) and 3(2) of the 1984 Act. Section 3(1) of the 1984 Act says "a traffic regulation order shall not be made with respect to any road which would have the effect ... (b) of preventing for more than 8 hours in any period of 24 hours access for vehicles of any class, to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians, or (as the case may be) for vehicles of that class, from, and only from, the road". The existing draft Order appears to the Reporter to make such provision and so is contrary to section 3(1). The council could have taken advantage of section 3(2) which disapplies section 3(1) if the authority is satisfied, and it is stated in the order that it is satisfied, that section 3(1) should not apply, for one or more of five specified reasons. But the Council has not done that. If the Order were one which does not require the consent of Ministers and could continue to be processed under the present arrangements, the Reporter would be willing to consider a modification to bring the order into line with section 3, but that could be an option which Transport Scotland and Ministers might not be prepared to take.

The Reporter proposes to cease work on this case until he hears from the Council on the above matters."

Council's answer to question, 28 April 2022

“On the first point, the Council agrees with what you say regarding the relevant provisions of Schedule 9, paragraph 13 of the 1984 Act. In addition, the Council would flag regulation 11 of the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 (“the Regulations”) which provide that where the order is one which requires the consent of Scottish Ministers the Council’s application will be accompanied by copies of such documents as are specified in schedule 4 of the Regulations.

The specified documents include the draft TRO, the relevant map, a statement of the Council’s reasons for proposing to make the order, the issues of each local newspaper containing the proposal, the objections, copies of the reply sent to each objection, a list of those people or organisations consulted and a statement of their views, and in a case where a hearing has been held, a copy of the report and recommendations made by the reporter.

Given that the Council has decided to hold a discretionary hearing, we considered that it made most sense for the hearing to be held before the draft TRO is submitted to Scottish Ministers. In our view this approach most properly complies with the Regulations notwithstanding that the hearing is discretionary.

The Council did seek clarification on this point from Transport Scotland (“TS”) and instructed Brodies LLP to make contact with TS (which it did on 7 October 2021) to inform it that the Council had decided to hold a discretionary hearing into the draft TRO. The Council explained to TS that it was aware of Scottish Ministers’ discretion to require the Council to hold a hearing before it gives consent (in accordance with regulation 8(1)(c) of the Regulations) and asked whether in TS’s view the Council’s decision to hold a discretionary hearing would be likely to satisfy Scottish Ministers’ in respect of the Regulations and avoid the potential requirement for the Council to hold a further hearing into the same TRO.

TS sought advice and responded on 29 October 2021 that: “As you are aware, Scottish Ministers have a discretion to require the holding of a hearing before giving consent however unfortunately we cannot provide our thoughts or make a decision as to whether to exercise that discretion until the Order is submitted for approval. Sorry I cannot be of more help.”

In those circumstances and given the decision made by the Area Committee at their meeting on 16 September 2021 to hold a discretionary hearing, the Council considered that it should proceed with the discretionary hearing and subsequently submit all of the specified documents to Scottish Ministers in accordance with the Regulations referred to above.

With regard to the second point, the Council agrees that there should be reference to section 3 of the 1984 Act in the draft Order. We would therefore request that the Reporter modifies the Order accordingly, acknowledging of course that there is a risk that Scottish Ministers may not agree with that approach.

The Council hopes the foregoing comments are helpful.”

Reporter's response to Council's answer, 4 May 2022

"The Reporter has noted the Council's response to the points he raised in relation to the need for Scottish Ministers' consent to the order. On the basis of that response he has resumed work on the case.

On the first point, he accepts the council's position that the order can proceed to a hearing in line with current legislation.

On the second point, the Reporter notes that the Council wishes him to modify the Order to make reference to section 3 of the Road Traffic Regulation Act 1984. The most the Reporter could do in this respect is to recommend an appropriate modification, and he is prepared to give consideration to doing so. He cannot undertake to do so at this stage, particularly as the relevant provisions of the Order are subject to objection. In order to progress this matter, he suggests that the Council takes early steps to provide the Reporter with (a) suggested wording of an appropriate modification which makes clear which of the five purposes in section 3(2) of the 1984 Act is invoked, and (b) a statement of reasoned justification for the modification."

Reporter's post-hearing postscript

This report deals with this point at paragraphs 3.2-4 and 4.3-4 above.

APPENDIX 3. REPORTER'S SUMMARY OF THE TRO

Note: the TRO itself should be examined for any details required.

The order is made by the Council in exercise of various powers including those in the Road Traffic Regulation Act 1984, as amended by the Roads (Scotland) Act 1984, and the Road Traffic Act 1991.

It makes provisions about on-street parking within Luss, and revokes three orders dating from 1967-68.

Part 1: general

Articles 1-3 deal with citation, commencement, provisions and interpretation.

Part 2: prohibition of driving

Article 4 prohibits driving on roads specified in schedule 1 (effectively all of the Luss village core), except as provided in article 5.

Article 5 exceptions are vehicles with a valid permit, vehicles accessing premises on schedule 1 roads, invalid carriages or vehicles with disabled person's badge and being used by disabled person, vehicles being used for emergency or local authority statutory purposes, vehicles being used for furniture removal to or from premises adjacent to schedule 1 road,

Part 3: restricted roads ("Luss residents parking zone")

Article 6 designates roads specified in schedule 3 (effectively all of the Luss village core except the cul-de-sac going southwards off Pier Road and a short stretch of Church Road) as restricted roads within the "Restricted Parking Zone".

Part 4: prohibition and restriction on waiting and loading

Article 7 restricts waiting and loading of vehicles in roads specified in Schedule 2 except as provided in Articles 9.3, 10 and 12. Roads specified in schedule 2 cover significant lengths of the old A82 road, part of Church Road, and that part of School Road west of old A82 road.

Article 9.3 provides an exception for vehicles being used for emergency or local authority statutory purposes.

Article 10 provides exceptions for waiting for a person to board or alight from the vehicle or to load or unload luggage; for use of vehicles in connection with building operations, road cleansing or lighting, the removal of traffic obstructions, the maintenance, improvement or reconstruction of any restricted road, laying, erection, alteration or repair of apparatus for sewerage, water, electricity or electronic communications, the placing, maintenance or removal of any traffic sign; when the vehicle is required by law to stop or is obliged to do so in order to avoid an accident or is prevented from proceeding by circumstances beyond his control; postal and similar delivery vehicles, funeral undertakers' vehicles.

Article 12 provides an exception for vehicles in use in connection with the removal of furniture to or from an office, dwelling house or depository to another office, dwelling house or depository.

Article 8(i) prevents waiting on roads specified in schedule 3, except as provided in articles 9.1, 10, 11 and 12.

Article 9.1 provides exceptions for vehicles with a valid parking permit displayed in accordance with article 37.4; vehicles while being used for specified emergency purposes; vehicles used for necessary local authority statutory purposes; disabled persons' vehicles not causing an obstruction; and vehicles being driven by a medical practitioner attending an emergency or hosting a scheduled surgery.

Article 10 as above.

Article 11 provides exceptions for vehicles in use for delivering or collecting goods or merchandise or while loading or unloading the vehicle at premises adjoining the road, subject to maximum of 30 minutes' waiting in the same place, with no return within 60 minutes.

Article 12 as above.

Article 8(ii) prevents waiting on roads specified in schedule 4, except as provided in articles 9.2, 10, 11 and 12. Schedule 4 specifies various lengths of old A82.

Article 9.2 provides exceptions for vehicles while being used for specified emergency purposes; vehicles being used for necessary local authority statutory purposes; disabled persons' vehicles not causing an obstruction; and vehicles being driven by a medical practitioner attending an emergency or hosting a scheduled surgery.

Articles 10, 11 and 12 as above.

Article 13 restricts the depositing of goods on the carriageway before, during or after the loading or unloading goods.

Article 14 specifies where any vehicle waiting on a schedule 3 shall wait in relation to the edge of the carriageway.

Article 15 imposes a duty to move a vehicle waiting on a schedule 3 road on the reasonable instructions of a police officer or parking attendant.

Part 5: parking places

Article 16 designates parking places on two short lengths of the old A82 (maximum seven spaces; maximum stay 30 minutes, no return within 1 hour, 0800-2000 hours Monday to Sunday) as specified in schedule 5 and the plans described in schedule 8.

Article 17 says each parking place in schedule 5 may be used by any vehicle wholly parked within the marked limits of a parking bay.

Article 18 says the Council will mark parking places and parking bays in accordance with the Traffic Signs Regulations and General Directions 2016.

Article 19 says the extent, capacity and location of parking places shall accord with schedule 5.

Article 20 specifies the maximum waiting time in a schedule 5 parking place as 30 minutes between 08:00 hours and 20:00 hours Monday to Sunday.

Article 21 specifies the minimum return time to schedule 5 parking place as 60 minutes.

Article 22 provides for general exceptions to the parking restrictions for (i) avoiding accident, (ii) emergency service vehicles, (iii) vehicles for necessary local authority statutory duties, (iv) waiting for the removal of any obstruction to traffic, (v) vehicles for postal etc services, (vi) vehicles in use for furniture removal.

Article 23 specifies the manner of standing in parking places.

Article 24 specifies 30 minutes maximum waiting time, and 60 minutes minimum return time, in a parking place for loading/unloading.

Article 25 specifies the circumstances in which the Council may suspend the use of a parking place.

Article 26 specifies restrictions of use of parking places (eg no business to be carried out; no washing of vehicles; no trailers or caravans separate from vehicles).

Articles 27-29 deal with altering the positions of vehicles in parking places, or their removal, by the Council.

Article 30 specifies the power of the Council to dispose of abandoned vehicles

Articles 31 and 32 deal with the responsibilities of drivers and registered keepers respectively.

Article 33 specifies that any any person using a parking place does so at their own risk.

Part 6: parking permits

Article 34(1) specifies that any resident of premises in Luss parish who owns a motor vehicle or has access to a company vehicle, is a qualifying person and may apply for the issue of a maximum of two resident permits per household for vehicles in their ownership or control.

Article 34(2) specifies that any business user with a business in Luss parish is a qualifying person and may apply for the issue of a maximum of two business permits for vehicles required for the operation of the business.

Article 35 deals with applications for parking permits.

Article 36 says the charges for a parking permit as specified in schedule 6 may be amended by the Council giving notice in accordance with section 46A of the 1984 Act.

Schedule 6 specifies that parking permit charge is £98 per vehicle annually.

Article 37 deals with the surrender, withdrawal and validity of parking permits.

Article 38 deals with applications for and the issue of duplicate parking permits.

Part 7: supplementary provisions

Article 39 specifies that a penalty charge shall be payable in accordance with any penalty charge notice following contravention of the order.

Article 40 specifies orders to be revoked as in schedule 6.

APPENDIX 4. MATERIAL POINTS OF DIALOGUE BETWEEN REPORTER AND COUNCIL ON WHETHER THE HEARING WAS MANDATORY OR DISCRETIONARY

Reporter's question to Council, 17 May 2022

“Regulation 8 of the 1999 Regulations provides that, before making an order, the authority may hold a hearing in connection with it and the authority shall hold such a hearing before making an order in certain specified cases. It appears to the Reporter that draft TRO article 7 with schedule 2, article 8(i) with schedule 3, and article 8(ii) with schedule 4 all include prohibitions on loading/unloading which bring the TRO within the scope of regulation 8(1)(a) for a mandatory hearing if there is an objection to those provisions. Similarly, draft TRO article 4 prohibits driving on roads specified in schedule 1 (effectively all of Luss village), except as provided in article 5, and those provisions appear to bring the TRO within the scope of regulation 8(1)(b) for a mandatory hearing if there is an objection to those provisions. There is such an objection in both cases (submission no 68 from Rowena Ferguson). On that basis, a mandatory hearing is required. Does the Council agree? If the Council does agree, it appears to the Reporter that, apart from referring to the hearing as “mandatory”, nothing substantive arises in terms of procedures leading to and at the hearing.”

Brodies' answer, for Council, 18 July 2022

“... the holding of a hearing does not fall to be considered 'mandatory' per regulations 8(1)(a) or 8(1)(b) of the 1999 Regulations because:

(i) the objection is not made in relation to the loading or unloading of vehicles in any road. As was indicated in our initial instructions from the Council, in order for a mandatory hearing to arise, the objection (which must be made in accordance with regulation 7) has to be "to that provision in the order". The objection from Rowena Ferguson raised a number of points in relation to the limit on business parking permits, business need for a loading bay, customer parking and public access; and

(ii) we are also in agreement with the Council's view that that regulation 8(1)(b) of the 1999 Regulations would not apply because the objection has not been made by a person who provides a “relevant service on any road to which the order relates”. Relevant service is as defined in regulation 8(4) of the 1999 Regulations and does not apply to the person making the objection (Rowena Ferguson).”

Reporter's response to Brodie's answer, 19 July 2022

“The Reporter notes Brodies' position in relation to the hearing being mandatory or discretionary. He accepts the position stated by Brodies at point (ii).

On Brodies point (i), the Reporter accepts that he over-stated the argument for the hearing being mandatory in his earlier assessment. However, it is still the case that the Order (article 8(i) with schedule 3) restricts waiting on Church Road. That restriction must include a restriction on "the loading or unloading of vehicles" as referred to in Regulation 8(1)(a)(i). Ms Ferguson's objection includes the words "Please consider a marked Loading Bay as shown outside my premises" and her plan shows a proposed loading bay on Church Road. It seems reasonable to the Reporter to construe that as an

objection to the imposition of the waiting restriction on Church Road, ie she seeks the ability to load and unload vehicles on Church Road where the Order would restrict it.

The Reporter therefore asks for reconsideration to be given to this point.”

Council’s response, 12 August 2022

“... The section of road directly fronting Ms Fergusson's business is subject to (i) "Restricted waiting with exemptions" (marked blue on the attached plan); and (ii) a Prohibition of Driving with exemptions (marked purple on the attached plan).

We also attach a 'snip' of the plan which shows Ms Ferguson's property on Church Road indicated in purple outline.

Articles 4 and 5 of the TRO (Prohibition of Driving and Exceptions to Prohibitions of Driving)

As you are aware Article 4 provides for the prohibition of driving on any road specified in Schedule 1 to the Order.

The Order under Article 5(b) provides for an exception to the prohibition of driving as set out in Article 4. The Article 5(b) exception allows for vehicles being used for or in connection with the conveyance of goods or persons to or from premises situated on any road specified in Schedule 1 to the Order. This includes the section of Church Road where Ms Ferguson's business is situated (see item 2 of Schedule 1).

Therefore the Council considers that Ms Ferguson will be able to receive goods delivered to her business premises under this exception.

Articles 8 and 11 (Restrictions on waiting of vehicles in roads specified in Schedules 3 and 4 and exemptions)

Article 8(i) of the Order provides that no person shall, except upon the direction or with the permission of a parking attendant or police officer, cause or permit any vehicle to wait at any time on any length of road specified in Schedule 3 to the Order. This includes the section of Church Road where Ms Ferguson's business is situated (see item the second item 2 of Schedule 3).

Articles 11 of the Order provides that nothing in Article 8 "shall apply so as to prevent any person from causing or permitting a vehicle to wait in any restricted road specified in Schedule 3 or Schedule 4 while the vehicle is in actual use for the purpose of delivering or collecting goods or merchandise or while loading or unloading the vehicle at premises adjoining the said road." Certain conditions then follow that apply to the exemption such as no such vehicle will be allowed to wait for a period of more than 30 minutes to load/unload.

Therefore the Council considers that Ms Ferguson will also be able to receive goods delivered to her business premises under this exception.

Unless Ms Ferguson has goods delivered on the section of Church Road covered by the no loading/unloading provisions in the Order (marked red on Church Road on the

attached plan) then we do not consider that the proposed restrictions as set out in the Order will impact on Ms Ferguson's business with regards to the delivery of goods.

Mandatory v Discretionary hearing

Therefore, in relation to Regulation 8(1)(a)(i) of the 1999 Regulations, the Council considers that whilst Ms Ferguson appears to be concerned with the loading and unloading of vehicles outside of her business premises (which is not prohibited by the Order), Ms Ferguson's objection could be construed to be an objection to the provisions on Church Road as a whole (and which do, on part of Church Road, restrict loading and unloading) and if this broader interpretation of the objection is taken, then we would agree that the hearing would fall to be considered a mandatory one. The Council would not wish to see this point become a bone of contention at a later date and on balance is content that the approach is taken that the hearing is prescribed by the terms of regulation 8(1)(a) of the 1999 Regulations.

Finally, we further agree with the observation from the original list of questions ... that whether the hearing is considered to be mandatory or discretionary, "nothing substantive arises in terms of procedure leading to and at the hearing". The key point is that if a hearing is considered to be necessary, that requirement is being complied with and, in the event that the Council requests Scottish Ministers to confirm the Order, it will, of course, submit a copy of your report to the Scottish Ministers in accordance with Schedule 4 of the Regulations which appears to be a requirement where a hearing has taken place regardless of whether it was necessitated by regulation 8(1)(a)."

Reporter's post-hearing postscript

I note that the Council's position at the beginning of this dialogue was that the hearing would be discretionary. At the end of the dialogue it was content for the hearing to be regarded as mandatory for the reasons it stated. However, at the hearing, Ms Ferguson confirmed that she is not concerned about the narrow section of Church Road which would have the loading and unloading restrictions in the draft TRO. There is therefore no need to give Ms Ferguson's objection a "broader interpretation" (as referred to in the Council's first paragraph under the heading "Mandatory v Discretionary hearing") for this purpose. My final view, therefore, is that the hearing was a discretionary one.

The most important point, however, is that the hearing has been held. If anyone, including Scottish Ministers, takes the view that regulation 8(1)(a) applies, then it has been complied with.

APPENDIX 5. OBJECTORS AND OBJECTIONS

Council ref no	Name(s)	Reporter's summary of objection	Notes
22	Amy Andrade	Template letter. This is a summary of the template letter... Supports TRO as it gives best chance of reducing circulating traffic in the heart of the village. But opposes parking fee of £90 per year. Council was proposing a fee of £40 in 2016. Income from fee now proposed would exceed parking income from rest of Argyll & Bute. There is no reason for such a high charge.	
63	Jose Andrade	Template letter as above.	
21	Lorraine Andrade	Template letter as above.	
20	Rui Andrade	Template letter as above.	
71	Argyll Community Housing Association		This objection had been withdrawn in June 2021.
44	Natalie Astridge	Template letter as above.	
11	Julie Bauyer	Template letter as above.	
32	Jacqui Bissett	Template letter as above.	
45	Clare Bond/Ross	Template letter as above.	
12	Alan Brander	Template letter as above.	Objection withdrawn in May/June 2022.
47	W Eric and Pamela Brown	Template letter as above.	
13	Barbara Butler	Template letter as above.	
23	G and M Cameron	Template letter as above.	
18	Mr and Mrs A Campbell	Template letter as above.	
50	Alison and Chris Charters	Template letter as above.	
56	Fergus Colquhoun	Template letter as above.	
57	Katharine Colquhoun	Template letter as above.	
55	Malcolm Colquhoun	Template letter as above.	Objection withdrawn in May/June 2022.
41	Patrick Colquhoun	Template letter as above.	
5	Mr and Mrs S Colquhoun	Template letter as above.	
58	Richard Cuttill	Template letter as above.	
59	Sharon Cuttill	Template letter as above.	
7	Angus Duff and Margaret P Duff	Template letter as above.	
73	Lisa Duncan	Template letter as above.	
39	Margaret Errington	Template letter as above.	

Council ref no	Name(s)	Reporter's summary of objection	Notes
68	Rowena Ferguson (Loch Lomond Trading Company Ltd, Coach House Coffee Shop, Luss)	TRO does not take account of this business's needs, and so will damage local economy. 1. Business parking permits. The 2-permits allocation is inadequate for the operation of this company. With inadequate public transport, cars are essential for staff to get to work. Staff have parked for 23 years (max 4-5 cars) close to Coach House on Church Road, where there is a adequate space for parking along frontage which takes up most of street. £489 permit charge per individual is far too high (amounts to £1.00 per hour). It is already difficult to attract staff, so effect on business is potentially dramatic. Tradesmen (eg electricians, plumbers) also need to park outside Coach House, as they have done for 23 years, so more than 2 permits are needed, at nominal charge and with transferability. 2. Loading bay. Asks for loading bay to be considered outside Coach House (see plan submitted). 3. Customer parking. Asks for small amount of customer parking on Church Road. There has been provision for last 23 years for customers to park close to shop, including in winter and for disabled customers who do not have a blue badge. 4. Public access. Prohibition of driving is not required for parking issues. There is currently very little access to west bank of Loch Lomond, and it should not be further restricted for benefit of very small number of people. It will mean that residents of parish, but outside village, and emergency vehicles will be unable to drive around village.	
6	Norrie Gardner and Christine Ramsay	Template letter as above.	
4	Donald Hardie and Sheena Hardie	Template letter as above.	
34	J David Henderson	Template letter as above.	
43	G R Jack	Template letter as above.	
60	Robert I Kerr and Robert S Kerr	Template letter as above.	
52	Christy Macdonald	Template letter as above.	
33	Euan MacEachern	Template letter as above.	
54	Ian MacEachern	Template letter as above.	Objection withdrawn in May/June 2022.
17	Robert Mackle	Template letter as above.	
30	Andrew MacLeod	Template letter as above.	Objection withdrawn in May/June 2022.
53	Flora and Norrie MacLeod	Template letter as above.	
31	T N MacMillan	Template letter as above.	Objection withdrawn in May/June 2022.
2	Caren Macrae	Template letter as above.	
3	Iain Marshall	Template letter as above.	
8	Mrs E McAdam	Template letter as above.	
28	Andrew McClay	Template letter as above.	
29	Patricia McClay	Template letter as above.	
46	J McKay	Template letter as above.	
25	Janet and ? McQueen	Template letter as above.	
9	Charlotte Mitchell	Template letter as above.	
51	Annelise Norrie	Template letter as above.	
48	Craig Norrie	Template letter as above.	
24	Elaine Paterson	Template letter as above.	
27	Ken Pitman	Template letter as above.	

Council ref no	Name(s)	Reporter's summary of objection	Notes
69	Police Scotland		This was not an objection to the TRO before me but to other orders which the Council was promoting at the same time.
70	Fiona and William Potter (Luss Village Shop and Post Office)	Support broad intentions of TRO. 1. Object to level of fees for initial 2 permits per business of household. This is too high at £90. Charges should be removed or reduced to £40. 2. Object to proposed £498 charge for any additional business permits. LVSP0 employs 9 staff who would all require individual permits, but only max 5 staff work on any given day. A reasonable charge for non-transferable business permits would be £40 each for the first two, and then £90 each for additional ones.	On-street parking charge element of this objection withdrawn in May/June 2022.
37, 37A	David and Jennifer Pretswell	Template letter as above.	
49	Agnes Purdie	Template letter as above.	
42	Michelle Robertson	Template letter as above.	
64	Roy H Rogers	Template letter as above.	
61	Arthur Ross and Helen Sinclair	Template letter as above. Additional points ... Traffic issues in Luss are mainly a holiday/seasonal problem and should be treated as such with regard to street parking. Imposing a financial penalty on existing residents in a mainly social housing area is wrong.	
1	Rachel Shields	Template letter as above.	
15	Mary Stalker	Template letter as above. Additional point ... Opposes lack of consideration for residents' visitors' parking.	
14	James Stewart	Template letter as above.	Objection withdrawn in May/June 2022.
16	Duncan and Jennifer Taylor	Template letter as above.	
40	John Taylor	Template letter as above.	
26	James and Linda Thomson	Template letter as above.	
65	Colin and Kirsteen Tosh	Template letter as above.	
36	Ray Thomson	Template letter as above. Additional point ... Will not pay the £90 annual charge.	
19	Valerie and Stuart	Template letter as above.	
66	Lindsay Voigt	Template letter as above.	
72	Alyson Walker	Template letter as above. Additional points ... 90% of residents do not make a living from tourism, yet still have to endure the detrimental effects of huge numbers of visiting tourists. The TRO should put the interests of residents first. Businesses should not have more than one permit each. Nowhere else do businesses expect their staff to be able to park next to their place of work. Two permits are insufficient for residents – some families have more than 2 cars; B and B's and holiday lets without off-street parking also need an extra permit. Residents should not be charged for permits.	
38	Ann-Marie Webster	Template letter as above.	
67	Elizabeth M Whelan	The proposed £90 charge is unfair to residents, most of whom are pensioners: parking should be free to residents. Only local traffic, delivery and emergency vehicles should be allowed through the village.	
35	Marie White	Template letter as above.	
62	Anne Wilson	Template letter as above.	
10	Clare Winton	Template letter as above.	

APPENDIX 6. MAIN PARTICIPANTS IN THE HEARING, 23 AUGUST 2022

For the Council

Ms J Boyd, Solicitor, Brodies.

Mr S Watson, Assistant Network and Standards Manager, Argyll and Bute Council

Objectors

Ms A M Webster (local resident)

Ms R Ferguson (proprietor, Coach House Coffee Shop, Luss)

APPENDIX 7. DOCUMENTS

A. Documents submitted with Council's statement of case

1. Conservation area and listed buildings
2. Luss village roads (plan, photographs and list of non-domestic rates)
3. Press articles – traffic issues
4. Luss traffic regulation: heads of terms
5. Luss Traffic Management TRO
 - a. Argyll and Bute Council (Various Streets, Luss) (Traffic Management) Order 202_ (the "hearing order")
 - b. Drawing LUSSTRO - TM 2021/01: layout (indicative)
 - c. Drawing LUSSTRO - TM 2021/02: extent of Luss parish boundary
6. Consultation 1 & 2 record sheets
7. Luss TTROs
 - a. Argyll and Bute Council (Various Roads, Luss and Duck Bay) (Temporary Traffic Management) Order 2020
 - b. Argyll and Bute Council (Various Roads, Luss and Duck Bay) (Temporary Traffic Management) Order 2021
8. Helensburgh & Lomond Area Committee printed minutes and copy of TRO Report
 - a. Minutes of meeting held by Microsoft Teams, 16 September 2021
 - b. Report to meeting held by Microsoft Teams, 16 September 2021
9. Template objection

B. Other Council documents

10. Argyll and Bute Council (Off-Street Parking Places and Charges) (Luss) Order 2016
11. Report to and minutes of Helensburgh & Lomond Area Committee, 17 September 2020
12. Public notice of proposed making of Argyll and Bute Council (Various Streets, Luss) (Traffic Management) Order 202_, 22 April 2021
13. Minutes of meeting of Community Council Conduct Review panel held by Microsoft Teams on 5 November 2021
14. Argyll and Bute Council (Off-Street Parking Places and Charges) (Luss) (Amendment) 2021
15. Minute of reporter's appointment, 24 March 2022
16. Public notice of hearing, 28 July 2022
17. Letter to objectors giving notice of hearing
18. Parking income and expenditure tables
19. Plan showing location of Council's car park at Luss
20. Plan showing length of road for proposed no waiting restriction next to Coach House Coffee Shop, Church Road

C. Ms Ferguson's documents

21. Appendices to statement of case
22. List of non-domestic rated properties
23. Parking situation of Luss businesses

D. Documents issued by reporter

- 24. Guidance note on written statements for hearing sessions, 16 June 2022
- 25. Guidance note on further written submissions, 16 June 2022
- 26. Agenda for hearing on 23 August 2022, 26 July 2022
- 27. Potential modifications to the Order (for consideration during the hearing, agenda item 5d), 26 July 2022

E. Other documents

- 28. Road Traffic Regulation Act 1984
- 29. The Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999
- 30. Road Safety Review of Traffic Management Proposals for Luss, Argyll & Bute