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Richard Lochhead, Cabinet Secretary Rural Affairs

Dr Aileen McLeod, Minister for Environment

St Andrew’s House

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 16/12/15

Dear Mr Lochhead and Dr McLeod,

**Need for government intervention to ensure re-instatement of good governance in the Loch Lomond and Trossachs National Park**

I have previously written to you to raise concerns about serious failures in governance in the National Park which I discovered as a result of my investigations into how the camping bye-laws proposals were developed. I now evidence that these failures are even wider than that and am writing to suggest that you need to consider using your powers under the National Park’s Scotland Act to:

1. Issue Directions and Guidance to the Loch Lomond National Park Authority in respect of its governance arrangements (under section 16 (1) of the NP (Scotland) Act 2000
2. Remove the convener from the Board (under Schedule 1 Para 9 (b) iii of the NP (Scotland Act 2000)
3. Require the National Park to set up National Advisory Groups (each National Park is required to have one or more National Advisory Group under section 20 of the National Park (Scotland) Act but its not clear to me any such group exists for LLTNP) for recreation and access and improving openness and accountability in the National Park,

I am suggesting this on the basis of evidence I have previous supplied to you and recent evidence set out below and in attachments. I have a number of outstanding Freedom of Information requests and appeals and believe when these are resolved – which may take time – the case will be even stronger. I do however believe there is sufficient evidence for you to act now.

1. I had copied you into my letter of 13th November to Linda McKay asking her what action she was going to take as a result of the Commissioner for Ethical Standards establishing that it was not she, but senior staff, who had falsified the minute of the Board Meeting of 27th April. This was a chance for her to demonstrate that she took good governance seriously and address the issues. Instead of answering my questions, however, she passed this down and her Chief Executive who it now appears almost certainly authorised the falsification of the minute responded (COMP 2015-093 response). My letter to Linda McKay (15/12/15) sets out just wrong this. The key points are the Park are refusing to answer who authorised the falsification of the minute or accept that this is a serious issue and have now in effect allowed the Chief Executive to investigate himself. He hasn’t, not surprisingly, but it would be wrong in any case for him to do so. I therefore believe your intervention is now required and this should include guidance on the need for Boards to hold senior members of staff to account and consideration of Linda McKay’s fitness to be on the Board given the way she has handled this.
2. I now have proof that the LLTNP Board now meets regularly outwith formal and public Board Meetings to determine actions and that Board Meetings are simply staged to agree formally what in effect has already been decided. I attach – and I apologise in delay in sending this to you – my letter to Linda McKay of 9th December - which sets out requests that this information is made public and that these Board Meetings should be brought within scope of Standing Orders. The Board Meeting on Monday, which I observed with others, simply confirmed this. The meeting was over in 55 minutes and the discussion of the process for the new National Park Partnership Plan – which will of course need to be approved by Ministers – took just 12 minutes: the reason for this is that all the discussion about the Plan had already taken place at a secret Board meeting that took place before the public Board meeting on 26th October. I am sure this is not how Ministers intended National Parks to work and suggest there is a need for Directions from yourself about the requirements of Boards to meet in public.
3. Mr Watson’s letter of 14th December demonstrates the shambles of the National Park’s Complaints process – concerns about which I have previously brought to your attention e.g in section 3 of my letter of 28th May to you both. You would not know this however from information produced by the National Park. On 8th December the Audit Committee considered an internal audit report from KPMG which reported the Park had complied 100% with its complaints processes for 2015. I attach my letter to KPMG (15/12/15), to which you are formally copied in, asking them to clarify the basis of their audit.

What the audit needed to cover however was not process – the Park has a very competent Information Officer who ensures everything I have asked or complained about is responded to on the day of the deadline – but outcomes. So, what do people think about the complaints process and were they satisfied with outcomes? I have stopped almost complaining to the National Park, because I have plenty of evidence to show there is no point, but this has not prevented the Park treating any question it cannot respond to under the Freedom of Information Act as a complaint (see my letter of 19/11/15 about so called “COMP 2015-093” which Linda McKay never answered and COMP 2015-44). This is misuse of authority. As Ministers I believe you should considering directing the Park to consult complainants about their views of the complaints process and how you can use your powers to ensure the Park stops misusing its complaints procedure.

1. Gordon Watson, in his letter of 14th December, includes a chronology of what he describes as my FOI requests and complaints. I believe he included this to try and demonstrate that somehow the issues I have been raising are unreasonable. What it actually shows is first the complete lack of transparency in the Park. Worse however it clearly demonstrates that the Park has issued instructions to Board Members and staff that any communication from myself should not be responded to and will be dealt with separately. It explains that when I have tried to open dialogue or bring matters to the attention with individual board members (eg Petra Biberbach in relation to camping and the development plan which is a shambles) they have refused any dialogue with me. It has also resulted in the perverse situation where having reported genuine access problems to the Park – and provided them with information on this – their staff are now not allowed to respond to me but this has to be dealt with through formal FOI requests (and the Park even lists these under their list of complaints). This is abuse of power which as responsible Ministers you should be very concerned about.
2. Finally I believe it is time to consider how you can use your powers to ensure other improvements in governance that would assist with transparency and prevent some of the problems that have happened from recurring. Among the things I have identified are:
3. Require all National Parks to issue Board Papers at least 7 days before meetings (and reverse recent decision LLTNP to reduce this to 3 days).
4. Require National Parks to record all meetings and make them available as podcasts. What is good enough for the Scottish Parliament should be applied to National Parks. Such a requirement would enable far more people to hear how the Board was performing (its very difficult for most people to get to meetings) and would have prevented the falsification of the Board Minute of 27th April by senior staff (and all the cost and effort that investigating that has required)
5. Review the Standing Orders of both Parks and from this produce a set of model standing orders that incorporate best practice from each Park together with suggestions from the public. For example, I was very interested to see the following provision in the Cairngorms National Park Standing Orders:

Had this been in place in LLTNPA I believe this would have prevented any falsification of the Minute of the Board Meeting of 27th April because the Convener and Chair would have been clearly responsible. The Park was able to falsify the minute precisely because lines of accountability were not clear. Clause 31 of the CNPA Standing Orders also usefully requires minutes to reflect the discussion that informed the decision making – if this was in place, I believe the current practice of the LLTNPA of making decisions in private and then stage managing public meetings would become hard to sustain.

It is now well over six months since I first raised governance issues with yourselves and I believe that without your intervention these issues will just continue. This is not desirable. I am a supporter of National Park but they need to be open and accountable, in a way that SNH was when I served on that board, and this is clearly not happening at present. I hope this letter indicates how you could address the issues and why you should do so.

Yours Sincerely

Nick Kempe

Encs: Letter to Linda McKay 13/11/15 (previously sent)

Letter Linda McKay 19/11/15

Letter to Linda McKay 9/12/15

COMP 2015-093 response 14/12/15

COMP 2015-044 response

Letter to Linda McKay 15/12/15

KMPG Audit Report Complaints Handling

Letter to KPMG complaints audit 15/12/15

Chronology of FOI requests and complaints