

Loch Lomond and the Trossachs National Park Authority
Carrochan
Carrochan Road
Balloch G83 8EG

for the attention of Vivien Emery
Development Management Planner

21 May 2019

Dear Sirs

ROSS GREER MSP
APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE REF. 2018/0133/PPP –
WEST RIVERSIDE, DRUMKINNON WOOD AND WOODBANK HOUSE, BALLOCH

On behalf of and as instructed by Ross Greer MSP, I am writing to object to the above application (“the Application”) made to you jointly by Flamingo Land Limited and Scottish Enterprise (“the Applicants”) in relation to their development proposal for the above locations (“the Proposal”), for the following reasons:

1. Flaws in (a) the pre-application procedures and (b) the application procedures are likely to have undermined both public understanding of the Proposal and public participation in the assessment of the Application and, in the absence of corrective action, will continue to affect the assessment and determination of the Application;
2. The environmental statement that accompanied the Application is incomplete, so an appropriate environmental impact assessment (EIA) of the Proposal is impossible; and
3. The Proposal is fundamentally at odds with the Local Development Plan for Loch Lomond & The Trossachs National Park 2017-2021 (“the LDP”), extending far beyond the relevant allocations in the LDP and contradicting many of its policies, and there are no material considerations that justify departure from the LDP in this case.

For all these reasons, my client now considers that the Application should be refused.

Further details follow on each of the numbered points above. Section 1 contains several requests for information. If you post the requested documents on the application website, please let me know. Otherwise, please process these requests in the normal way.

1(a) Flaws in the pre-application procedures

On 4 April 2017, the agent for the Applicants asked you, the National Park Authority, for a screening opinion and a scoping opinion under regulations 6(1) and 14(1) respectively of the Town and Country Planning (EIA) Regulations 2011 (“the 2011 Regulations”), in relation to the development proposal which is the subject of the Application (“the Proposal”). After you gave a screening opinion on 13 April 2017 to the effect that the Proposal was EIA development, the scoping request was validated and you duly gave a scoping opinion on 11 May 2017. The scoping opinion appears to meet the requirements of regulation 14(6) of the 2011 Regulations – but see section 2 below on flaws in the environmental statement.

The Proposal is a major development in terms of the hierarchy of developments under section 26A of the Town and Country Planning (Scotland) Act 1997, as amended (“the Act”). Major developments are prescribed by regulation 4 of the Town and Country Planning (Development Management Procedure) Regulations 2013 (“the 2013 Regulations”) for the purposes of section 35A of the Act, so the Proposal was required to undergo pre-application consultation under the Act. On 6 October 2017, the Applicants’ agent duly submitted to you a proposal-of-application notice under section 35B of the Act, together with a strategy for the pre-application consultation. You responded by letter dated 12 October 2017 (reference 2017/0331/PAC), asking for corrections to the notice and improvements to the strategy, and the Applicants’ agents duly submitted a revised proposal-of-application notice and consultation strategy to you dated 24 and 25 October 2017 (“the Notice”).

Misleading pre-application description of Proposal

Section 35A of the Act requires a proposal-of-application notice to include “a description in general terms of the development to be carried out”. The proposal-of-application notice is a very important element of the process for handling a major development, because it is the first notice of the development that enters the public domain, being sent to the local community council(s) and usually to other public bodies. The description does not therefore have to be precise, but it must not mislead anyone receiving or seeing the notice.

The Notice says the Proposal is located at “West Riverside (Loch Lomond Shores) and Woodbank House” and describes it as being “on two linked sites, West Riverside and Woodbank House”. It does not mention any of the land linking the two named sites, in particular Drumkinnon Wood, because the name “West Riverside” is used here to cover all this land, even though some of it is over half a mile from the river. “West Riverside” and “Woodbank House” happen to be the names of two areas allocated for ‘visitor experience’ in the LDP, so the natural response of anyone aware of this would be that a proposal for a tourism-related development in two areas with these names must be broadly in accordance with the development plan. However, these two allocations have a total surface area of about 20 hectares, equivalent to only about 60% of the whole application area.

Both the location and the description given in the Notice are therefore misleading, as they refer only to two named areas, both of which are allocated for ‘visitor experience’ in the LDP, but not to any areas not allocated for development of any kind, which constitute the remaining 40% of the site of the Application. The redline plan attached to the Notice

includes the whole application site, of course, but the casual reader, aware of the names of allocations in the LDP but not necessarily of their size and shape, might still interpret the Notice as meaning that the Application affects only land that is allocated for 'visitor experience'. Given that the Notice was the first public notice of the Proposal, this was seriously misleading.

Unfortunately, despite being sent a prior version of the Notice, you failed to correct this omission, and simply adopted the Applicants' misleading description of the site, as shown in your above-mentioned letter of 12 October 2017, which gives the site address as "West Riverside and Woodbank House, Balloch". As a result, this misleading description appears not only on the Notice sent to the community council, but also in the advert that was placed in the local newspaper and on the face of all the Applicants' and your own subsequent documents about the Proposal, at least until the Application was lodged – when a slightly more accurate and helpful reference to land at Ben Lomond Way was introduced.

My client therefore asks that the planning officer's forthcoming report to members about the Application make it abundantly clear that the area referred to as "West Riverside" in the Application is much bigger than the area with the same name in the LDP that members will be familiar with, and that it encompasses all of Drumkinnon Wood, as well as other areas not allocated for development of any sort in the LDP.

Insufficient notice of pre-application consultation

Your letter of 12 October 2017 said that a copy of the Notice should be sent to all consultees at least 3 weeks before the first public event proposed in the strategy, presumably because of the unusual scale and size of the Proposal, but your recommendation was not followed. The revised strategy, at paragraph 2.5.1, states that this will be done "where possible ... at least 2 weeks in advance of the first public event", so it is very unlikely that the pre-application consultation process was as effective as it could or should have been.

Incomplete report of pre-application consultation

The report of the pre-application consultation (the "PAC Report") that was submitted with the Application in accordance with section 35C of the Act states, at paragraph 2.3.1, that Balloch and Haldane Community Council and others were sent a copy of the Notice, but it does not state when exactly. Moreover, although it contains (at Appendix D) a copy of a newspaper notice advertising 3 public consultation events, dated 10 days in advance of the first of them, apparently as evidence of compliance with regulation 7(2)(b) and (3) of the 2013 Regulations, the PAC Report contains no similar evidence that any consultees were actually sent copies of the Notice, so it is not clear that the Applicants definitely complied with the requirement of regulation 7(1) of the 2013 Regulations, namely that the relevant community council be given a copy of the proposal-of-application notice. If you hold documentary evidence that it was, **please provide me by return with a copy, or upload a copy to the application website as soon as possible.** If you do not hold such evidence, **my client asks you to follow this up with the Applicants in order to fully satisfy yourselves and the public that these requirements were definitely met.** As you know, any failure to comply

with statutory procedural requirements, particular as regards public consultation, is capable of undermining the whole application process.

On behalf of my client, I reserve the right to comment further on the Application once you have responded to the above request.

Misleading report of pre-application consultation

The PAC Report states, at paragraph 3.2.2, that 385 questionnaires were completed during the pre-application consultation, but it exaggerates the level of support for the Proposal that this feedback provided. For example, at paragraph 3.2.6, it states that 55% of respondents welcomed the proposals, but the comments listed below include concerns about impacts on public access, landscape, environment and community. The figure of 55% thus includes respondents who can be described as offering at best qualified support.

Likewise, the comments extracted from questionnaires and quoted at paragraphs 3.2.9, 3.2.11, 3.2.13, 3.2.14, 3.2.15 and 3.2.16 demonstrate in some cases only qualified support for the aspects of the Proposal under discussion. This is not reflected in the bare percentages, which all imply majority support for those aspects. My client considers this misleading, especially given the additional feedback listed at paragraph 3.2.21: out of 41 comments quoted, 24 are negative, 15 are neutral, and only 2 are positive – less than 5% support, but for some reason this bare percentage is not included. **The planning officer's report on the Application should therefore advise members to disregard all the percentage figures.**

1(b) Flaws in the application process

Regulation 15 of the 2013 Regulations requires the applicant for planning permission to give prior notice to any owners or agricultural tenants of land to which the application relates. I understand that you own some of the land to which the Application relates, and should therefore have received such a notice. The application form, which would include a certificate that this was done and which is usually available for the public to see on an application website, is not available in respect of the Application, so **please provide me by return with a copy, or upload a copy to the application website as soon as possible.**

The Application was lodged on 4 May 2018, accompanied by the PAC Report, an environmental statement (“the Environmental Statement”), a planning statement (“the Planning Statement”) and other supporting information.

Regulation 17 of the 2011 Regulations and regulation 18 of the 2013 Regulations require that the planning authority notify neighbours when it receives an environmental statement and, respectively, a planning application. The application website contains a list of properties to which notification of the Application is said to have been sent on 11 May 2018, but no copy of an actual notification that might demonstrate that this was done correctly. Again, **please provide me by return with a copy of a neighbour notification, or upload a copy to the application website as soon as possible.**

On behalf of my client, I reserve the right to comment further on the Application once you have responded to the above request.

Misleading advertisement of the Environmental Statement

Regulation 18 of the 2011 Regulations and regulation 20 of the 2013 Regulations require that the planning authority publish a notice in a local newspaper giving details of the environmental statement and, respectively, the planning application. For environmental statements, a notice must also be published in the Edinburgh Gazette. The notice you published in the Dumbarton & Vale of Leven Reporter and in the Edinburgh Gazette on 29 May 2018 under the 2011 Regulations, that was meant to be about the Environmental Statement, erroneously stated that “additional information in relation to an environmental statement” had been submitted, and that a copy of the so-called ‘additional information’ could be examined online. This was misleading, as it might have given members of the public the impression that the Environmental Statement had been received and advertised earlier, that they had missed the opportunity to comment on it, and potentially, that there was little point in commenting on additional information if they had not commented already on the Environmental Statement itself. The notice was also incorrectly said to have been given under regulation 17 of the 2011 Regulations, rather than regulation 18.

Regulation 19 of the 2011 Regulations and regulation 25 of the 2013 Regulations require that the planning authority consult specified statutory bodies. Following this consultation, you wrote to the Applicants’ agent on 8 August 2018 under regulation 23 of the 2011 Regulations to require additional information. The Applicants submitted additional information with a letter dated 15 April 2019, stating that the Proposal had been amended in light of comments by you and the statutory consultees.

According to documents on the application website, neighbouring properties were re-notified on 17 April 2019 and the additional information was advertised on 23 April 2019, as required by regulation 24 of the 2011 Regulations. However, again, no copy of an actual neighbour notification is available on the application website, to demonstrate that this was done correctly. Again, **please provide me by return with a copy of a neighbour re-notification referring to the additional information, or upload a copy to the application website as soon as possible.**

Again, I reserve the right to comment further on the Application once you have responded to the above request.

2. Flaws in the Environmental Statement

Early passages in the Environmental Statement (ES) set out how EIA is supposed to work in relation to an application for planning permission in principle (referred to as “PPiP”), in which much of the detailed design work has still to be done. Paragraph 1.4.3 says:

“As the Applicants are seeking PPiP rather than full planning permission, at this stage the proposed development comprises a suite of key parameters, within which the detailed design of the proposed development will be confirmed later. This EIA has therefore adopted a Rochdale Envelope approach to assess likely significant effects on the environment from the key parameters of the proposed development. Providing that the final design remains within these key parameters, this approach ensures that the likely ‘worse case’ effects can be considered when determining the PPiP application for the proposed development.”

Paragraph 1.9.1 explains: *“Chapters 6-14 comprise the technical assessment chapters which document the aspects of the environment likely to be significantly affected by the proposed development and describes the likely significant effects of the proposed development (Ecology and Woodland; Traffic and Transport; Noise and Vibration; Air Quality; Water, Hydrology and Flood Risk; Ground Conditions and Geology; Landscape and Visual; Archaeology and Cultural Heritage; Socio-economics, Tourism, Recreation and Public Access)”*.

Paragraph 3.2.3 confirms that each of the technical assessments in Chapters 6-14 is supposed to assess *“the likely worst case effects from the construction and operation of the proposed development according to the defined key parameters.”*

Paragraph 3.8.1 explains that *“in line with EIA best practice”*, certain mitigation measures are *“incorporated into the proposed development from the outset”* and referred to as *“embedded mitigation measures.”*

Paragraph 3.8.3 states that *“the embedded mitigation measures of relevance to each technical assessment are listed in **Subsection 6 – Embedded Mitigation** and have been taken account of within the assessments presented in **subsection 7 – Potential Effects**”*.

Paragraph 3.8.4 then states: *“Further specific mitigation has also been identified where necessary This ‘further mitigation and enhancement’ is identified in **Subsection 8 – Further Mitigation and Enhancement** of Chapters 6-14”*.

Once further mitigation measures have been taken into account, the ‘residual effects’ are described in subsection 9 of each chapter, and an assessment is made of their significance. Subsection 10 of each chapter then covers monitoring of residual effects, and subsection 11 is an assessment of cumulative effects.

However, not all of the technical assessment chapters of the ES live up to these expectations. Chapters 7-14 contain subsections covering Embedded Mitigation, Potential Effects, Further Mitigation and Enhancement, and Residual Effects, but Chapter 6, on Ecology and Woodland, contains no subsection on Potential Effects.

This is far from being an academic omission. When only the residual effects are presented, it creates the impression of a lower risk profile from the Site than actually exists, so it is extremely misleading.

Meanwhile, only 4 of the 9 technical assessment chapters contain subsections covering Monitoring of Residual Effects and Assessment of Cumulative Effects. Monitoring of

Residual Effects is absent from Chapters 6, 10 and 11, while Assessment of Cumulative Effects is missing from Chapters 7, 9 and 11.

These are just the glaring omissions. At a more detailed level, the Applicants have used the excuse of this being a PPIp application to justify an incomplete noise assessment.

In the subsection on Potential Effects in Chapter 8 (Noise and Vibration), paragraph 8.8.1 states: *“At the time of writing, the development is at the Planning Permission in Principle (PPIp) stage and detailed design and construction methods have not yet been determined, as such, noise assessment is not possible at this stage”*, while for the operational phase, paragraph 8.8.3 says: *“There is the potential for commercial/entertainment noise from the proposed development to impact on future residents within resort accommodation, and on existing residents in the area surrounding the development. At the time of writing the development is at the PPIp/ masterplan stage, therefore detailed design information on proposed commercial/ entertainment noise sources is not available.”*

Far from ensuring that *“the likely ‘worse case’ effects can be considered when determining the PPIp application for the proposed development”*, as their own ES says, the Applicants have opted to exclude any construction phase noise from their assessment at the PPIp stage, and to assess only road traffic noise during the operational phase.

Modelling was used to predict traffic noise levels during operation. It would have been quite feasible to model noise emissions from construction plant and equipment based on manufacturers’ data and to include predicted construction traffic noise from similar developments. For the operational phase, it would have been possible to include predicted commercial/entertainment noise emissions from similar developments.

Finally, in terms of factors not covered in the ES, paragraph 8.4.4 says that *“Vibration was scoped out of the assessment because it is considered not to be an issue”*. This suggests it is not even to be assessed at the detailed planning application stage. This is an odd decision, given that piling of foundations is being considered. Paragraph 11.6.4 states:

“Piled foundations are likely to be required where strip or pad foundation depth becomes excessively deep, where the size of the foundation becomes excessively large, or where the magnitude of predicted settlements for pad or strip footings is unacceptable. It is therefore anticipated that medium and heavily loaded structures or structures that are sensitive to total and/or differential settlements such as the pool and leisure facility, budget accommodation and hotel will require piled foundations.”

Paragraph 11.6.1 states: *“Where the Made Ground or Alluvium is greater than 1.5m to 2.0m thick, it may be uneconomical to adopt a traditional pad or deep strip foundation solution, and therefore consideration should be given to Vibrated Concrete Columns (VCC’s) or a piled foundation solution”*. Vibration must be assessed as part of the EIA for the Proposal.

You could have corrected these omissions by including them with your request for additional information in August 2018, but unfortunately you failed to do so. Without all the environmental information, you as competent authority in terms of the EIA Directive will be unable to come to a fully reasoned decision on the Application.

Habitats Directive

The Applicants' ecological impact assessment (Appendix 6.5 to the ES) states that the Endrick Water Special Area of Conservation (SAC), designated under the Habitats Directive for two species of lamprey and Atlantic salmon, is hydrologically connected to the Site. The Site is also adjacent to the River Leven, which is the sole entry and exit point to Loch Lomond – and hence to that SAC – for migratory salmon heading for and returning from the Atlantic. The ES acknowledges the risk of pollution of the River Leven, particularly during construction works, yet Scottish Natural Heritage (SNH) has stated in its consultation response dated 15 June 2018: *“There are no designated sites affected by this proposal (eg Sites of Special Scientific Interest or European designated sites).”* Yet if there were a major pollution event whilst salmon are present in the River Leven, the SAC would certainly be affected, so it is hard to see how SNH has been able to reach that conclusion.

My client considers that such an incident poses a real risk to Atlantic salmon, one of the qualifying interests of the Endrick Water SAC, and that you are therefore required to conduct an appropriate assessment under Article 6 of the Habitats Directive. He notes that SNH provided a similar opinion about the Applicants' EIA scoping report in 2017, so perhaps the Applicants cannot be blamed for this apparent omission, but **my client asks you to approach SNH again for confirmation of its position on this specific point.**

3. Non-conformity with the Local Development Plan

The foundation of a plan-led system is the primacy of the development plan. Section 37 of the Act requires every planning authority, in dealing with any planning application, to *“have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”*, and section 25 (headed ‘Status of Development Plan’) explains what ‘having regard to’ the plan means: *“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise, to be made in accordance with that plan”*.

The Planning Statement, at paragraph 3.5.2, claims that *“Section 5 of this Statement demonstrates that in relation to the planning matters addressed in this Statement, the proposed development accords with the Development Plan. This Statement also demonstrates that there are no material considerations which indicate that planning permission should not be granted.”* By erroneously and repeatedly asserting that the Proposal is “in conformity with the Local Development Plan”, the Planning Statement sets itself up to fail: the Proposal is patently not in conformity with the LDP, as the following paragraphs will demonstrate, so the Planning Statement should, if anything, have used material considerations to indicate that planning permission should be granted. Although it lists material considerations relevant to the Application, the Applicants make no attempt to use them to justify the proposed departure from the provisions of the LDP.

To be “in accordance with the development plan”, a proposal must not only be situated on land allocated in the LDP for the proposed use or uses, it must also comply with the relevant policies in the LDP. I consider each of these in turn, as follows.

Allocations of land

The LDP states, on page 16, that it includes “existing sites ... that have yet to be developed.” Three of these pre-existing allocations in Balloch are directly relevant to the Application. They are shown on pages 53-55 of the LDP and described there as follows:

- MU1 – The Old Station – 0.8 hectares (ha) allocated for mixed use of visitor experience and transport;
- VE1 – West Riverside – 11.61 ha allocated for visitor experience (only); and
- VE4 – Woodbank House – 9.51 ha allocated for visitor experience (only).

The total area of these allocations is 21.92 ha.

My client acknowledges that these 3 allocations have been a settled part of the local development plan for many years, and that Balloch is identified in the LDP as a Strategic Tourism Opportunity. They have no objection in principle to sensitive development of any of the 3 allocations, of suitable quality for a national park and of appropriate scale for each site, and that unquestionably meets the definition of sustainable development. They would actively support such development if it was community-led. However the Proposal is none of these things; for a start, it is simply far too large.

The Planning Statement states that the total area of the site of the Application (“the Site”) is about 33.5 ha¹. This includes all of the 3 LDP allocations, apart from:

- a) the eastern part of The Old Station which has an area of roughly 0.2 ha; and
- b) a strip between the A82 trunk road and Woodbank House measuring 2.0-2.5 ha.

Subtracting these from the total area of the 3 allocations listed above, the total area of LDP allocations included in the Site is at most 19.7 ha. This means that the area of the Site not covered by LDP allocations is at least 13.8 ha, or over 40% of the total area of the Site, making the Application significantly contrary to the LDP.

The same Planning Statement does not confront the fact that nearly half the Site is not allocated for any kind of development; it does not even mention it. It simply repeats, five times, that “the majority” of the proposed development is allocated for visitor experience in the LDP, and makes no attempt at all to justify development of the remainder of the Site in the absence of an appropriate land use allocation. This omission tacitly recognises that there are no material considerations that can justify such development.

The Environmental Statement is even more cavalier with the facts, not even using the word “majority”. A paragraph about the whole site ends with this sentence: “*It is noted that the site is allocated for development for visitor experience related uses within the adopted Loch*

¹ The Environmental Statement says the Site is 35.5ha in area. The non-technical summary includes both figures. This submission assumes that the Planning Statement is right, but this needs to be clarified.

Lomond and the Trossachs LDP (2016)” (ES Addendum, main report, paragraph 12.12.2). This statement is all the more misleading as it follows a sentence about Drumkinnon Wood, almost all of which falls outwith any LDP allocation.

The non-technical summary of the Environmental Statement is even worse. Paragraph 6.8.4, in its entirety, reads:

“Drumkinnon Woods appears well used by local residents and although classed as ancient woodland it visually appears to be in relatively poor condition. It is noted that the site is allocated for development for visitor experience related uses within the adopted Loch Lomond and the Trossachs LDP (2016).”

In this case, “the site” can only be a reference to Drumkinnon Wood, only a small part of which is included in the West Riverside allocation. Even if this is a simple mistake, it casts doubt on the accuracy of the Applicants’ documents.

To be clear, the following specific elements of the Proposal – all in Zone D on the updated parameters plan submitted last month (“the Parameters Plan”) – are not covered by any LDP allocation:

- all of the L-shaped area of managed woodland west of Drumkinnon Bay, as well as two smaller areas of managed woodland east of Ben Lomond Way, all labelled 4b (on the Parameters Plan) and together measuring very roughly 6 ha;
- all but the north-east strip of Drumkinnon Wood, intended for forest lodges and visitor attractions, labelled respectively 3b and 8, and measuring very roughly 5 ha;
- the boathouse on the shore of Loch Lomond west of Drumkinnon Bay, labelled 3c;
- almost all of the multi-use public realm area behind Drumkinnon Tower, labelled 7;
- the site entrance building beside the ‘Loch Lomond Shores’ car-park, labelled 9;
- the staff and service building beside Ben Lomond Way, labelled 10; and
- the southern part of the car park behind the buildings on Pier Road, shaded brown.

All of these proposed developments are clearly contrary to the development plan, because they are located on land not allocated for development in the LDP. As stated above, they represent over 40% of the Site.

As for the particular elements within the three listed LDP allocations, it is clear that the area of proposed residential housing within the grounds of Woodbank House, labelled 12 on the Parameters Plan, is located on land allocated for a use other than residential housing, and is therefore not in accordance with the development plan.

Most local development plans include detail about design principles or other requirements for specified allocations, making it is possible to consider planning applications against those requirements. However, as stated by the Applicants in paragraph 5.3.5 of the Environmental Statement, after listing the 3 relevant allocations in the LDP, *“no details are provided ... regarding development requirements or design principles for these LDP site allocations”*.

One of the 3 relevant allocations, VE1, does contain some further detail in the form of symbols and/or captions, some of which seem prescriptive (e.g. *“Link Balloch town centre to*

Loch Lomond Shores” and the barely visible “*Maintain access*”), others merely descriptive (e.g. “*Sensitive river frontage*” and “*Maid of the Loch*”), but these labels are not explained anywhere, so it is not clear what their purpose is.

It is surprising, and highly regrettable, that the LDP is so vague and lacking in detail, considering it concerns one of Scotland’s only two national parks and was compiled by the authority with statutory responsibility for protecting it. It is not fit for purpose.

In the absence of design principles or allocation-specific development requirements in the LDP, the only measure for assessing the Application qualitatively against any of these LDP allocations is the term ‘visitor experience’, which appears to be defined, on page 10 of the LDP, as “*a high quality, authentic experience for visitors, with many opportunities to appreciate and enjoy the natural and cultural heritage within an internationally renowned landscape that compares to the best on offer around the world*”. There is no indication of what “high quality” entails, nor what “authentic” means, but the context suggests that it might mean “in keeping with the special qualities (i.e. “*natural and cultural heritage within an internationally renowned landscape*”) of the National Park”. If this is the case, many elements of the Proposal are neither “high quality” nor “authentic”, and therefore not in accordance with the development plan.

LDP policies

The Proposal fails to meet many of the LDP policies, including the following:

(a) Overarching Policy 1

The first two elements of this policy are that development should contribute (i) to the collective achievement of the 4 aims of the National Parks (Scotland) Act”, bearing in mind the requirement of section 9(6) of that Act (see undernote to this letter), and (ii) to sustainable development.

By destroying parts of Drumkinnon Wood, which is the most notable remaining feature of the natural heritage of the National Park between Loch Lomond and the village of Balloch, and permanently disturbing the wildlife species that use it as habitat, the Proposal fails the first aim, which is “*to conserve and enhance the natural and cultural heritage of the area*”.

By scattering holiday accommodation throughout parts of the Site that are now popular and well used for informal public access, education and enjoyment by residents of Balloch and other occasional visitors, the Proposal will inevitable privatise any “*understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities*” of that part of the National Park, instead of promoting them “*to the public*”, as required by the third aim – if indeed those special qualities are to survive at all.

By jeopardising those special qualities in that part of the National Park, through felling of trees and permanent wildlife disturbance, the Proposal undermines the “*sustainable use of the natural resources of the area*”, instead of promoting it, as the second aim requires.

And in the event that the surviving habitat deteriorates over time, leading to the dwindling attractiveness of the area and the consequent commercial failure of the Proposal, it will also

have undermined the “*sustainable economic and social development of the area’s communities*”, in breach of the fourth aim.

It hardly needs saying that the Proposal will almost certainly fail to contribute to sustainable development, and future generations will again ask what their forebears were thinking of.

(b) Overarching Policy 2

The Proposal deals with the primary aim of this policy, that “*development proposals should not conflict with nearby land uses*”, by taking over the nearby land, Drumkinnon Wood, with its incompatible uses, and including it in the development. The Proposal fails to “*safeguard visual amenity and important views*”, to “*avoid any significant adverse impacts*”, to “*protect biodiversity*”, or to “*support public transport use over car use*”. Even if the Applicants’ do all they can to “*safeguard access rights*”, as they promise, the placing of holiday lodges throughout large parts of the site will inevitably disrupt public access to those parts.

(c) Housing Policy 2

My client opposes in principle the housing element of the Proposal, because none of the 3 relevant LDP allocations are for housing development. But if housing is to be permitted, then detailed housing policy must be followed. Balloch is identified in the Affordable Housing Requirements map on page 24 of the LDP as requiring at least 25% affordable provision for developments of 4 houses or more (with no scope for an equivalent financial contribution), but the Proposal includes no such provision at all.

(b) Visitor Experience Policy 2

The Planning Statement summarises this policy as requiring tourism development proposals to “*enhance the visitor experience of the National Park*”, but omits to mention that the policy also requires such development to “*offer a bespoke and high quality product*”. My client doubts whether an apart-hotel, an indoor water park and a treetop walkway – in addition to one already in use on the other side of the Lomond Shores car-park – can be said to satisfy either of these requirements.

(c) Transport Policy 2

According to the Planning Statement, the Proposal “*will enhance existing path networks*”, thereby satisfying the requirement for all development proposals to “*make a positive contribution towards encouraging safe, sustainable travel and improving active travel options throughout the Park*”. Of far greater significance is the provision of an additional 291 car-parking spaces as part of the Proposal, which is patently in conflict with this policy.

(d) Natural Environment Policy 1

“*Development will protect the special landscape qualities of the National Park*” and proposals will have to “*be sympathetic to their setting and minimise visual impact*”, yet the amended Landscape and Visual Impact Assessment concludes that the Site itself would experience major adverse localised landscape effects during construction work, dropping to moderate during operation, and that receptors at 4 different locations would face major

adverse visual effects during construction works, in one case continuing during operation, but otherwise dropping to moderate during operation, all in breach of this policy.

(e) Natural Environment Policy 2

As stated in the previous section, my client considers that there is some likelihood that Endrick Water Special Area of Conservation will be significantly affected if the cumulative effects mentioned in the first half of paragraph 6.9 of the Environmental Statement occur while Atlantic salmon or river lamprey are present in the River Leven, so this policy will be breached if you do not conduct an appropriate assessment, in terms of Article 6 of the EU Habitats Directive, of the Proposal's implications for that European site.

(f) Natural Environment Policy 4

Otter is a species listed in schedule 2 of the Conservation (Natural Habitats &c.) Regulations 1994 (a "European Protected Species") that is known to occur in the vicinity of the Site, and Atlantic salmon, river lamprey and pine marten, which also occur there, are all protected under schedule 3 of those Regulations, so this policy will be breached if you do not satisfy yourselves before granting planning permission that the Proposal represents "imperative reasons of overriding public interest" for adversely affecting any of those species. The Applicant has made no attempt to justify the impacts of the Proposal in these terms.

(g) Natural Environment Policy 8

The Proposal includes the removal of 0.75 ha long-established woodland of plantation origin (LEPO), 2.73 ha broadleaved semi-natural woodland and 0.86 ha broadleaved plantation woodland, totalling 4.34 ha woodland loss across the Site. This policy says that proposal that result in such loss or deterioration of woodland will not be supported unless they bring overriding public benefits. Again, the Applicant has made no attempt to justify any derogation from this policy. There may be some limited public benefits from the Proposal, e.g. in the form of jobs for local people, but these can in no way be described as overriding.

(h) Open Space Policy 2

This policy provides for the protection from development of "formal and informal open space ... in public or private ownership ... unless it can be demonstrated that ... the open space is not of community value and has no other multifunctional purposes such as cultural, historical, biodiversity or local amenity value". Many parts of the Site consist of informal open space that is of immense value to the community and fulfils most of the stated purposes, so the Proposal is very clearly in conflict with this policy.

Conclusion

For all the above planning reasons, my client considers that you should refuse the Application.

Conflict between National Park aims

Furthermore, in this instance there is an irreconcilable conflict, in terms of section 9(6) of the National Parks (Scotland) Act 2000 (“the 2000 Act”) (see undernote), between the National Park aim of conserving and enhancing the natural heritage of the area and the other National Park aims of promoting public enjoyment (in the form of recreation) of the special qualities of the area and promoting sustainable economic and social development of the area’s communities, meaning that greater weight must be given to the first above-mentioned National Park aim, and the application should be refused.

Conflict of interest

However, if you propose to approve the Application, please note that, in my client’s opinion, the Proposal represents, in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, “*development to be located on land wholly or partly in the planning authority’s ownership or in which it has an interest, in circumstances where the proposed development would be significantly contrary to the development plan for the area*”, so you are obliged by that Direction to notify the Scottish Ministers about the Application and defer granting planning permission until they have had the opportunity to consider calling it in under section 46 of the Act.

If you decide not to refuse the application, my client will be forced to consider further action, including:

- (a) asking the Scottish Ministers to exercise their powers under section 46 of the Act to call in the Application and determine it themselves; and/or
- (b) petitioning the Court of Session for judicial review of your decision, and/or
- (c) complaining to the European Commission about an infringement by the UK of the EIA Directive and the Habitats Directive.

I look forward to hearing from you as soon as possible.

Yours faithfully

Ian Cowan
on behalf of Ross Greer MSP

Undernote referred to:

The National Parks (Scotland) Act 2000

Section 1 of the 2000 Act sets out the National Park aims, which are:

*“(a) to conserve and enhance the natural and cultural heritage of the area
(b) to promote sustainable use of the natural resources of the area,
(c) to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and
(d) to promote sustainable economic and social development of the area’s communities.”*

Section 9(1) of the 2000 Act sets out the general purpose of a National Park authority, which is *“to ensure that the National Park aims are collectively achieved in relation to the National Park in a co-ordinated way”*.

Section 9(6) of the 2000 Act provides:

“In exercising its functions a National Park authority must act with a view to accomplishing the purpose set out in subsection (1); but if, in relation to any matter, it appears to the authority that there is a conflict between the National Park aim set out in section 1(a) and other National Park aims, the authority must give greater weight to the aim set out in section 1(a).”