



Scottish Natural Heritage

All of nature for all of Scotland

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Planning
Loch Lomond & The Trossachs National Park
Authority
Carrochan
20 Carrochan Road
Balloch
G83 8EG

Your ref:

Our ref:

Date: 30 April 2010

Dear Grant,

EAST LOCH LOMOND CAMPING BYELAWS CONSULTATION – FEBRUARY/MAY 2010

Thank you for consulting Scottish Natural Heritage over the East Loch Lomond Camping Byelaws.

SNH is a statutory consultee for any byelaw proposals under Section 12 of the Land Reform (Scotland) Act 2003. We have therefore considered the current consultation from a national perspective, adopting a consistent approach to our assessment of cases across the country and reflecting good practice in access and visitor management within Scottish access rights.

We acknowledge that there is a history of anti-social behaviour on East Loch Lomond and that this, combined with the sheer numbers of visitors camping in the area, has led to significant impacts on the environment as well as incidences of criminal damage. We recognise the excellent work the National Park Authority (NPA) and its partners have undertaken in addressing these problems, for example through Operation Ironworks. We encourage ongoing effort based on positive management and education as, in most circumstances, these provide better long term solutions than regulatory approaches. However, we also recognise that the scale of the problems on East Loch Lomond and the long established behaviour patterns, are such that a more determined approach is needed to underpin a series of measures to effect a long-term change in visitor behaviour. The achievement of the desired management objectives will be dependent on being able to commit significant resources, particularly during the early years of a new approach, to deliver an effective implementation programme.

SNH supports, in principle, the National Park Authority's proposal to introduce a camping byelaw for East Loch Lomond. However our support is conditional on the adequate provision of informal camping within the restricted area being fully operational before the date byelaws come into effect. Plans have been drafted to develop the site at Salloch. However, the issues relating to the development of informal camping 'pods' within the Loch Lomond Woods Special Area of Conservation and Rowardennan Woodlands Site of Special Scientific Interest have not been concluded, and final plans, budgets and site management arrangements have not been fully agreed and received all necessary approvals. Any delay in the provision of the informal camping facilities will necessitate a delay to the commencement date stated in the Park Authority's application to Ministers for confirmation of the proposed byelaws.



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We would also like to make the following comments on the proposed camping byelaws.

- We are supportive of the use of byelaws to underpin positive visitor management. In this case, a key element of this management is informal camping provision. However, it is essential that the level of provision is reasonable and adequate. The number and capacity of planned informal campsites is limited in comparison to current levels of use at Sallochy and other nearby locations; this is an inevitable consequence of pursuing the management objective to reduce the sheer volume of overnight visitors. However, from the consultation paper and through our involvement in the East Loch Lomond Visitor Management Group, we understand that there will be a significant reduction in provision and opportunities for people to experience the countryside. Managing this mis-match between supply and demand could be a significant challenge in implementing the proposed byelaws. We strongly recommend that the NPA makes an assessment of what would be an appropriate level of provision and gives serious consideration to additional sites or capacity for informal camping areas within the Restricted Zone, or works with commercial operators to increase the level of formal provision in the park. We would view this as an essential part of the case which seeks to justify the use of byelaws.
- We are also concerned over the potential impact of camping byelaws on other users such as West Highland Way walkers and campers. Again, we wish to see adequate informal camping provision in place before the byelaws are enacted to minimise this impact.
- We note that the proposed drinking byelaw is likely to be implemented prior to the introduction of a camping byelaw. Alcohol is a key factor contributing to anti-social behaviour on East Loch Lomond but it is also a motivating factor that contributes to the number of people who come to the area and camp. Whilst there is an argument for simultaneous implementation to ease communication of the new arrangements to visitors, our preferred approach is that the NPA should assess the effect of the alcohol byelaw before proceeding with the camping byelaw. We recommend that the NPA gives careful consideration to the relative timing for these two management measures.
- We are concerned that the introduction of byelaws in East Loch Lomond may lead to displacement of informal camping activity, and consequent problems associated with numbers and anti-social behaviour, to other locations both within and outside the National Park. We recommend that the NPA undertakes a proactive approach to monitoring the use and impacts at sites affected by displacement. Whilst we recognise that similar visitor pressure and problems of informal camping and associated irresponsible and anti-social behaviour currently occur in other areas both within and outside the National Park, our support, in principle, for byelaws for East Loch Lomond should not be viewed as a presumption that we will support byelaws being rolled out into other areas as we will deal with any subsequent proposals on a case-by-case basis.
- We are concerned about displacement of informal camping within the Loch Lomond National Nature Reserve (NNR). The camping byelaw boundary follows that of the proposed alcohol byelaw and whilst we recognise this makes implementation and enforcement of both byelaws easier, we believe there is a strong case to extend the camping byelaw boundary. At present the boundary includes part of the NNR along the loch shore to the north of Crom Mhin but does not follow a clearly identifiable feature. The area south of this line is affected by informal camping, as identified on page seven of the consultation document. Our concern is that displacement of informal camping further south will have an impact on the natural heritage of the area (designated as a Site of Special Scientific Interest for breeding birds which are sensitive to disturbance in spring and summer) and consequently on other people's

ability to enjoy the NNR. **We recommend that the boundary of the camping byelaw is adjusted to follow the line of the River Endrick as outlined in blue in Map 1, below.**

- We recommend that the NPA gives consideration to the proposal for byelaws being progressed solely under the provisions of Schedule 2, Section 8 of the National Parks (Scotland) Act 2000. We view the management issue being addressed (visitor pressure) as being more consistent with the purposes of the byelaw-making powers available under the National Parks (Scotland) Act 2000. Progressing the byelaws jointly under Section 12 of the Land Reform (Scotland) Act 2003 may create unnecessary complications at the enforcement stage regarding the relationship between camping being undertaken under access rights and with other legislation covering encampment outwith access rights. We recommend that the NPA takes legal advice on this issue before progressing the proposal for byelaws.

Further comments on the proposal, wording and scope of the proposed byelaws are in the attached Annexes. **Annex A** contains our more detailed comments on the proposal and aims to provide helpful advice with regard to the content of the final submission to Ministers to seek confirmation of the proposed byelaws. **Annex B** contains comments on the wording and scope of the proposed byelaws and suggested amendments to the text of the byelaws.

SNH staff have already met with you and would be happy to meet you or your colleagues again to discuss our response in more detail or to provide advice on the case prior to your final submission to Ministers to seek confirmation of the proposed byelaws.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Zoe Kemp', written in a cursive style.

Zoe Kemp
Operations Manager

Annex A: Detailed Comments on the Proposal for Byelaws

SNH is a statutory consultee for any byelaw proposals under Section 12 of the Land Reform (Scotland) Act 2003 and as such we have considered the current consultation from a national perspective, adopting a consistent approach to our assessment of such cases. In particular, we note the Scottish Executive Guidance for Local Authorities and National Park Authorities (2005) which states that Authorities “*must, at all times, have regard to their general duty under Section 13 of the Act to uphold the exercise of access rights*” and “*In general, byelaws should be limited to those specific areas where a need has arisen, rather than be applied over extensive areas on a precautionary basis*”.

Byelaws are a valid management tool which may be appropriate in a limited number of situations. Where byelaws are proposed, the case put forward must be comprehensive and specific to the circumstances of the site in terms of the issues being experienced and their context, the management needs, the reasons to choose byelaws, the legal basis and the specific text of the byelaws, as well as the wider management package and issues relating to byelaw implementation.

The case for byelaw proposals needs to demonstrate that there are genuine and specific local problems and that they merit criminal sanctions. As well as the impact of a minority of trouble-makers, the sites (particularly at Salloch) are also being affected by the sheer volume of use which is beyond the capacity of these sites for informal camping. This point is understated in the consultation paper.

We recommend that this point be made more clearly in the final submission to Ministers to seek confirmation of the proposed byelaws.

In terms of evidence of the issues associated with informal camping, the data provided in the consultation paper on recorded overnight vehicles at three key sites show high numbers for the summers of 2007, 2008 and 2009, particularly at Salloch and Rowardennan, with the main variation between years presumably being caused by the vagaries of the summer weather. Apart from this data, the other evidence is from the NPA Ranger Service and Central Scotland Police, and presumably relates to reported site degradation, volumes of litter collected and removed from site, and incidents of extreme behaviour such as burning of cars etc – none of which is quantified in the consultation paper.

We recommend this additional evidence is quantified and included in the final submission to Ministers to seek confirmation of the proposed byelaws.

It is an established principle that proposed byelaws should not duplicate or conflict with existing legislation / byelaws. In this case, the relationship between the proposed byelaws and the Trespass (Scotland) Act 1865, as amended by the Land Reform (Scotland) Act 2003, needs careful consideration, as does the proposed use of the term “encampment”.

The case for byelaw proposals needs to demonstrate that previous management methods have been ineffective and present a clear rationale for the use of byelaws. The consultation paper states that Operation Ironworks has been an effective enforcement mechanism, but evidently it has not influenced the key target audience of the antisocial minority. The consideration of other management options, and the reasons for choosing byelaws has not been fully presented in the consultation document.

We recommend that the final submission to Ministers to seek confirmation of the proposed byelaws should include a fuller review of the effectiveness of previous methods, and a more detailed description of the specific circumstances of the case which lead the NPA to consider that byelaws are the best and most appropriate management mechanism.

The case for byelaw proposals needs to demonstrate that the proposed byelaws are appropriate and proportionate to the impact. The spatial extent proposed for the Restricted Zone under the camping byelaws coincides with the drinking byelaws proposed by Stirling Council. As we understand it, this coincidence has been proposed largely for pragmatic reasons as it is envisaged to offer simpler implementation of both byelaws, recognising that whilst drinking occurs close to Drymen, there is little informal camping this far from the loch shore. However, it is recognised that some local displacement of informal camping may take place. If the spatial extent of the Restricted Zone is in part in anticipation of the likely displacement of informal camping, this should be made clear.

The camping byelaws will prohibit camping throughout the year, however the majority of incidences of anti-social and criminal behaviour and problems caused due to the numbers of informal campers occur within the summer months. As we understand it, the year-round prohibition is again a pragmatic solution as it is envisaged to offer advantages in terms of implementation.

We recommend that the final submission to Ministers to seek confirmation of the proposed byelaws should include a fuller explanation of the reasons for the spatial and temporal extent of the proposed byelaws.

The case for byelaw proposals needs to demonstrate that the proposed byelaws are part of a wider programme of measures which will be implemented alongside the enforcement of byelaws. There are a number of implementation issues associated with the proposal for byelaws which we have identified:

- the proposed outdoor drinking byelaw;
- the provision of alternative informal camping provision, including the requirement for the necessary ecological assessments for any proposals that may affect designated sites;
- the likelihood of displacement of informal camping activity to other locations;
- the management of applications for permission to camp, as per clause 8 of the proposed byelaws;
- the need for an integrated communications programme;
- staff resources required to enforce the byelaws.

Many of these issues are referred to in the consultation paper, but plans for future implementation are not adequately explained. We are aware, through our involvement in the East Loch Lomond Visitor Management Group and other recent discussions, that further information on implementation is available, but feel that it is important that these points are made more strongly as part of the case for byelaw proposals.

We recommend that the final submission to Ministers to seek confirmation of the proposed byelaws should include a fuller description of the planned implementation programme, including the associated timings and potential risks.

Annex B: Comments on and Suggested Edits to the Proposed Byelaws

SNH acknowledges that this proposal is intended to be a valid application of the powers and purposes under the two Acts: National Parks (Scotland) Act 2000 and the Land Reform (Scotland) Act 2003. The view of the NPA that camping falls within the definition of “recreational activity” under Section 8(2)(e) of Schedule 2 of the NP(S)A 2000, is agreed.

In the introductory paragraph of the proposed byelaws, we have suggested deleting the reference to sections of the Local Government (Scotland) Act for two reasons. Firstly, those sections are not byelaw-making powers, but rather are provisions about the procedures to which the authority must conform. Secondly, those sections are in any case contained within the relevant sections of both the Land Reform (Scotland) Act 2003 and the National Parks (Scotland) Act 2000. In the same paragraph, we have inserted ‘Schedule 2’ as Sections 8 and 9 of the main body of the Act do not contain byelaw-making powers.

We have the following more detailed comments on the proposed byelaws; see **yellow highlights** in draft byelaw text below.

- The term “encampment” – we recommend that this term is either clearly defined, or preferably avoided. For example, you can pitch a tent, but how do you ‘pitch’ an encampment, as in 3a? If the encampment is something ‘within’ which there is a tent, what constitutes the encampment as distinct from the tent? Could you even put the tent ‘outwith’ the encampment, so as to avoid the byelaws?. We suggest it would be better to avoid the term ‘encampment’ and use in 3a the same phrase as in 3b. As stated in Annex A, an added benefit of this change is that it would help reduce the duplication with the ‘encamping’ term used in the Trespass (Scotland) Act 1865.
- The phrase “...or other form of shelter...” – this could perhaps be interpreted as banning the use of fishermen’s umbrellas, or sunbathers’ windbreaks, which we envisage are probably outside the intended scope of the byelaws. We suggest that this issue could be dealt with, either by adding a suitable extra clause to the Exemptions, or by using an alternative phrase ‘or other similar structure’.

We have also made some suggested edits for the proposed byelaws underlined in blue below.

Proposed East Loch Lomond Camping Byelaws

Loch Lomond & The Trossachs National Park Authority, constituted under the National Parks (Scotland) Act 2000 and the Loch Lomond & The Trossachs National Park Authority Designation, Transitional and Consequential Provisions (Scotland) Order 2002, and having its principal offices at Carrochan, Carrochan Road, Balloch, G83 8EG (“the Authority”), in exercise of the powers conferred upon it by [Sections 202, 203 and 204 of the Local Government \(Scotland\) Act 1973](#), Sections 8 and 9 [of Schedule 2](#) of the National Parks (Scotland) Act 2000, Section 12 of the Land Reform (Scotland) Act 2003 and all other powers enabling it in that behalf, hereby makes the following byelaws:-

Citation and Application

- (1) These byelaws may be cited as The Loch Lomond & The Trossachs National Park Authority East Loch Lomond Camping Byelaws 2010.
- (2) These byelaws shall apply to the area outlined in red on the plan annexed hereto (hereinafter referred to as “the Restricted Zone”).

Unauthorised Camping

- (3) It shall be an offence for any person to:
 - a. set up, pitch, erect or construct an **encampment**;
 - b. use or occupy within said **encampment** a tent, wigwam, tarpaulin or other form of **shelter**; or
 - c. sleep overnight outdoors or in a vehicle [\[new line\]](#) within the Restricted Zone.
- (4) A new offence under Section 3 is deemed to have been committed for each period of 24 hours during which any **encampment** remains in the Restricted Zone, or any person remains in, or returns to the Restricted Zone in contravention of Section 3.

Removal from Restricted Zone

- (5) It shall be an offence for any person to refuse to leave the Restricted Zone, after being requested to do so by a duly authorised officer of the Authority or police officer having reasonable grounds for believing that person is committing, has committed or is about to commit an offence under these byelaws.

Provision of Details

- (6) It shall be an offence for any person to refuse to provide his or her correct full name and address and car registration to a duly authorised officer of the Authority or police officer who has reasonable grounds for believing [he or she that person](#) is committing, or has committed [or is about to commit](#) an offence under these byelaws.

Exemptions

- (7) These byelaws shall not apply to areas within the Restricted Zone which [\(a\)](#) are designated by the Authority as a formal or informal camping site (such sites being designated as may be deemed necessary from time-to-time by the Authority) or [\(b\)](#) areas within the curtilage of any ~~private dwelling or~~ premises [or the privacy zone of any private dwellings](#).
- (8) On prior application in writing to the Authority by an individual or group, the Authority shall be entitled at its sole discretion to grant exemption under these byelaws in circumstances where, in the opinion of the Authority acting reasonably, the activity or activities concerned would further the aims of the Park. Any exemption granted shall

be in writing, shall specify the activity or activities for which the exemption is granted and shall specify the duration of the exempted period, and any terms or conditions which may apply. It shall be an offence to fail to comply with any such terms or conditions imposed by the Authority.

Penalties

- (9) Any person who contravenes any of the foregoing byelaws shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale in respect of each offence.