

# Ian Cowan

## highland environmental law

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for the attention of Caroline Strugnell  
Development Management Planner

15 September 2022

Dear Sirs

ROSS GREER MSP ("**my client**")  
FLAMINGO LAND LIMITED ("**the Applicant**")  
THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)  
(SCOTLAND) REGULATIONS 2017 ("**the Regulations**")  
APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE REF. 2022/0157/PPP –  
WEST RIVERSIDE AND WOODBANK HOUSE (LOMOND BANKS), BALLOCH ("**the Application**")

Further to my letter of 7 July 2022 stating my client's objections to the Application, I am writing to expand on and add to those objections. That will be done in part 2 of this letter.

First, in part 1 of this letter, my client highlights a selection of serious flaws and inner contradictions in the Application which make it difficult to understand properly, and which would call into question the lawfulness of any decision you might make to approve it.

Normally, the presence of a handful of mistakes in any application containing thousands of details can be overcome, for the purpose of assessing and determining that application, by assuming that all of the surrounding details are correct. Such an application can be assessed and determined without asking the applicant to correct the mistakes and re-submit the application. But when there are dozens of flaws and mistakes in an application, it becomes increasingly difficult to make sensible assumptions about which other details are correct. Eventually a threshold is reached where it becomes impossible to assume that any particular detail is correct. My client submits that the Application has reached that threshold, and that it should be rejected on the basis purely that it is incomplete and incomprehensible.

As planning authority, you of course have powers to require the submission of further information in relation to any application. As there are no signs on the portal for the Application ("**the Portal**") – apart perhaps from the one mentioned in the following paragraph – that you have exercised those powers, my client is left to wonder, if you proceed to determine the Application despite these significant errors and omissions, how you have been able to fill in the blanks and make sense of it yourselves.

As for flaws that have legal implications, the way that information submitted late regarding the landscape and visual impacts of the Proposal – about which this letter gives more detail at section 1.7 below – has been handled risks creating suspicion of an inappropriate level of collaboration between the Park Authority and the Applicant, for the apparent purpose of circumventing legal requirements and limiting the effectiveness of public participation in your decision-making about the Proposal.

There is still time to allay any such suspicion and demonstrate your commitment to effective public engagement in the planning process, and my client strongly urges you to do that.

## **1. Legal and other flaws in the Application**

### ***1.1. Conflicting and missing information about Drumkinnon Woods***

1.1.1. Perhaps the greatest public concern, when the previous proposal for this site came forward in 2018/19, related to Drumkinnon Woods, because they are wildlife-rich, open to the public and very popular with residents of and visitors to Balloch alike, and because they feature in Scotland's Ancient Woodland Inventory – a matter of local pride. It has been reported by the BBC, in relation to the present proposal ("**the Proposal**"), that "*[t]he plans include the complete removal of any development in the ancient woodland of Drumkinnon Wood*"<sup>1</sup>. Such a clear statement – presumably provided by the Applicant to the BBC – should put the future of Drumkinnon Woods beyond any doubt. My client expects that many residents were reassured by it, as the Applicant appears to have intended. Yet several of the key documents submitted by the Applicant in support of the Application – the Site Location Plan, the EIA Report (and associated Non-Technical Summary), the Planning Statement and the Design Statement – do the opposite, raising serious questions and creating renewed public concern about the status of Drumkinnon Woods and the Applicant's true intentions for them.

1.1.2. There are two aspects to this concern: one in relation to the major part of Drumkinnon Woods (bounded to the south-west and north-west by Ben Lomond Way, to the north-east by Pier Road and to the south-east by *inter alia* the Loch Lomond Shores overflow carpark and the Drumkinnon Gate housing development), which is, we are told, not included in the Proposal, and which this letter refers to from now on as "**the Main Drumkinnon Woods**"; and another in relation to a smaller area of woodland that historically formed the southwestern part of Drumkinnon Woods but was separated from the Main Drumkinnon Woods between 20 and 50 years ago by the construction of Ben Lomond Way, and which definitely is included in the Proposal. This section of Drumkinnon Woods is mentioned in the Application (e.g. at paragraph 6.4.39 of the EIA Report) and is referred to in this letter as "**the Fragment of Drumkinnon Woods**" (or simply "**the Fragment**"). These two aspects are covered in the following sections 1.2 and 1.3 of this letter.

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-scotland-scotland-business-61604950>

## **1.2. Conflicting information on present and future status of Main Drumkinnon Woods**

1.2.1. The Site Location Plan clarifies the status of the Main Drumkinnon Woods on the one hand, but also raises questions about it on the other. The red-line boundary on that plan shows that, unlike the site of the 2018/19 proposal which was a single, sprawling area, the site of the present Application (**“the Site”**) is in three discrete parts: a very small one and two much larger ones, the shortest distance between which is about 250 metres. The small area to the north (the Boathouse) was previously connected to the large area to the south-west (Woodbank) by an approximately 400-metre-long strip of woodland that is not part of the Site, and Woodbank was previously connected to the other large area, to the north-east (West Riverside), by the Main Drumkinnon Woods, which now appear to be excluded from the Site. However, the area of land that includes the Main Drumkinnon Woods is, unusually, delineated on the Site Location Plan by a blue line and labelled as *“other land within control of the applicant subject to development agreement”*. What is the purpose of this?

1.2.2. Normally, site location plans show only a red-line boundary, so the very fact that this one shows an extra blue-line boundary, surrounding what this letter refers to from now on as **“the Development Agreement Land”**, raises the question of why it is necessary. Paragraph 2.2.2 of the EIA Report mentions it but does not explain why it is necessary. The Design Statement also mentions it (at section 1.1, ‘Development overview’) as part of the *“total site area 25.9 hectares”*, including *“Red Line Boundary area 18.8 hectares and Blue Line Boundary area 7 hectares”*, and refers to it at section 1.4 as an *“adjacent development area”* – strongly suggesting that in future, if not now, the Applicant intends to develop all of the Development Agreement Land, including the Main Drumkinnon Woods.

1.2.3. A plan on page 19 of the Design Statement further supports this suggestion. Entitled ‘Ecological Schematic of Footprint’ and labelled Appendix 5.2, this plan – to which, oddly, no reference is made in the text of the Design Statement – shows the same red-line Site boundary, but also shows the whole of the Development Agreement Land (including the Main Drumkinnon Woods) coloured in, just like all the areas within the Site boundary, and labelled as one of several *“pre-development habitats”*. It is hard not to conclude that the Development Agreement Land remains very much part of the Applicant’s overall proposal and that they have only drawn the red-line boundary to exclude it, at this stage, for the purposes of obtaining planning permission in principle for the rest of their overall proposal.

1.2.4. The Planning Statement manages to sow confusion even about the present status of the Main Drumkinnon Woods. It describes, at paragraph 3.2.1/table 3-1, five ‘Development Zones’ A, B, C, D and E, where Zone D is called ‘Drumkinnon Wood & Bay’<sup>2</sup> – reinforcing concerns that development is still proposed in the Main Drumkinnon Woods – but the Parameters Plan annexed to the Planning Statement as Appendix A refers to Zone D as ‘Boathouse & Staff Area’. It is obvious that the Planning Statement is an updated version of

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<sup>2</sup> The same table appears in volume 1 of the EIA Report, numbered 2-3, at paragraph 2.6.4, and paragraph 2.6.26 uses this name, but all other references to Zone D in that document use the updated name.

the same document submitted in support of the 2018/19 application<sup>3</sup>, in which Zone D (also called ‘Drumkinnon Wood & Bay’) included what is now the Development Agreement Land. The fact that the present Planning Statement still calls it that, while the name of Zone D in the Parameters Plan has been updated with a more accurate name, might be dismissed as a simple omission, during the updating process, to replace the old name with the new name in the Planning Statement. However, the Parameters Plan also shows the Main Drumkinnon Woods labelled, along with the woods immediately north-west of Old Luss Road and within the red-line Site boundary, as Area 4b (with proposed use as ‘Managed Woodland’), suggesting that, as in all the other numbered areas on that plan, some level of development is proposed there. This cannot be dismissed as an omission: the 2019 parameters plan (copy attached as Annex A to this letter) labelled the Main Drumkinnon Woods ‘3b’ in two places, and both labels have been changed to ‘4b’ in the 2022 Parameters Plan. This must have been a deliberate edit. It demonstrates an intention on the part of the Applicant, at some point since they withdrew the previous proposal in 2019 – perhaps still in the future – to develop the Main Drumkinnon Woods as ‘Managed Woodland’.

1.2.5. Why does all this matter? The Planning Statement describes the Parameters Plan, at paragraph 1.4.4, as *“the key plan for which [planning permission in principle] is being sought”*, so the public are entitled to be concerned that this plan shows development proposals for the Main Drumkinnon Woods, and that the Applicant is not making their intentions in this regard completely clear. As planning authority, you have a duty under regulation 26 of the Regulations, *“in order to ensure the completeness and quality of the EIA report”*, to require the submission of supplementary information in situations such as this, as well as a power under regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to require that further information be submitted to enable you to deal with the Application. The public are also entitled to be frustrated that you have not exercised those functions and required the Applicant to clarify all conflicting statements and correct major errors and omissions in the Application.

1.2.6. It is hard to believe that this needs to be said about ancient woodland within a national park at any time, let alone during a global climate and biodiversity crisis, but my client urges you, as national park authority, to remove any doubt about the future of what remains of Drumkinnon Woods – nibbled away at by successive developments over time, and a further part of which the Proposal now clearly threatens (see next section) – by either purchasing them or securing their long-term protection by agreement with their owner. Continued uncertainty about such an important public asset cannot be tolerated.

### **1.3. Conflicting/missing information on development in Fragment of Drumkinnon Woods**

1.3.1. Uncertainty about the fate of the Fragment of Drumkinnon Woods is, if anything, more acute than that relating to the Main Drumkinnon Woods, because the Fragment is

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<sup>3</sup> Peter Brett Associates, who produced the 2018 Planning Statement, were acquired later in 2018 by Stantec UK Limited, who produced the 2022 Planning Statement <https://www.stantec.com/en/news/2018/stantec-to-acquire-uk-peter-brett-associates>

clearly included in the Proposal and is marked, at least in some parts of the Application, for development. Unfortunately, the Application contains conflicting information in this regard too. To add to the confusion, different maps show the Fragment having different shapes along its southern edge, as well as different extents.

1.3.2. The Parameters Plan includes a blue dashed line representing the notional boundary of woodland shown on the Ancient Woodland Inventory (referred to in this letter as ancient woodland). The southmost length of this boundary appears in both the Ancient Woodland Inventory (AWI) and the Parameters Plan as a straight line running more or less east to west. The strip of ancient woodland north of this straight line is not coloured on the Parameters Plan, while the area south of it is coloured beige and labelled 10 ('Staff & Service Area') – but it is possible that Area 10 of the Site includes not only the beige area but also both the non-coloured strip of land north of the AWI boundary and the very dark green strip of 'Buffer Zone' (where no development is proposed) to the south of the beige area.

1.3.3. The single area of woodland shown on the AWI, called 'Drumkinnon Wood' on historic maps and bounded by the blue dashed line on the Parameters Plan, was split into two parts by the construction of a new road, Ben Lomond Way, as mentioned above, at some time between 1971 – the year of publication of the most up-to-date map for the area not protected by copyright on the website of the National Library of Scotland<sup>4</sup>, on which the road does not yet appear and Drumkinnon Wood still appears intact – and 2002 – the year of the oldest clear satellite image for the area on Google Earth, on which the road does appear, with the two parts of Drumkinnon Wood appearing clearly on either side of it.

1.3.4. The red-line Site boundary follows the line of Ben Lomond Way where it splits Drumkinnon Woods. By far the larger part of the Woods (the Main Drumkinnon Woods) lies to the north-east of Ben Lomond Way, beyond the Site boundary, while the Fragment lies within the Site to the south-west of the road, either part of Area 10 or adjacent to it.

1.3.5. Paragraph 6.4.39 of the EIA Report confirms that the road severed the Fragment from the Main Drumkinnon Woods, and that development is proposed there, as follows: *"The analysis also looks at the Drumkinnon Wood AWI shape, but this is significant only in the south west edge where a remnant of possible tree cover remains along the edge of the public road that now severs this fragment from the remainder of the Drumkinnon Woods AWI shape and, (sic) where development of staff accommodation is proposed"*.

1.3.6. The analysis referred to here is by the Applicant's 'Trees & Woodland' specialist, Julian Morris, in a report from April 2022 of a review he conducted, for the purposes of the Application, of 'old mapping and ancient woodland character' on the Site – Appendix 6.3 to the EIA Report. In a drawing on the second page of this report, the Fragment of Drumkinnon Woods is shown not with a straight southern edge, as on the AWI and the Parameters Plan, but with an S-shaped southern edge, and is labelled F ('Historic wooded extent'). The report explains this as follows (p.3): *"[An] area of AWI shape overlaps with the [Site] at reference area F. However, ... it appears very likely ... that this shape is too simplistic and that the AWI*

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<sup>4</sup> <https://maps.nls.uk/view/197235569>

*extent at reference area F is greater than any shown consistently on historic maps and aerial photographs. A plot of the historic wooded extent is indicated by a dashed line of the preceding plan.*” Clearly Mr Morris considers his plot of the historic wooded extent, with an S-shaped southern edge, more accurate than the AWI shape with its straight southern edge.

1.3.7. In section 2.a of his report Mr Morris further claims that this AWI shape *“is plotted in the wrong position”*, suggesting it should be shifted to the north-east by some 25 metres – which would leave only a tiny sliver of AWI shape within the red-line Site boundary – as shown in a second drawing in that section in which he has actually shifted the AWI shape (delineated in green) as suggested.

1.3.8. My client takes issue with Mr Morris’s written analysis in relation to the Fragment. For a start, although Mr Morris writes that *“the AWI extent at reference area F is greater than any shown consistently on historic maps and aerial photographs”*, his own plot of the ‘historic wooded extent’ at F on his drawing shows the opposite: the uncoloured area that is part of the AWI shape and north of (or part of) Area 10 on the Parameters Plan occupies only about a quarter of the roughly square space between Ben Lomond Way and the back gardens of 4 houses on Old Luss Road, while the dashed brown line Mr Morris uses to define the ‘historic wooded extent’ encloses an area occupying about half of that space – so his drawing contradicts his own written analysis. The 5 historic maps on pages 13 and 14 of the Design Statement (from 1860, 1896, 1919, 1936 and 1965) show exactly the same extent.

1.3.9. Secondly, both the 1971 map (a six-inch Ordnance Survey (OS) map) and the 2002 Google Earth image referred to above mirror Mr Morris’s plot of ‘historic wooded extent’. The 1971 map (copy extract attached as Annex B) – more recent than those in the Design Statement – still shows Drumkinnon Woods with an S-shaped southern edge close to what is now Old Luss Road, with exactly the same extent, albeit with less detail. The 2002 Google Earth image shows the northern half of the roughly square space described above occupied by what appears to be mature woodland, the southern half by what looks like scrub land. The subsequent 2005 satellite image shows this division even more clearly. (More recent, successive images show the scrub land to the south gradually turning into woodland too.)

1.3.10. While Mr Morris appears to downplay or even deny the existence of all but a sliver of ancient woodland within the Site in this location, using historic maps and aerial photos as evidence, my client argues that the same maps and images support the view that the extent of ancient woodland on the Site is in fact greater than that indicated by the AWI shape. This is important, because the Applicant proposes to fell a large part of the woodland which appears now (according to Google Earth in 2021) to occupy all of the roughly square space between Ben Lomond Way and the four properties on Old Luss Road, in order to build staff accommodation, a new carpark and an access road to it from Ben Lomond Way. Although indicative in nature, the ‘Ecological Schematic of Footprint’ mentioned above (included in the Design Statement) shows that about a third of that space could be turned into these ‘buildings’ and ‘hardstanding’. If ancient woodland in that space is to be avoided, as is claimed elsewhere in the Application, its true extent is of the utmost importance.



1.3.11. Ironically, a separate drawing also produced by Mr Morris – entitled ‘Areas of tree cover’, at Appendix 6.1 to the EIA Report – supports my client’s argument set out above. It shows, as Areas 2.2 and 2.3 (split by a strip of land where the INEOS pipeline is buried), an even larger extent of ancient woodland – described in the accompanying Table 6-4 in the EIA Report as *“notionally in Ancient Woodland Inventory”* – now occupying about two-thirds of the roughly square space between Ben Lomond Way and the four properties on Old Luss Road. It would be impossible for the Applicant to avoid felling some ancient woodland shown here to make way for the proposed staff accommodation, carpark and access road.

1.3.12. It is hard to take Mr Morris’s written analysis and conclusions about the AWI shapes when his own drawings appear so clearly to contradict them.

1.3.13. Other statements in the EIA Report confirm that ancient woodland would be removed in this location. Table 6-4, which describes Areas 2.1, 2.2 and 2.3 in a single row in Appendix 6.1, says that Area 2.1 is *“UNAFFECTED BY DEVELOPMENT PROPOSALS”* – implying that Areas 2.2 and 2.3 (*“notionally in Ancient Woodland Inventory”*) would be affected. As already mentioned, paragraph 6.4.39 refers to the Fragment of Drumkinnon Woods and appears to confirm that development of staff accommodation is proposed there. Table 6-8 (‘Assessment of impacts – Woodlands’) removes any doubt: it says the *“Staff Area, including Staff Accommodation ... and Parking ... would necessitate the removal of tree cover, part of which is within an AWI area”*, entailing *“[p]ermanent loss of some tree cover under footprint of building (c.300m<sup>2</sup>); permanent loss of tree cover for car parking (35 spaces)”*.

1.3.14. Unfortunately for most members of the public who are interested in the Application, all these references are tucked away in chapter 6 of the main EIA Report, which few are likely to have read in much detail. People are more likely to have read either the first two chapters of the EIA Report (headed ‘Introduction’ and ‘Site and Proposed Development’) or the Planning Statement, both of which contain sections entitled ‘Key Characteristics [of the Proposal]’, including almost identical paragraphs on ‘Tree-felling’. Shockingly, neither of them mentions the proposed clear-felling of woodland in the Fragment of Drumkinnon Woods. Paragraph 3.2.21 of the Planning Statement says: *“Targeted tree removal is proposed at the pier head area only. Following a tree survey within the Woodbank area the proposal is to remove trees unsuited for long term retention. In other parts of the site, the principle of avoidance of tree clearance is being proposed.”* Apart from the serious failure to mention ‘tree removal’ in the Fragment, the term ‘targeted tree removal’ is highly misleading. Anyone reading either of these paragraphs could easily be led to believe not only that the Applicant proposes nothing more, anywhere on the Site, than ‘targeted tree removal’, but also that only carefully selected individual trees would be removed – when what would obviously be needed where any proposed new building or carpark replaces an area of existing woodland – for example, in the Fragment – is clear-felling of woodland.

#### **1.4. Misleading information about development in other woodland**

1.4.1. As stated above, two of the most important documents in the Application, the Planning Statement and the EIA Report make almost identical statements about the

Applicant's proposals for 'tree-felling'. Paragraph 2.6.2 in the EIA Report says: *"Targeted tree removal is proposed at the pier head area and, following a tree survey, within Woodbank area of the site to remove trees unsuited for long term retention. In other parts of the site, the principle of avoidance of tree clearance has been adopted"*.

1.4.2. The claim that only targeted trees would be removed in the Woodbank area may be more or less accurate, but as for the pier head area, what is actually proposed is disclosed in Table 6-8 on page 93 of volume 1 of the EIA Report: *"the removal of two areas of woodland and partial removal of areas of tree cover to the east for car parking"*. According to a drawing at Appendix 6.1 to the EIA Report (**"the Tree Cover Drawing"**), in which they are labelled C and D, the total area of the two woodland blocks is 0.83 hectares, and they are to be clear-felled to make way for the 'Pierhead Visitor Destination' and 'hard landscape public realm', as shown on the Parameters Plan. It is misleading to state that this can be achieved by 'targeted tree removal' (without stretching the meaning of that term beyond usefulness).

1.4.3. Equally misleading is the claim that tree clearance would be avoided in other parts of the Site: at least two other areas of woodland would need to be cleared to make way for proposed infrastructure indicated at Areas 10 and 11 on the Parameters Plan:

- 348 m<sup>2</sup> (according to section 6.4 of the Design Statement, p.50) in Areas A.2.3 and A.4 on the Tree Cover Drawing, for staff accommodation, service area, 35-space carpark and access road from Ben Lomond Way (as mentioned above); and
- at least half of Area L on the Tree Cover Drawing (which measures 0.73 Ha), for a 132-space carpark west of Pier Road.

1.4.4. As it happens, these two areas of proposed clear-felling lie mostly outside zones allocated for development in the National Park's Local Development Plan 2017-2021 ("the LDP"), so the proposals should only be permitted if material considerations can be found to justify them. Please see below for comment about the Proposal's compliance with the LDP.

## 1.5. Conflicting information about parking provision

1.5.1. The following table is a reproduction of Table 6.2 of the Transport Assessment, headed 'Proposed Parking Provision' ("Table 6.2") – which also appears more prominently, and unaltered, as Table 2.4 in the EIA Report and Table 3.2 in the Planning Statement.

Development Zone	Land Use	Parking Provision
Station Square, Pier road and Riverside	Brewery incl. pub	132 spaces
	Restaurant	
	Budget outdoor hotel	
	WDC park and Ride (44 spaces)	
	Woodland Lodges (Riverfront)	
	Apart Hotel & Restaurant	99 spaces
	Water Park	
Ben Lomond Way	Staff & Service area	35 spaces
Woodbank	Woodland Lodges	127 spaces
	Woodbank House	24 spaces
	Total	<b>393 spaces</b>



1.5.2. Unfortunately, that Applicant did not take the time to check their sums: the numbers in the right-hand column of Table 6.2 do not add up to 393, but to 417, so the reader has to look elsewhere for reliable figures. One obvious alternative source for correct figures is the Parameters Plan, where the numbers in two boxes showing parking space provision at Woodbank and West Riverside can be cross-checked against the numbers in Table 6.2.

1.5.3. But the Parameters Plan too contains an obvious mistake: the total of 393 labelled 'WEST RIVERSIDE TOTAL' is probably meant to be the total of both boxes – the same total as given in the Parking Provision Tables – while that label should probably appear inside the West Riverside box with the number 266 next to it (being the sum of 35, 99 and 132).

1.5.4. The Woodbank and the West Riverside totals in the Parameters Plan add up to 393, thankfully, and most of the numbers in the right-hand columns of both boxes tally with numbers in Table 6.2, so it may be safe to assume that the only number that is different – the one given in the Woodbank box for woodland lodges (103) – is correct. If that number is then substituted in Table 6.2 (and in the other more prominent tables where it appears) for the number 127 given in all those tables for woodland lodges, the numbers add up to 393. If it is thus assumed that the number 127 is a simple typo, all the sums can be made to add up.

1.5.5. But unfortunately it is not that simple, because if the origins of the numbers in Table 6.2 are examined, several more of them start to appear highly questionable. Paragraph 6.4.3 of the Transport Assessment explains the origins of those numbers: *"The parking standards shown in Table 6.1 have been applied to the development quantum set out in Section 3 of this [Transport Assessment]. The resultant proposed parking provision is shown in Table 6.2."*

1.5.6. The first thing to note about Table 6.1 in the Transport Assessment ("Table 6.1") – all the details of which are reproduced in black in the next table below – is that two of the rows (for Development Uses 'Woodland Lodges (Drumkinnon)' and 'Residential units') are relicts from the 2018/19 proposal which, if other parts of the Application are to be believed, are no longer proposed and should not be included in the Transport Assessment (which is dated April 2022). These two rows are therefore shown below in 'strikethrough' mode.

<b>Development Use</b>	<b>Proposed Standard</b>	<b>Parking spaces required</b>
Brewery incl. pub (1200sqm GFA)	10 spaces/ 100sqm GFA	120
Restaurant (150sqm GFA)	1 space / 5sqm GFA	30
Youth hostel (32 beds)	1 space/ 4 staff plus customer parking	@1 space/ 2.5 beds = 12
Woodland Lodges (Riverfront) (42)	1.5 spaces per lodge	63
Apart Hotel & Rest. (60 beds)	1 space/ 2.5 beds	24
Water Park (no pool area given)	10 spaces/ 100sqm pool area	?
<del>Woodland Lodges (Drumkinnon)</del>	<del>1.5 spaces per lodge</del>	<del>-</del>
Staff & Service Area (no GFA given)	1 space/ 20sqm	?
<del>Residential units</del>	<del>3 spaces/ dwelling</del>	<del>-</del>
Woodbank House	?	?
Woodland Lodges (Woodbank) (84)	1.5 spaces per lodge	126

1.5.7. The next thing to note about Table 6.1 is that it omits one of the ‘Development Uses’ shown in Table 6.2: ‘Woodbank House’ (now added in red type to the above table), so it is hard to see how the proposed parking provision shown in Table 6.2 can possibly result from applying the proposed parking standards shown in Table 6.1 to the development ‘quantum’ shown in section 3 (Table 3.1) of the Transport Assessment.

1.5.8. Assuming that the proposed parking standards given in Table 6.1 are correct, and that the term ‘Woodland Lodges (Woodbank)’ includes not only 30 woodland lodges but also 37 ‘countryside’ lodges and 17 ‘bothies’ at Woodbank – because these do not appear anywhere else in that table – 84 lodges @1.5 spaces per lodge gives 126 parking spaces – almost the same as the figure of 127 for woodland lodges that has just been assumed to be a typo and substituted with the figure 103.

1.5.9. Even more problematic is the figure of 132 that Table 6.2 gives for all the spaces provided for the first five ‘land uses’ listed for Station Square, Pier Road and Riverside. In the absence of the Applicant’s calculations, which would have been helpful, my client has – where possible – calculated the number of parking spaces required for each ‘development use’ in Table 6.1, by multiplying the proposed parking standards – which he assumes to be correct – by the development ‘quantum’ from Table 3.1 (where given, now added to the above table in red type), and added a third column to the above table containing the results.

1.5.10. The brewery (including pub) has a gross floor area (GFA) of 1200 square metres (sqm), which @10 spaces/ 100sqm GFA gives 120 spaces; the restaurant has a gross floor area (GFA) of 150 square metres, which @1 space/5sqm GFA gives 30 spaces; there are 42 woodland lodges at the Riverfront, which @1.5 spaces per lodge gives 63 spaces; and 44 spaces are provided for park-and-ride purposes. The parking standard for the fifth land use, ‘Budget outdoor hotel’, does not relate to the ‘quantum’ of 32 beds given for it in Table 3.1; but applying the standard used for the Apart Hotel gives about 12 spaces for it, resulting in a total for all five land uses of 269 parking spaces – over twice as many as Table 6.2 states.

1.5.11. My client submits that it is impossible to see how that figure of 132 spaces was derived and that it is a serious under-estimate. If in fact that figure should be closer to 269 and the figure for Woodbank lodges should be 126, as set out at para.1.5.8 above, then, assuming that the three other figures in Table 6.2 (99, 35 and 24) are correct, the overall total comes to 553 – over 40% greater than the figure given in Table 6.2.

1.5.12. My client concedes that an application for planning permission in principle need not be accurate in every detail, however, as stated at paragraph 1.4.3 of the Planning Statement, it needs include the likely ‘worst case’ effects for all parameters, and a difference of over 40% is no mere detail. Is 553 a more accurate figure for the ‘worst case’ number of parking spaces required by the Proposal? My client submits that because of all the mistakes, omissions and miscalculations in the various tables, it is impossible to tell, and he challenges you, as the determining authority, to state what the true ‘worst case’ number of parking spaces is and on what basis you have been able to establish that. If you have received more recent, accurate information from the Applicant, then he asks you to explain why this has not been published on the Portal.

## **1.6. Inadequate and unlawful Non-Technical Summary**

1.6.1. As alluded to above and confirmed by Scottish Government guidance – reproduced in the Undernote (part (a)) to this letter – EIA reports containing hundreds of pages of detailed information are notoriously dense and inaccessible for most readers, so the Regulations require applicants to produce a non-technical summary of the EIA report, which is meant to be more widely accessible. The Non-Technical Summary in this case (labelled ‘EIA Report Volume 3’) is therefore the document that members of the public wanting to clearly understand all the basics of the Proposal and its impacts are most likely to have read.

1.6.2. They are likely to have been disappointed, because not only is the Non-Technical Summary in several places quite technical and in other places vague, it also fails to meet the basic requirements of the Regulations regarding content – reproduced in part (b) of the Undernote – making any decision to grant the Application vulnerable to legal challenge.

1.6.3. For example, on woodland removal, Section 1.3 of the Non-Technical Summary (‘Trees and Woodland’) hints vaguely that woodland would be removed, but without reference to any specific location in the Site. Only in section 1.8, concerning ‘Landscape and Visual Impact’, oddly, is anything disclosed about locations of woodland removal. A member of the public seeking to know where woodland is going to be felled should be able to find out in the section of a non-technical summary relating to trees and woodland, without having to chance upon it in the section about landscape and visual impact.

1.6.4. Paragraph 1.8.9 mentions the removal of *“an area of woodland around the loch shore and along Pier Road”*. Paragraph 1.8.15 is even clearer: *“the area of existing woodland between the Maid of the Loch Steamer and Drumkinnon Tower will be replaced by the three-storey apart-hotel”*. Paragraphs 1.8.16 and 1.8.17 mention woodland removal at two further locations, but for some reason nothing at all is said about the clear-felling proposed in or adjacent to the Fragment of Drumkinnon Woods, an area of ancient woodland. This is a huge omission, because in order to find out about it at all, a member of the public – if not already falsely reassured by the bland statements about ‘targeted tree removal’ in the Planning Statement and at section 2 of the EIA Report – would have to keep reading until page 93 of the EIA Report before coming across the reference to it in Table 6-8 mentioned above. Or they might be lucky enough to stumble on the only other explicit mention of it in the Application, on page 45 of the Design Statement: *“Existing woodland will provide a setting for the new staff/service building [which] will require some tree removal...”*.

1.6.5. As for the requirements of the Regulations, regulation 5(2)(e) requires a non-technical summary to summarise *“the information referred to in sub-paragraphs (a) to (d)”* of regulation 5(2) or, according to paragraph 9 of Schedule 4 to the Regulations, *“the information provided under paragraphs 1 to 8”* of that schedule. (The latter requirements include all of the former requirements, so it is only necessary to refer to Schedule 4.)

1.6.6. The Non-Technical Summary purports to describe the significant environmental effects of the Proposal (as mentioned in paragraph 5 of Schedule 4), but only after all mitigation has been taken into account – i.e. the residual effects – so it does not comply with paragraph 5. By describing only the mitigation measures and the residual

environmental effects, it satisfies, at most, only the requirements of paragraph 7 of Schedule 4, which requires a *“description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment ... [including] the extent to which significant adverse effects on the environment are avoided, prevented, [etc.] ...”*. The requirements of paragraphs 1-4, 6 and 8 of Schedule 4 are ignored.

1.6.7. There is no excuse for this. Like the Planning Statement, the Non-Technical Summary appears to be an updated version of the non-technical summary that was submitted as part of the 2018/19 application – which did meet most, if not all of the statutory requirements, as shown by the copy of its cover page and contents list attached as Annex C to this letter. All that remains of the 2018 version, which had seven sections, is section 6 (‘Assessment of Effects’). For 2022, this section has been re-numbered 1 (the only section), re-titled ‘Non-Technical Summary’, and edited to reflect the new proposals, but parts of the 2018 text are still easily recognisable. This means that someone in the Applicant’s team at Stantec, while reviewing the 2018 document for present purposes, deliberately deleted 6 out of 7 sections, along with all tables, both appendices and a sub-section on ‘impact interactions’ numbered 6.11 in the old document. The document control sheet on page 2 of the Non-Technical Summary shows that it was prepared by a graduate planner, reviewed by an associate planner and approved by Stantec’s director of planning. Even if it was a mistake to delete most of the old document in the preparation of the new one, this would have been picked up and corrected during the review, before the Non-Technical Summary was signed off.

1.6.8. So it is hard not to conclude that, this time, for some reason, the Applicant simply opted out of summarising – except in 1 out of 8 categories – *“the main findings of the EIA report in accessible plain English”* (as required by the Scottish Government guidance); out of *“ensuring that the public can comment fully on the EIA report”*; and out of complying with the law. Again, the public is entitled to ask why you, as planning authority, failed to challenge this crucial, but completely inadequate document when you have a duty to do so.

1.6.9. According to a recent news article<sup>5</sup>, the Applicant has *“accused outside organisations of spreading ‘unfounded claims’ about the proposal”*, and supporters of the Proposal have complained about *“misinformation”* spread by objectors. Such complaints ring hollow when the Applicant omits, by mistake in some places, but clearly also by design in others, several key pieces of information, as well as including many conflicting and confusing pieces of information. Objectors have no control over what the Application contains, and the only other party that does – the planning authority – has thus far failed in its implied duties to make sure that the Application gives a single consistent, coherent and comprehensive account of the Proposal, and *“to ensure the completeness and quality of the EIA report”*.

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<sup>5</sup> <https://www.glasgowlive.co.uk/news/loch-lomond-flamingo-land-plans-24779273>

## **1.7. Omission, late submission and misrepresentation of environmental information**

1.7.1. Paragraph 11.1.3 of the EIA Report, introducing Chapter 11 (Landscape & Visual), says it is *“supported by the following figures and technical reports provided in Appendices 11.1 – 11.5:*

- **Appendix 11.1 – Figures:** includes: ...
  - ...
  - *Figure 11-4: Landscape Character Types*
  - ...
- ...
- **Appendix 11.5 – Visualisations:** includes a series of post-construction visualisations for each of the representative viewpoints, produced in accordance with the *Landscape Institute guidance”*.

1.7.2. Unfortunately, Figure 11.4, despite being labelled ‘LANDSCAPE CHARACTER TYPES’, appears to show only numbered viewpoints and offset distances, so the reader would have to look elsewhere to see where the various landscape character types occur in the area surrounding the Site in order to make a judgement about the landscape impacts of the Proposal. Again, you are in a position to correct such omissions but have not done so.

1.7.3. As for Appendix 11.5, paragraph 11.2.27 of the EIA Report goes on to say: *“To support the [Landscape and Visual Impact Assessment (LVIA)] and demonstrate the likely visibility of the proposed development from various representative locations, a series of visualisations showing summer and winter views were produced by specialist company ADS Ltd. These cover the viewpoints agreed with the National Park Authority and are included in Appendix 11.5, which also includes the approach and methodology.”* References to Appendix 11.5 in Chapter 13 of the EIA Report state that these visualisations also support the assessment of impacts on archaeology and cultural heritage. Clearly, not only is Appendix 11.5 an important part of the environmental information legally required to be contained in the EIA Report, but the Applicant also intended to include it in the EIA Report during the preparation of the Application.

1.7.4. When the Application was submitted, on 16 May 2022, the EIA Report and every Appendix to it was uploaded to the planning portal for the Application (“the Portal”) and categorised under ‘Environmental Impact Assessment’, with one exception: Appendix 11.5. But this was not in any way obvious. The fact that Appendix 11.5 even existed would not have been apparent to anyone until they read Chapter 11 of the EIA Report, because it is not included the 4-page list of appendices entitled “EIA Report – Vol.2 – Appendix List” that was also uploaded on 16 May, listing every other Appendix to the EIA Report. This indicates that, when it became clear that Appendix 11.5 was not going to be submitted on 16 May, reference to it was removed from the list. Yet references to it were not removed from Chapters 11 and 13 of the EIA Report.

1.7.5. There was no sign of Appendix 11.5 or its contents until 3 August 2022, when four new items appeared unannounced on the Portal. Together they comprise a single document headed ‘LOMOND BANKS — LVIA VISUAL REPRESENTATIONS FOR PLANNING SUBMISSION’

produced by Architectural Design Studio, split into 4 parts, presumably because of its size. There can be no doubt that this document, containing *“a series of visualisations showing summer and winter views ... produced by specialist company ADS”*, is the missing appendix.

1.7.6. Yet nothing was said about this new submission on the special page on your website about the Application. The document itself contains no introduction or explanation of its purpose. It makes no reference to the EIA Report, and the words “Appendix 11.5” appear nowhere in the document, in the filenames of its 4 component documents or in the names given to them on the Portal. The 4 items have been categorised on the Portal under ‘Supporting information’, as opposed to ‘Environmental Impact Assessment’.

1.7.7. When any planning authority receives a planning application consisting of multiple electronic documents, it systematically gives them (or requires the Applicant to give them) filenames that include the planning reference number, before uploading them for public view on its planning portal. This re-naming of documents and the subsequent categorisation of each document on the portal is under the control of the planning authority. It is therefore very hard for my client not to suspect that there has been a concerted effort in this case to disguise not only the fact that this late submission is Appendix 11.5 to the EIA Report, but also the fact that the Applicant has submitted additional environmental information.

1.7.8. Regulation 27 of the Regulations states: *“Where additional information is provided to the planning authority ..., regulations 20 to 22 ... apply to the provision of such additional information as they apply to the submission of an EIA report as if references to the EIA report were references to that additional information.”* In other words, when additional information (including late information) is lodged, neighbours must be re-notified (under regulation 20), notices must be re-published in the Edinburgh Gazette and local newspaper (under regulation 21) and statutory consultees must be re-consulted (under regulation 22), all giving at least 30 more days for representations to be made to the planning authority.

1.7.9. When you received this additional information from the Applicant, presumably in July or early August, you were therefore legally obliged to pause the processing of the Application in order to allow for a new round of consultation and public participation about the additional information. To allay my client’s suspicion that there has been inappropriate cooperation between the Park Authority and the Applicant with the intention of avoiding not only the delay that meeting this obligation would cause but also the more effective public scrutiny it would provide of the Proposal’s visual impacts, I would be obliged if you could provide him with your written explanation about why you did not do so – including any involvement you might have had in the decision to remove reference to Appendix 11.5 from the list of appendices submitted with the Application in May.

## **1.8. Recommendation**

1.8.1. I also urge you strongly, on his behalf, not only to fulfil those obligations under Part 5 of the Regulations before proceeding to determine the Application, but also, before doing that, to take the opportunity this pause creates to require the Applicant to provide other



missing or updated information “*in order to ensure the completeness and quality of the EIA report*”; in other words:

- (a) to require the Applicant, under regulation 26 of the Regulations, to submit:
  - i. an addendum to the EIA Report correcting mistakes and clarifying conflicting statements in the EIA Report;
  - ii. an updated non-technical summary that satisfies the requirements of Schedule 4 to the Regulations;
  - iii. updated Tables 6.1 and 6.2 for the Transport Assessment, showing workings;
  - iv. an updated Figure 11.4 showing landscape character types as intended; and
  - v. any other relevant information identified by anyone to date as missing;
- (b) on receipt of the above information, to ensure the Applicant complies with regulation 25 of the Regulations in relation to Appendix 11.5 and that information, requiring hard copies to be made available in advertised public places; then
- (c) to fulfil your obligations under regulations 20, 21 and 22 of the Regulations in relation to Appendix 11.5 and that information.

1.8.2. Unless these steps are taken, any decision to approve the Application will be highly vulnerable to judicial review in the Court of Session.

## **2. Objections to the Proposal**

### **2.1. *Summary of adverse effects of the Proposal and risks of over-reliance on mitigation***

2.1.1. A compliant, accessible non-technical summary of an EIA report would have included a table summarising, in one place, for the benefit of interested members of the public, of which there are many hundreds, all the significant<sup>6</sup> environmental effects of the Proposal, related mitigation (embedded and additional) and residual significant effects.

2.1.2. In the absence of such a summary, and in order to highlight the risks to the environment that this Proposal creates, this letter summarises all the adverse effects of the Proposal that the EIA Report describes as substantial or major, plus, in the case of ecological effects, those that are described as significant at local or Council level, i.e. of significance beyond the Site. (Moderate adverse effects and ecological effects that are significant ‘only’ at Site level are not included, as there are too many to summarise, so the tables show only the most significant adverse effects, according to the EIA Report, of the Proposal.)

2.1.3. The following table shows the most significant adverse effects during construction.

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<sup>6</sup> The EIA Report says at paragraph 3.7.20, “[e]ffects that are described as ‘substantial,’ ‘major’ or ‘moderate’ are determined to be significant, whereas effects that are described as ‘minor’ or ‘negligible’ are determined to be not significant”. Exceptionally, in the assessment of effects on ecology, according to paragraphs 5.4.13 and 5.4.14, effects are described only as ‘significant’ or ‘not significant’, and in relation to a spatial scale (i.e. at Site, local, Council, national or international level).

<i>receptor</i>	<i>sources in EIA report</i>	<i>adverse effect and its pre-mitigation significance</i>	<i>residual significance of adverse effect</i>	<i>what the Non-Technical Summary says about this</i>
Endrick Water Special Area of Conservation	Tables 5.9, 5.16	temporary decrease in water quality due to pollution: <b>significant at local level</b>	no significant effect	nothing
ancient woodland habitat	Tables 5.9, 5.16	permanent loss of 0.48Ha due to clear-felling: <b>significant at Council level</b> ; permanent fragmentation due to disturbance of ground flora: <b>significant at local level</b>	significant at Site level	mentions residual impact only (para.1.2.3)
mixed broad-leaved woodland habitat	Tables 5.10, 5.16	permanent loss of 1.33Ha due to clear-felling: <b>significant at Council level</b>	significant at Site level	mentions residual impact only (para.1.2.3)
red squirrel	Tables 5.12, 5.16	permanently reduced survival/reproduction rates due to loss of dreys etc.: <b>significant at local level</b>	no significant effect	nothing
bat species	Tables 5.12, 5.16	permanently reduced survival/ reproduction rates due to loss of tree roosts etc.: <b>significant at local level</b>	no significant effect	nothing
native woodland at Pierhead	Table 6.8	permanent loss of two areas due to felling: <b>major</b>	minor	mentions non-specific residual impacts only (para.1.3.6)
Loch Lomond	Table 10.6	surface water flow alterations and flood risk: temporary, <b>major</b> pollution from sediments: temporary, <b>major</b> pollution from chemicals: temporary, <b>major</b>	negligible	nothing
VP01: View from Ben Lomond Way	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	<p><i>“significant adverse short-term visual effects [from receptors] within 1km of the site”</i></p> <p><i>“the areas which will experience the greatest visual effects are Pierhead and Station Square”</i></p> <p><i>“the most extensive views of construction activity will be related to the Pierhead development and will be experienced by receptors mainly to the north, including from the open waters of the loch”</i></p>
VP02: View from Loch Lomond Shores	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	
VP 03: View from the Maid of the Loch Slipway	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	
VP 10: View from Balloch Road	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	
VP 25: View from Southern end of Loch Lomond	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	
VP 26: View from Southern end of Loch Lomond	Tables 11.6, 11.10	temporary visual: <b>major</b>	<b>major</b>	

2.1.4. My client objects to the permanent destruction of up to two hectares of ancient woodland and mixed broad-leaved woodland in a national park; and to the major visual impacts, unmitigated but temporary, particularly for visitors to and recreational users of Loch Lomond – all for the proposed construction of new roads, car parks or buildings.

2.1.5. He also objects, in spite of the possibility that planned mitigation measures might reduce these impacts to a negligible level, to the listed threats posed by construction works not only to valued native wildlife, permanently, in the national park, but also in the short-term to water quality in both the world-renowned Loch Lomond and the internationally designated Endrick Water Special Area of Conservation – none of which are even mentioned in the Non-Technical Summary.

2.1.6. The following table shows the most significant adverse effects during operation.

<i>receptor</i>	<i>sources in EIA report</i>	<i>adverse effect and its pre-mitigation significance</i>	<i>residual significance of adverse effect</i>	<i>what the Non-Technical Summary says about this</i>
ancient woodland	Tables 5.13, 5.16	permanent decrease in quality and extent due to increased recreational pressure: <b>significant at local level</b>	significant at Site level	mentions residual impact only (para.1.2.3)
mixed broad-leaved woodland	Tables 5.14, 5.16	ongoing decrease in quality and integrity due to increased recreational pressure: <b>significant at local level</b>	no significant effect	nothing
bat species	Tables 5.15, 5.16	lighting and noise causing disturbance to foraging/ commuting routes and impaired breeding success: <b>significant at local level</b>	no significant effect	nothing
noise-sensitive receptor 11 at Woodbank	Table 7.18	noise exceeds target level by 5.4dB: <b>moderate/major</b>	moderate/major (moderate if proposed design changed – paras.7.8.2-7.8.4)	moderate/major (moderate if proposed design changed – paras.1.4.4-1.4.5)
traffic at Pier Road	Table 12.7, para.12.8.5	29% increase in annual average daily traffic (AADT) flows: <b>substantial</b>	moderate beneficial	“increases in traffic flows within the Site and Loch Lomond Shores, ... most noticeably on Old Luss Road (North) and Ben Lomond Way...” “[mitigation will] potentially lead to ... the moderate benefit of all road users”
traffic at Old Luss Road (North)	Table 12.7, para.12.8.4	84% increase in AADT flows: <b>moderate [??]</b>	moderate beneficial	
traffic at Ben Lomond Way	Table 12.7, para.12.8.5	33% increase in AADT flows: <b>substantial</b>	minor beneficial	

2.1.7. My client objects to the ongoing impacts, post-construction, that would be caused to ancient woodland, and could be caused – if planned mitigation measures are not taken or if

they fail – to other native woodland and wildlife (both again unmentioned in the Non-Technical Summary), and to the huge increases in vehicle numbers that are predicted to occur on the three above-named local roads and that can only be offset, in broad transport terms, by a raft of other planned transport improvements, all of which would need to be secured by planning conditions or planning agreement.

2.1.8. The tables above illustrate the huge reliance being placed on the Applicant's proposals for mitigating or offsetting the significant adverse effects on the local environment that would otherwise occur. The proposed measures may have been shown in the past to function reliably and fulfil their intended purposes, but the past also shows that the conditions placed on planning permissions to secure the implementation of such measures are rarely enforced. The only research done in Scotland into the effectiveness of monitoring and enforcement within the planning system<sup>7</sup> confirmed that:

*"The monitoring of conditions is a widely acknowledged weakness in the system, with virtually all officers surveyed highlighting this as a key concern (which is mirrored in community responses). Those interviewed suggested that somewhere between 75 and 90% of developments were unlikely to be subject to any checking on whether conditions had been discharged effectively 'on the ground' – as opposed to administratively." (p.78)*

2.1.9. Scottish Natural Heritage (SNH) (now re-branded as 'NatureScot') took part in the research. As the statutory body responsible for the conservation and enhancement of Scotland's natural heritage, SNH's interest with regard to enforcement centres around ensuring development avoids or mitigates significant adverse effects on the natural environment, and as one of the statutory 'consultation bodies' under the Regulations, SNH plays an important role in the planning system. They regularly advise developers on the design of development, in terms of avoiding or mitigating adverse effects, and planning authorities on the form and content of appropriate planning conditions to secure specific mitigation measures. According to the research, SNH

*"considered that the current model of enforcement is too reactive and based on external (i.e. public) reporting of breaches – rather than a targeted approach that focuses on developments and breaches with the greatest potential for adverse environmental effects. Like other stakeholders, conditions monitoring is a key concern – particularly with regard to mitigation measures for major developments" (p.8, underline added).*

2.1.10. There is nothing on the website of the Scottish Government to indicate that it adopted any of the recommendations made by the researchers in 2016 or that they have been followed up on in any way. In any event, my client is of the opinion that little has changed since the research was published. In this case, which he considers an example of what SNH referred to in the research report as *"higher-impact schemes where significant effects are only rendered acceptable through mitigation secured by condition"* (p.114), my client considers that, if you grant planning permission, you will be taking unjustifiable risks with the precious qualities of the national park you are entrusted to promote and protect.

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<sup>7</sup> *Planning Enforcement in Scotland: research into the use of existing powers, barriers and scope for improvement*, Scottish Government Planning & Architecture Division, December 2016

## **2.2. The LDP allocations, and the scale of the Proposal.**

2.2.1. The LDP includes what it calls “*existing sites ... that have yet to be developed.*” Three of these pre-existing allocations in Balloch are relevant to the Application:

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

2.2.2. My client acknowledges that these three allocations have been a settled part of the development plan for many years, and that the village of Balloch is identified in the LDP as a Strategic Tourism Opportunity, but sees no reason why they need to be developed under a single proposal. It might be reasonable to develop MU1 and VE1 under one proposal, because they are contiguous, but VE4 is at its closest point at least 500 metres away, so should be developed separately.

2.2.3. Although he does not consider it appropriate that the West Riverside allocation includes a strip of the Main Drumkinnon Woods west of Pier Road, my client has no objection in principle to sensitive development of the other parts of the three allocations, of suitable quality for a national park, of appropriate scale and density for the allocations, and unquestionably satisfying the definition of sustainable development. He would actively support such developments if they were community-led. However the Proposal is none of these things.

2.2.4. For a start, the Proposal is on such a scale that it occupies the majority of all three allocations, and more: it is so large that it spills over, unnecessarily, into two areas of land, both currently covered entirely by woodland, that are not within any allocation in the LDP. With reference to the Parameters Plan, these are:

- Areas 4b and 10 (within Development Zone D) situated between the Loch Lomond Shores main carpark and Ben Lomond Way on the north-east and Old Luss Road and four residential back-gardens on Old Luss Road on the south-west; and
- the southern third of Area 11 (also within Zone D) between four residential back-gardens on Pier Road and back-gardens on Drumkinnon Gate housing development.

2.2.5. Together these areas cover about 1.8 hectares, i.e. nearly 10% of the total area of the Site, which is 18.9 hectares. The Proposal earmarks Area 10 for staff accommodation, a service area and a 35-space carpark with an access road onto Ben Lomond Way, and most of Area 11 (the other two thirds of which are within allocation VE1) for a 132-space carpark.

2.2.6. The Planning Statement makes no attempt to justify, in planning terms, the proposed conversion of substantial areas of woodland outwith LDP allocations into buildings and carparks, probably because there is no planning justification for that. It does not even mention the fact that two areas of the Site are not within the relevant LDP allocations.

2.2.7. My client considers that each of the two VE allocations is – and was intended to be – large enough to accommodate appropriate ancillary infrastructure, such as staff accommodation and service facilities, for whatever VE facilities might be proposed in it. There is rarely likely to be planning justification, in any circumstances, for locating

infrastructure essential to any given use of land outwith the areas of land allocated to that use, and in this case, given the large size of the LDP allocations, there can be none.

### **2.3. Density of the Proposal and parking provision**

2.3.1. The main reason that extra space is needed for the Proposal outside the three LDP allocations, and the clearest demonstration that the development proposed, as well as being too large for the LDP allocations, is also too dense – in spite of the extra space it takes up – is the provision for so much car-parking.

2.3.2. As demonstrated in section 1.5 of this letter, it is not at all clear what the total required number of parking spaces is: the Applicant says 393, but applying their own methodology and assuming that the parking standards they have used are correct, the total could be 553.

2.3.3. Paragraph 6.4.4 in the Transport Assessment says: *“For the purposes of the [application for planning permission in principle], it has been assumed that the development proposals demonstrate self-sufficiency with respect to vehicle parking. That is, presently, no reliance is placed on the existing spare capacity at the Loch Lomond Shores (main or overspill car parks). Whilst the future operating ambition would see the parking for all woodland lodges, the luxury boathouse accommodation, staff parking and, potentially, parking for the Apart Hotel at Pierhead, being sited at the existing Loch Lomond Shores overspill parking area, the quantum of shared parking is still to be agreed with the existing Loch Lomond Shores proprietors.”*

2.3.4. My client understands this to mean that the Applicant hopes that the Proposal’s parking requirements for the stated facilities can eventually be met by the overspill carpark at Loch Lomond Shores (LLS), but unless and until the use of that carpark has been agreed with LLS, the Applicant, seeking planning permission in principle and therefore obliged to depict the ‘worst case’ effects for all parameters, is stating (a) that the Proposal requires 393 car-parking spaces (or at least 541 if their own methodology is applied), and (b) that they hope many of these proposed new parking spaces will be unnecessary if they can use the LLS overspill carpark as planned.

2.3.5. Representations from Kemble Business Park LLP, owner of what they call *“a significant interest within the retail crescent”* at LLS, state firmly *“that LLS would be against this proposition. LLS have been quite clear in their representations thus far that LLS relies on the existing car park and overspill car parking for current operations and no parking within LLS should be made available for Flamingo Land.”*

2.3.6. This means that, unless LLS undergo a complete change of heart, the Proposal would definitely require hundreds of new parking spaces.

2.3.7. Furthermore, the Estates Department of the Park Authority itself, owner of land and visitor facilities at the pier head, is concerned because *“[t]he current proposal suggests use of the Park Authority’s trailer parking areas”* at the Pierhead. This is probably a reference to



paragraph 9.1.7 of the Transport Assessment, in which the Applicant states: “we have demonstrated that the interim parking provision scenario is based on all West Riverside development parking being provided over the reconfigured Pierhead and new Pier Road car parks”. My client can find no earlier reference in the Transport Assessment to plans to use the Pierhead carpark, least of all in section 6.4 which concerns parking provision, so there appears to be yet another mistake, but if the Applicant does propose to share another existing carpark, they again risk undermining existing users of that facility.

2.3.8. Your Estates Department appears equally concerned “that the proposal will inevitably increase traffic to the surrounding area”, causing “bottle-necks at the entrance to the Duncan Mills Memorial Slipway car park” and “even longer queues to access our site”.

2.3.9. My client echoes the wider points made by your colleagues as follows:

*“National Parks in Scotland have statutory aims, one of which is that the Park Authority must promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public. Promoting access to Loch Lomond by providing a public boat launching slipway with associated facilities building, car and trailer parking and related infrastructure and car parking, assists Loch Lomond and The Trossachs National Park Authority in fulfilling this aim. Compromising the slipway operation in any way would be contrary to the National Park Statutory aims and the current National Park Plan.”*

2.3.10. Your colleagues would not have said that unless they were concerned that the generation of additional traffic by the Proposal on the approach roads to the Pierhead, and the Proposal’s related need for parking spaces at the Pierhead, risks such a compromise to their own operations. Although they do not say so, this appears to be a contravention of the LDP Visitor Experience Policy 3: Safeguarding existing tourism sites.

2.3.11. In summary, my client considers that the provision in the Proposal for so much extra car-parking epitomises the 20<sup>th</sup> century thinking at the root of the whole development. While lip service is paid to concepts of active travel, and a distraction is created by the concept of a monorail, essentially the Applicant has employed the outdated ‘predict-and-provide’ road traffic model. In essence, the provision in the Proposal for hundreds of new parking spaces would:

- need land, much of which the Applicant opts not to provide within the areas allocated for Visitor Experience (Area 10 and the southern part of Area 11), thus necessitating the removal of woodland in areas not allocated for development;
- need surface water drainage, necessitating the construction of sustainable urban drainage systems (p.46, Design Statement), which themselves need space, potentially necessitating the removal of further trees; and
- attract more cars and other road vehicles to Balloch and surrounding roads, exacerbating existing traffic congestion and air pollution at certain times.

2.3.12. The Applicant’s parking proposals are the opposite of sustainable development.

## **2.4. Quality of the Proposal**

2.4.1. Most local development plans include detail about design principles or other requirements for specified allocations, making it is possible to consider planning applications, in terms of quality, against those requirements. However, as stated by the Applicant in paragraph 4.4.6 of the EIA Report, after listing the 3 relevant allocations in the LDP, *“no details are provided ... regarding development requirements or design principles for these LDP site allocations”*.

2.4.2. One of the three 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”* beside the River Leven), others merely descriptive (e.g. *“Sensitive river frontage”* and *“Maid of the Loch”*), but these captions are not explained anywhere, so it is not clear what their purpose is.

2.4.3. 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.

2.4.4. Indeed, paragraphs 11.5.11 and 11.5.22 of the EIA Report disclose that, far from being *“in keeping with the special qualities of the National Park”*, the Proposal creates, both in the short-term (during construction) and in the long-term (during operation), *“a moderate risk of loss or damage to the following Special Qualities of the National Park:*

- *A world-renowned landscape famed for its natural beauty;*
- *The rich variety of woodlands;*
- *Famous through-routes; and,*
- *Banks of broadleaved woodland”.*

2.4.5 It is also hard to see how *“a family friendly indoor water park and spa”* (as described on p.67 of the Design Statement) is compatible with the special qualities of the National Park, and its emphasis on promoting outdoor recreation.

## **2.5 Non-conformity of the Proposal with the development plan**

### **2.5.1 The LDP**

As well as extending beyond the relevant LDP allocations, the Proposal fails to meet many of the LDP policies, including the following:

(a) Overarching Policy 2

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 Applicant does 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.

(b) 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 hundreds of new car-parking spaces as part of the Proposal, which is patently in conflict with this policy.

(c) 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 Landscape and Visual Impact Assessment concludes that the Site itself would experience major adverse localised landscape effects during construction work, dropping to moderate adverse during operation, and that receptors at six different locations would face major adverse visual effects during construction works, dropping to moderate adverse during operation, all in breach of this policy.

(d) Natural Environment Policy 2

My client considers that there is some likelihood that Endrick Water Special Area of Conservation will be significantly affected if construction works 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 of the Proposal’s implications for that site, in terms of the Conservation (Natural Habitats &c.) Regulations 1994.

(e) Natural Environment Policy 8

The Proposal includes the removal of significant areas of woodland. This policy says that proposals that result in such loss or deterioration of woodland will not be supported unless they bring overriding public benefits. 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.

(f) 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.

#### *2.5.2 Visitor Experience Planning Guidance, May 2022*

Paragraph 4.6.15 of the Planning Statement says *“This [Planning Guidance (PG)] defines different types of tourism accommodation and infrastructure. This PG does not set out criteria to assess tourism development proposals beyond repeating those within relevant LDP policies”*. This is wrong. Both the 2017 PG (to which that paragraph refers) and the 2022 update include specific additional guidance, perhaps not relevant to the Proposal, but state very clearly that *“All proposals must comply with the overarching policies, including natural heritage, in the Local Development Plan ... .”*

Paragraph 4.6.17 of the Planning Statement says *“The recent update introduced new guidance on delivery of car parking to support visitor Experience uses. This is covered in the accompanying Transport Assessment report.”* This is also wrong: the Transport Assessment says nothing about it, so it seems likely that the Applicant has not considered it at all.

The new guidance referred to is found on pages 21 and 22 of the 2022 update, and begins as follows: *“We would generally not encourage new car parks and seek to support investment in alternative forms of sustainable transport and active travel infrastructure in the National Park to support less reliance on cars. However, it is acknowledged that visitor pressures are currently severe in some locations and that some additional parking solutions may be required. Preferably new car parking would be a short term temporary solution and capable of being removed at a later date once alternative transport solutions are in place (for example shuttle bus).”*

The provision of 393, or possibly 553, permanent new parking spaces is clearly not in accordance with this aspect of the new guidance.

It goes on to say: *“Proposals should be in accordance with the other policies within the Local Development Plan. For instance the trees and woodlands policy and avoid the removal of trees...”*. Clearly the Proposal does not follow this part of the guidance either.

It finishes by encouraging applications for new/extended car parks to be accompanied *“by a design statement and also a supporting statement”*, which *“should answer the following where relevant: ... why a car park is being proposed and what other solutions were explored other than car parking?”*

The Application does include a Design Statement, but there is no evidence that the Applicant has at any stage considered alternatives to massive additional carparking.

### **3. Conclusion**

The best way to sum up the substantive failures of the Application are to consider it in the context of Overarching Policy 1 in the LDP.

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

By destroying three areas of woodland and permanently disturbing the wildlife species that use them 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 inevitably privatise any *“understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities”* of this 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 in this part of the National Park.

By jeopardising those special qualities in this part of the National Park, through felling of areas of woodland, disturbing wildlife, and replacing them with buildings and carparks, 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.

If ever there was a case of *“a conflict between the National Park aim [to conserve and enhance the natural and cultural heritage of the area] and other National Park aims”*, this is surely it.

My client therefore urges you to recommend to the Authority’s Planning Committee that the Application be refused, and gives you notice that, should it be approved, my client will consider petitioning the Court of Session for judicial review of that decision.

Yours faithfully

Ian Cowan  
on behalf of Ross Greer MSP

Encl.

Annex A – A-4 sized copy of 2019 parameters plan for previous proposal

Annex B – copy extract of 1971 six-inch Ordnance Survey map covering Balloch

Annex C – copy of first 4 pages of 2018 EIA non-technical summary for previous proposal

## UNDERNOTE

### (a) Extract from Scottish Government Planning Circular 1/2017: Environmental Impact Assessment regulations

*80. The information in the EIA report must be summarised in a non-technical summary (paragraph 9 of Schedule 4). The non-technical summary is particularly important for ensuring that the public can comment fully on the EIA report. The EIA report may, of necessity, contain complex scientific data and analysis in a form which is not readily understandable by the lay person. The non-technical summary should set out the main findings of the EIA report in accessible plain English.*

### (b) Extracts from The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (with emphasis added)

#### **Regulation 5 - Environmental Impact Assessment Report**

*(1) An application for planning permission for EIA development must be accompanied by an environmental impact assessment report ("EIA report").*

*(2) An EIA report is a report prepared in accordance with this regulation by the developer which includes (at least)—*

- (a) a description of the development comprising information on the site, design, size and other relevant features of the development;*
- (b) a description of the likely significant effects of the development on the environment;*
- (c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;*
- (d) a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;*
- (e) a **non-technical summary** of the information referred to in sub-paragraphs (a) to (d); and*
- (f) any other information specified in **schedule 4** relevant to the specific characteristics of the development and to the environmental features likely to be affected.*

*(3) Where a scoping opinion (or scoping direction) is issued, the EIA report must be based on that scoping opinion (or scoping direction, as the case may be), and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.*



*(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.*

*(5) In order to ensure the completeness and quality of the EIA report—*

- (a) the developer must ensure that the EIA report is prepared by competent experts; and*
- (b) the EIA report must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.*

#### **Schedule 4 – Information for inclusion in environmental impact assessment reports**

*1. A description of the development, including in particular:*

- (a) a description of the location of the development;*
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;*
- (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;*
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.*

*2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*

*3. A description of the relevant aspects of the current state of the environment (the “baseline scenario”) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of relevant information and scientific knowledge.*

*4. A description of the factors specified in regulation 4(3) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.*

*5. A description of the likely significant effects of the development on the environment resulting from, inter alia:*

- (a) the construction and existence of the development, including, where relevant, demolition works;*

- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;*
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;*
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);*
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;*
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;*
- (g) the technologies and the substances used.*

*The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium- term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project including in particular those established under Council Directive 92/43/EEC and Directive 2009/147/EC.*

*6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.*

*7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.*

*8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation of the European Union such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.*

*9. A non-technical summary of the information provided under paragraphs 1 to 8.*

*10. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.*

### **(c) Extracts from 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).”*