



## Town and Country Planning (Scotland) Act 1997

### Appeal: Notice of Intention

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Notice of Intention by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-002-2021
- Site address: land at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House, Balloch, G83 8QX
- Appeal by Flamingo Land Limited against the decision by Loch Lomond and the Trossachs National Park Authority
- Application 2022/0157/PPP for planning permission in principle dated 16 May 2022 refused by notice dated 25 September 2024
- The development proposed: erection and operation of a mixed-use tourism and leisure development including refurbished tourist information building; up to 60-bedroom apartment hotel; up to 32-bedspace budget hotel, up to 104 no. self-catering holiday lodges; restoration and redevelopment / conversion of Woodbank House and attendant listed structures for up to 21 self-catering holiday apartments (subject to other necessary consents); leisure pool, waterpark, spa; restaurants, hot food cafe and retail areas; craft brewery including pub; visitor reception area and hub building; external activity areas including areas for event and performance, play, picnic and barbeque; monorail; transport infrastructure; associated access and parking; landscaping and utilities infrastructure works
- Application drawings: listed in Schedule 3 to this notice
- Date of site visit by Reporter: 7 February 2025

Date of notice: 16 May 2025

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### Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the 49 conditions listed in Schedule 1 below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 (the Act), or some suitable alternative arrangement, covering the matters listed in paragraph 402.

### Preliminary matters

The description of the proposed development that was set out in the planning application form was *“To create a high quality, tourism and leisure-led mixed use destination comprising of hotel and lodge accommodation along with family orientated accommodation and leisure activities.”* However, the appellant was content with the description used by the planning authority which provided greater clarity on the maximum extent of the proposed development. This was subsequently amended to reflect a reduction in the maximum number of proposed self-catering holiday lodges.

I agree that the revised description provides greater clarity on the nature and maximum scale of what is proposed. However, I have further modified the description, as that set out

on the authority's decision notice does not reflect the fact that, prior to determination of the planning application, the then applicant removed the staff accommodation element of the proposal.

The appeal site, in places, lies close to the River Leven and / or Loch Lomond, which are used by qualifying species of the Endrick Water Special Area of Conservation (SAC). As such, it is likely to have a significant effect on that European site. An appropriate assessment is set out at the end of this notice.

## **Environmental impact assessment**

The proposed development is described as above, and at Chapter 2 of the Environmental Impact Assessment (EIA) report and EIA report addendum. It is EIA development. The determination of this appeal is therefore subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA regulations).

I am required to examine the environmental information, reach a reasoned conclusion on the significant environmental effects of the proposed development and integrate that conclusion into this decision notice. In that respect I have taken the following into account:

- the EIA report submitted on 16 May 2022;
- an EIA report addendum, submitted in February 2023, (which reflected a reduction in the scope of the proposals following the removal of staff and service buildings and 17 bothies). This provided updated information on ecology, trees and woodland, noise and vibration, air quality, ground conditions, water, hydrology and flood risk, landscape and visual, traffic and transport, archaeology and cultural heritage and socio-economic, tourism, recreation and public access effects;
- an updated flood risk assessment, submitted on 30 June 2023;
- an updated socio-economic study dated December 2024;
- consultation responses from Historic Environment Scotland (HES), NatureScot, SEPA, Scottish Water, Transport Scotland, West Dunbartonshire Council, and Scottish Forestry; and
- representations from members of the public, organisations and businesses including from Balloch and Haldane Community Council, Alexandria Community Council, Bonhill and Dalmoanach Community Council and Kilmaronack Community Council.

I am required by the EIA regulations to include information in this decision notice in regard to opportunities for the public to participate in the decision-making procedure. I set that information out in Schedule 4 below. My conclusions on the significant environmental effects of the proposal are set out at paragraphs 116 to 383 below.

## **Reasoning**

1. The determining issues in this appeal are: whether the principle of development is acceptable; whether it qualifies for an exception to the flood avoidance principle; whether it can be concluded that, subject to appropriate conditions, the effects of the proposal on natural and cultural heritage, amenity and on the local road network would be acceptable, and the likely nature and scale of its effects on socio-economics, tourism, recreation and public access.

## The principle of development – LDP site allocations

2. The planning authority's reasons for refusal raise no objections to the principle of developing the appeal site for the types of development that are proposed, and the report to the planning authority's Board advised its members that the proposed development, both within the areas that have been allocated for development in the LDP and elsewhere, is supported by the LDP.

3. However, the principle of developing this land is a matter of great concern to those who have objected to the proposal (who are very significant in number). Many of these representations consider the site unsuitable in principle for the types of development that are proposed and would favour the site either being developed for community purposes or left undeveloped.

4. Therefore, before considering the likely implications of development on a range of receptor types, I consider whether, having regard to the development plan and other material considerations, the principle of what is proposed should be supported.

5. The appeal site extends to approximately 18.9 hectares. It includes two main development areas – West Riverside and Woodbank, within which there are proposed to be five development zones (Zone A to Zone E). All of the site lies within the town boundary of Balloch and almost all of it has been allocated for development in the Loch Lomond and the Trossachs National Park Local Development Plan (the LDP).

6. The LDP allocates four main areas for "Visitor Experience" land use and development at Balloch. The two largest areas: West Riverside (VE1) and Woodbank House (VE4) are relevant to the appeal proposal. Also relevant to this proposal is an allocation close to the railway station for mixed use development of visitor experience and transport (MU1) and the identification of land as Placemaking Priority areas. For each site allocation, the LDP sets out a non-exhaustive list of key considerations which should be taken into account.

7. I have compared what is proposed within each of the development zones with the LDP allocations that apply to the land within those development zones.

8. **Zone A**, known as Station Square, is situated opposite the junction of Balloch Road and Tullichewan Road / Fisherwood Road in the centre of the town. The entrance to Balloch station is opposite.

9. In Zone A it is proposed to refurbish an existing tourist information office to include bike hire, commercial and site management uses. Around this building would be an enhanced public square, at the northern end of which would be the southern terminus of a proposed monorail that would run north through development Zone B, providing access to development Zone C and existing retail and leisure facilities at Loch Lomond Shores. Other proposed uses would include a micro-brewery and pub, a restaurant, a budget hotel and space for events including a temporary tented amphitheatre.

10. The tourist information office has its own car parking area to the side and rear of the building. Neither the building or car park were in use at the time of my site inspection and the collapsed state of the boundary fencing suggests that this has been the case since at least the most recent storm.

11. To the immediate east is a further car park, which a number of interested parties advise is used by visitors to Balloch and as an unofficial "park and ride" for the station. This, together with land to the west of the tourist information centre car park, is proposed to be

developed for a mix of budget tourist accommodation, a brewery and amphitheatre. The submitted Transport Assessment confirms the appellant's agreement to a request by West Dunbartonshire Council for the southern end of the proposed Pier Road car park to provide 44 "park and ride" spaces as a replacement (and enhancement) of these existing facilities.

12. Most of Zone A occupies land identified in the LDP as MU1 – Mixed use of visitor experience and transportation. The remaining area to the west of the visitor centre car park is allocated as VE1 – Visitor experience.

13. The part of development Zone A that lies within allocation MU1 would accommodate the proposed food and drink / entertainment / budget accommodation use, a tourist information centre and a public square including a monorail terminus. I find this mix of proposed uses to be consistent with the site's LDP allocation.

14. For allocation MU1, key considerations highlighted in the LDP include the requirement for: an active travel plan; an assessment of access by all transport modes; a flood risk assessment; and an assessment of the likely impact on the loch shore and on the water body quality. The site is also identified as a place-making priority. These key considerations are considered below.

15. The appeal proposal is accompanied by a technical note on active and sustainable travel. This supplements the assessment of traffic and transport effects that is set out in chapter 12 of the EIA report and its addendum, which also contain a Transport Assessment. Further environmental information submitted in support of the proposal includes a parking and signage strategy and a commitment to produce a Travel Plan to encourage visitors and staff to travel using active and sustainable means. I note that, in addition to the proposed monorail, which would link Balloch Town centre and the Loch Lomond Shores development, the appellant proposes to provide an electric shuttle bus from the railway station to zones within the site and to provide improved pedestrian and cycle paths.

16. I discuss the wider travel and access implications of the proposal, later in this notice. In terms of the LDP's expectations for the MU1 allocation for an active travel plan and an assessment of access by all travel modes, I am satisfied that the information submitted and studies undertaken, which confirm the appellant's commitment to maximising alternatives to the private car and to encouraging active travel, satisfy the requirements of the allocation.

17. Flood risk was originally considered in chapter 10 of the EIA report and its addendum. An updated flood risk assessment and a note setting out the appellant's position on the proposal's compliance with NPF4 policy 22 were submitted subsequently. The issue of flooding is discussed later in this notice where I conclude that the proposal qualifies for support from NPF4 policy 22 a) ii and iv. The submitted information, which explains how the proposed development could operate safely in the event of the site flooding, also satisfies the expectation of LDP allocation MU1 for the issue of flood risk to be addressed.

18. As site MU1 is not adjacent to the loch shore, the potential for development there to affect that feature seems low and I note that the planning authority has not cited that concern (in respect of any element of the proposal) in its reasons for refusing planning permission in principle. It is hydrologically connected to the loch (albeit downstream) so there is the potential for the water quality of the loch (in addition to the River Leven, which is immediately adjacent to the site) to be affected. Chapter 10 of the EIA report and addendum, which considered water, hydrology and flood risk, concluded that the proposed development would not induce any significant water quality effect and SEPA has raised no

concerns in that regard. I am satisfied that the expectation of the LDP allocation for MU1 to assess the likely impact on the loch shore and on the water body quality has been met.

19. The LDP's identification of the MU1 allocation as a Place-making Priority highlights the need to support improvements to the public realm around the old station. Full design details of the proposals are not known at this planning permission in principle stage. However, from the intentions that are set out in the appellant's design statement, I find no reason to doubt that the proposed new public square would achieve this objective. The planning authority's reasons for refusing planning permission in principle also raise no concerns in this regard, and it would retain control over the design of the proposals, at the matters specified in conditions stage.

20. Overall, I find the appellant's proposals for the site to be consistent with (and therefore supported in principle by) the MU1 allocation.

21. The part of development Zone A that is within the allocated VE1 site is proposed for a mixed-use development of food and drink, entertainment and budget accommodation. In the absence of any specific definition of the types of use that this allocation permits, I find it reasonable to use the definition of "visitor experience" that is set out in LDP Visitor Experience Policy 1. This includes new or improved / expanded / altered visitor facilities, accommodation and visitor infrastructure (including recreation and access proposals). I find the proposed uses to be consistent, in principle, with that definition and therefore with the VE1 allocation.

22. For allocation VE1, key considerations highlighted in the LDP include: the need for loch shore protection; the requirement to undertake assessments of archaeology, land contamination, flood risk, landscape and transport; the need to consider access by all modes of transport; the need to consider effects on woodland; the need to carry out an appropriate assessment of effects on a European protected site; the provision of a sustainable drainage (SuDS) scheme and drainage impact assessment; and the provision of linkages through the site, of open space and an active travel plan.

23. The requirement for a proposed development of allocated site VE1 to consider the need for loch shore protection and effects on woodland have no obvious relevance for this part of that allocation, as it is a grassed area that is distant from the loch shore. The planning authority has raised no issue over loch shore protection for any of the proposal and, as this part of the site is not woodland, its concerns over effects on woodland, which I discuss later in this notice, cannot apply here. I am satisfied that the appellant's archaeology, land contamination, drainage impact and transport assessments, to which the planning authority's reasons for refusal raise no challenge, satisfy the expectation to address those key considerations, along with the need to consider access by all modes of transport and to provide an active travel plan for staff and site users. I consider wider issues of flood risk and landscape effects later in this notice. In respect of the part of Zone A that lies within allocation VE1, being a small, well-concealed parcel of land outside the SEPA-identified flood risk area, I find the proposal to meet the expectations of these key considerations also.

24. In accordance with the VE1 allocation, the appellant has provided information to inform an appropriate assessment of the proposal's likely effect on the Endrick Water Special Area of Conservation (SAC). Although that European site is distant from all parts of the appeal site, the nearby River Leven is used by SAC qualifying species (Atlantic salmon and river lamprey). I conclude later in this notice that, subject to appropriate conditions, there would be no harm to the integrity of the SAC.

25. Outline details of the proposed SuDS scheme, to which the planning authority has raised no objection in principle, satisfy that key consideration for allocated site VE1. In accordance with the VE1 allocation's expectations to provide linkages through the site and open space, the proposal would be well connected to the adjacent town square with its onward linkages to the north and south.
26. Overall, I find the appellant's proposals for this part of Zone A to be consistent with- (and therefore supported in principle by) the LDP allocation.
27. **Zone B**, known as Riverside, occupies an area of existing woodland and open space between the River Leven and Pier Road.
28. LDP allocation VE1 covers the majority of this proposed development zone and also additional land to the north at Balloch Pier, which is outside the appeal site.
29. It is proposed to develop the central portion of Zone B with forest lodges and recreational facilities, with the periphery of the site retained as woodland. A monorail is proposed to run through this site, to the immediate east of Pier Road, linking the proposed public realm area at the tourist information building with Zone C (discussed below).
30. There is extensive woodland, known as Drumkinnon Wood to the west of Pier Road and south of Ben Lomond Way. This is not included within the appeal site, but was outlined in blue in the application plans to indicate land that is within the control of (as it was then) the applicant. The appellant has an option to take a long-term lease of the wood in order to put in place a woodland management plan aimed at, among other things, enhancing the existing level of biodiversity within the wood. This commitment, and others, were set out in the appellant's "Lomond Promise" which accompanied the planning application. This is a legally binding promise that aims to address issues that the community raised with the appellant during pre-application consultation. I discuss the Lomond Promise in more detail, later in this notice.
31. Contrary to the understandable fears of some who are opposed to the appeal proposal that Drumkinnon Wood could in time become a further phase of development, the retention of this land for the enhancement of biodiversity and its protection from development in the future, could (as the appellant has offered) be legally secured. The potential for this to compensate for any adverse environmental effects of the proposal and to offer biodiversity enhancement, is of importance to my assessment of this proposal and I return to it later in this notice.
32. To the south of the main Drumkinnon Wood is a strip of woodland that runs along the western side of Pier Road, behind houses on Clairinsh. It is proposed to create a car park within this woodland. Most of this area is included within the VE1 allocation. However, an area at the southern end of that woodland, between residential properties on Clairinsh and Pier Road, lies outside the VE1 allocation. However, it is within the Balloch town boundary.
33. None of the woodland within Zone B is on the Ancient Woodland Inventory (AWI).
34. The uses proposed for Zone B (visitor accommodation, recreation and access) fall within the broad definition of "visitor experience" that is provided in LDP policy Visitor Experience 1. In principle therefore, I find them to be acceptable uses for this allocated site.
35. The key considerations for allocation VE1 (set out above) are considered for Zone B below.

36. Zone B does not front directly onto the loch so the need for loch shore protection is not directly relevant. As I confirmed to be the case for Zone A, the appellant's archaeology, land contamination, drainage impact and transport assessments, to which the planning authority's reasons for refusal raise no challenge, satisfy the expectation to address those key considerations of the VE1 allocation, along with the need to consider access by all modes of transport and to provide an active travel plan for staff and site users

37. The proposed provision of SuDS, the development of an active travel plan, and the provision of open space within the proposed development for which I am satisfied from the submitted illustrative site layout plan, the maximum level of development that is proposed would leave adequate space, would also satisfy VE1 key considerations.

38. The LDP allocation plan for VE1 highlights the importance of providing a link between Balloch town centre and Loch Lomond Shores, which the proposed cycling / walking routes and monorail would address. Also identified as important is the need to respect the sensitivity of the River Leven frontage, for its own sake and to avoid intrusion upon the setting of the historic garden and designed landscape on the opposite bank. In accordance with that, the indicative proposals show the proposed forest lodges set well back from the river edge.

39. With regard to flood risk, although the planning authority disputes that the proposals qualify for the exemption to the "avoidance principle" that is offered by NPF4 policy 22 a) iv, it has not provided evidence to undermine the appellants' technical flood risk evidence, which demonstrates that, subject to further flood modelling work, development within Zone B could operate safely despite some of the site being within the flood risk area. SEPA accepts the appellant's position in principle. I discuss the flood risk issue later in this notice where I explain why I disagree with the planning authority on the policy question. Overall, I find this key consideration of the VE1 allocation to be satisfied.

40. Turning to the need to consider effects on woodland, I note that the planning authority's third and fourth reasons for refusal find there would be an unacceptable impact on the natural environment because of the proposal's impact on woodland, and its failure to demonstrate that it can deliver appropriate and sufficient woodland compensation. The authority's concerns particularly relate to woodland that it believes to be ancient woodland within Zones D and E, but also refer to woodland loss more generally. I deal with these matters later in this notice.

41. In respect of Zone B, the appellant's illustrative masterplan shows the extent of tree coverage actually being increased, due to the proposed introduction of tree planting into what is currently an open grassed area between existing woodland belts along Pier Road and the River Leven frontage. Towards the southern end of Zone B, at present it is the grassed area rather than the woodland that is the dominant land cover. Precise details of where the proposed lodges, visitor attraction, car park, cycling / walking routes and monorail would be sited, and how much tree planting would take place, are matters to be agreed by the planning authority at the matters specified in conditions stage. However, I am satisfied, at this planning permission in principle stage, that the VE1 allocation's requirement to consider effects on woodland has been satisfied.

42. The planning authority has raised no concerns over the landscape or visual effects of any element of the appeal proposal, although such concerns are raised by a number of objectors. Given the nature of the lodge development that is proposed for Zone B (being domestic scale buildings within a woodland setting, where any views of the proposals would be very short range) and the landscape / townscape context within which it would be seen, which is unexceptional, there are no grounds to suspect that, once finalised designs had

been prepared, there would be any harm to visual amenity or to the quality of the landscape / townscape from the proposed lodges. The proposed monorail would have the potential to be more prominent, but, given the visual context in which it would be seen, which includes the rather utilitarian Pier Road, and the likelihood of effective tree screening of longer views, there are no grounds to suspect that suitable proposals could not be designed. I discuss landscape / townscape and visual effects in more detail, later in this notice.

43. Overall, I find the appellant's proposals for Zone B to be consistent with the LDP's VE1 allocation.

44. I assess the acceptability in principle of the car park that is proposed for the southern end of the strip of woodland that runs along the western side of Pier Road, between residential properties on Clairinsh and Pier Road, and lies outside the VE1 allocation, later in this notice, in my assessment of the proposal against development plan policy.

45. In **Zone C**, known as Pierhead, it is proposed to develop an aparthotel (with a maximum of 60 rooms), a leisure pool / water park with an approximate floor area of 2500m<sup>2</sup>, a restaurant and bar (incorporated into the hotel / pool building) and a visitor hub. Most of this zone is adjacent to the existing Loch Lomond Shores retail and leisure development and the Sea Life Loch Lomond Aquarium. It is also proposed to create an unspecified visitor attraction and car park at the northern end of Zone B, on the eastern side of Pier Road.

46. Most of Zone C lies within the VE1 allocation. However, the south western end of the site, closest to the aquarium and shopping centre, where it is proposed to create a public square, is outside, although still within the Balloch town boundary.

47. The uses proposed for Zone C within the VE1 allocation (a visitor attraction, hotel, leisure pool, restaurant / bar, visitor hub and northern terminus for the proposed monorail) fall within the broad definition of "visitor experience" that is provided in LDP policy Visitor Experience 1. In principle therefore, I find them acceptable uses for this allocated site.

48. The key considerations for allocation VE1 (set out above) are considered for Zone C below.

49. Unlike other proposed development zones, some of Zone C would be close to the loch. Most of the shoreside development is shown in the appellant's illustrative masterplan to be set back from the immediate edge of the loch. The planning authority has raised no concern over loch shore or water quality effects and I am satisfied that these issues can be left to matters specified in conditions, as there is no evidence to suggest that the appellant would be unable to address them.

50. As with the proposals for Zones A and B, I am satisfied that the VE1 allocation requirement to undertake assessments of drainage, archaeology, land contamination, flood risk, landscape and transport have all been satisfied, as has the need to consider access by all modes of transport. Sufficient information has been provided to enable me to carry out an appropriate assessment of effects on the Endrick Water SAC, which I do, later in this notice.

51. The requirement to provide a SuDS scheme and the provision of linkages through the site along with the provision of open space and an active travel plan could all be satisfied at the matters specified in conditions stage, as the proposed indicative layout and the responses of consultees, suggest no insurmountable issues with regard to any of those matters.



52. There is an area of woodland within Zone C that provides landscape screening between a carpark serving the slipway and an existing pedestrian route around the north eastern side of Drumkinnon Bay. This is approximately 150m long and between 20m and 55m wide. All of this would be lost, which is a negative consequence of the scheme, albeit one that the planning authority took into account when it resolved to allocate the land for development. None of this woodland is on the AWI. All of the trees appear to be at a consistent, semi-mature stage of development, which gives the woodland a man-made but nevertheless attractive appearance.

53. The VE1 allocation does not specify that woodland loss must be avoided; rather, it requires effects on woodland to be considered. I consider later in this notice whether the proposals overall would have an acceptable effect on woodland and whether adequate compensation and enhancement measures are proposed. For the purposes of assessing compliance with the LDP allocation, I do not regard this loss of woodland within Zone C as a reason to find the principle of development to be contrary to the VE1 allocation.

54. Overall, I find the appellant's proposals for Zone C to be consistent with the LDP VE1 allocation. I consider the merits of the proposed public square in the area of Zone C that is outside the allocated site, in my assessment of the proposal against development plan policy, later in this notice.

55. None of **Zone D** is allocated for development but all of it is within the Balloch town boundary. I consider the acceptability in principle of what is proposed for that part of the site, later in this notice, in my assessment of the proposal against development plan policy.

56. **Zone E** lies to the south west of Old Luss Road. All of it is covered by allocation VE4, which, like VE1, is an allocation for "visitor experience" uses.

57. The site contains a derelict category A listed building known as Woodbank House, various outbuildings and surrounding woodland and fields. This eighteenth century building is on the buildings at risk register. There is disagreement between the planning authority and appellant over how much of the tree cover within this site is included on the AWI. I discuss that matter, later in this notice.

58. On this site, it is proposed to convert the former house into up to 15 holiday apartments, and the associated outbuildings to a further six. Within a field to the north of the buildings, set back from the Old Luss Road frontage, and in a further field that runs along the site's frontage with Lower Stonymollan Road, it is proposed to site up to 37 lodges. A further 25 lodges are proposed to be sited in a wooded area to the rear of the listed building, within and to the south of, a former walled garden.

59. I am satisfied that all elements of the uses proposed for Zone E would be consistent with, and therefore supported by, the VE4 "visitor experience" site allocation.

60. Allocation VE4 key considerations include the need to identify how the development would address or mitigate the impact on the historic environment. This is covered in chapter 13 (archaeology and cultural heritage) of the EIA report and addendum. In my consideration of these issues, later in this notice, I find no evidence to suggest that effects on the listed building or its setting (once design details were finalised) would be unacceptable. I also conclude that the opportunity the proposals for Zone E would provide to secure a future for one of the most important heritage assets in this part of the national park (and an asset of recognised national importance) are important factors that weigh in favour of approving the appeal proposal. I am satisfied that the planning expectations in

this regard, when the authority allocated site VE4 for development are satisfied and note that it has not indicated otherwise.

61. The VE4 key considerations requiring studies into flood risk, archaeological impact, drainage, landscape and effects on woodland have all been addressed by studies submitted with the planning application.

62. The planning authority has raised no concerns over archaeological impact, drainage or landscape effects and I find no grounds to disagree. An area of the site close to the junction of Old Luss Road and Lower Stoneymollan Road is at risk of flooding from surface water. I consider the implications of the “avoidance principle” for this and other flood risk areas, later in this notice. The authority has not taken issue with the conclusions of the appellant’s flood risk assessments that development here could take place safely, despite the known flooding issue. SEPA has similarly accepted those conclusions and I find no grounds to disagree.

63. The VE4 key consideration requiring a design document for this site highlights where a design brief and access statement or masterplan should be submitted as part of the planning application. This has been addressed by the appellant’s design statement, which demonstrates, in principle, how development of this sensitive site could proceed without harming the nationally important historic asset that is Woodbank House. I find no grounds to disagree with the conclusions of Historic Environment Scotland and the planning authority (which raised no concerns in respect of the historic environment in its reasons for refusal) that, in this regard, the proposal would satisfy the expectations of allocation VE4.

64. The requirement to address access by all modes of transport has been addressed by the proposed developer’s commitment to providing a shuttle bus between Zone E and the railway station and by the provision of pedestrian and cycle routes, the location of which is shown indicatively in the submitted drawings.

65. With regard to the need to consider effects on woodland, most of the proposed development would be confined to open areas of the site. However, the majority of the location where up to 25 “woodland lodges” are proposed, has existing tree cover. Tree survey work, including a tree report and assessment matrix, was undertaken to identify the age, species mix and quality of the trees in all parts of the Zone E site.

66. I conclude later in this report that the proposal’s likely effects on trees and woodland would be acceptable. I am satisfied that the requirement of the VE4 allocation to consider effects on woodland has been met.

67. Overall, I find the appellant’s proposals for Zone E to be consistent with (and therefore supported by) the LDP VE4 allocation.

68. The fact that the majority of the proposal would occupy land that has been allocated for the very form of development that is now proposed, is a significant factor in its favour. Some objectors contend that support for the types of development that the allocations encourage should only extend to community-led projects or to individual development projects for each allocated site, rather than to a proposal that would extend across several. However, there is no requirement in the LDP for such restrictions to apply or any evidence founded in material planning considerations that would justify such an approach.

69. I conclude that, for all of the development that lies within land allocated for development in the LDP (which is the great majority of the appeal site) the principle of

development is consistent with the requirements of those allocations and is therefore supported by them.

70. As site allocations merely agree the principle of certain land use types, it remains necessary in order to assess whether planning permission in principle should be granted, to assess the proposal against the policies of the development plan. This includes the more recently adopted NPF4, which has an increased focus on environmental issues such as the climate and nature crises.

### **The principle of development – development plan policies**

71. Allocating a site for development does not mean that it can be developed without regard to development plan policies or material considerations. However, it ought to provide a prospective developer with a considerable degree of confidence as to the acceptability, in principle, of a development proposal that is consistent with the terms of the allocation. It is also reasonable to assume that, if a site has been allocated for a particular form of development in the LDP, then the principle of developing it in accordance with that allocation will be consistent with the LDP's vision and overarching policies.

72. The LDP's vision and the strategy for its delivery seek (among other things) to direct most new development to the national park's towns. Balloch is identified specifically as one of the locations with the greatest range of existing public services, employment, facilities and transport or path networks.

73. Overarching Policy 1 requires all development to contribute to the national park being a successful sustainable place, a low carbon place, a natural, resilient place and a more connected place. Under each of the four headline expectations, more specific requirements are set out, such as the need for proposals to respect their landscape setting, to support waste reduction, to achieve the qualities of successful places and to improve connections to public transport. These more specific requirements are, in the main, issues that would be controlled at the matters specified in conditions stage, provided that the principle of development was found to be acceptable and no reasons were identified to suggest that addressing those requirements would be impossible.

74. As I have confirmed above, the great majority of the appeal proposal is aligned with the decision taken by the planning authority to allocate significant areas of land in this location for tourism and leisure development. And all of the proposed development would take place within the LDP-defined town boundary of Balloch, which the LDP describes as the southern gateway to the national park, a location that already attracts a high number of tourists due to its easy access from Glasgow, and an area of strategic tourism opportunities. For land within and outside the site allocations, there is no evidence to support a conclusion that the principle of the proposed tourism and leisure development would conflict with Overarching Policy 1 or that detailed proposals would fail to achieve its objectives.

75. The planning authority cites conflict with Overarching Policy 1 in its first and sixth reasons for refusal. This relates not to the principle of the proposed development but to the detailed objections that the authority has raised.

76. The first contends that development in a flood risk area would not achieve the expectation to contribute to being a natural, resilient place. It also cites conflict with NPF4 policy 2 b due to the authority's conclusion that the proposal has not been sited and designed to adapt to current and future risks from climate change, and with LDP Natural Environment Policy 13 (a).

77. I explain later in this notice that LDP Natural Environment Policy 13 (a) is incompatible with (and has therefore been superseded by) NPF4 policy 22 and that the development can benefit from the later policy's exemption from the general principle that development should be directed away from areas that are at risk of flooding. I also confirm my finding that such development would be safe and resilient. For those reasons, I find no conflict with Overarching Policy 1 or NPF4 policy 2b).

78. The sixth reason for refusal argues that there would be conflict with Overarching Policy 1 because the proposal would not contribute to the collective achievement of the four aims set out in The National Parks (Scotland) Act 2000, and because it would conflict with the National Park Partnership Plan. I explain later in this notice that I agree that these are material considerations, but that the proposed development would, in principle, be compliant with both.

79. Overarching policy 2 requires development proposals not to conflict with nearby land uses and, where relevant, to address a series of requirements. For those parts of the site that have been allocated for development, the planning authority has, evidently, already concluded that development in the form that the allocations envisage would not conflict with nearby land uses. My finding above that what is proposed is entirely consistent with those allocations confirms that conflict with nearby land uses should not be expected. And, for both the allocated majority and non-allocated minority of the appeal site, there is no evidence to suggest that what is proposed would have such an effect. Indeed, the types of development that are proposed are what one would expect to find within a settlement that has been identified as having strategic importance for tourism.

80. As with Overarching Policy 1, the more specific requirements of this policy, which deal with matters such as effects on the historic environment, climate friendly design and sustainable travel, are matters that could (if the principle of development were accepted) be controlled at the matters specified in conditions stage. I find no evidence to conclude that the principle of development is in conflict with Overarching Policy 2 or to doubt that detailed design proposals could satisfy all of the more specific requirements of this policy. The planning authority has identified conflict with this policy in its second and third reasons for refusal. These set out its concerns with biodiversity enhancement and woodland loss. I explain later in this notice why I do not share those concerns.

81. Overarching Policy 3 highlights that developer contributions may be sought for public infrastructure, public services or to address adverse environmental impacts. The appellant has offered to exercise the option it has on Drumkinnon Wood in order to manage and enhance that woodland for (among other things) the benefit of biodiversity. It has also agreed to fund improvements to the Ballochloan roundabout. These matters are discussed later in this notice. Other than expressions of concern that the Ballochloan roundabout improvements would be insufficient (which I consider later in this notice) no party has suggested a need for additional developer contributions, and I find the proposals to be in accordance with Overarching Policy 3.

82. LDP Visitor Experience Policy 1 offers support to new or improved, expanded or altered visitor facilities, accommodation and visitor infrastructure (including recreation and access proposals), provided that it falls within one of a number of development or location categories.

83. As I have explained above, all elements of the proposed development fall within the remit of (and can therefore potentially draw support from) this policy.

84. Part (a) of the policy applies to identified strategic tourism opportunities in (among other places) Balloch, as shown in the LDP's Development Strategy Map, or which would be located in, or within a safe walking distance from, a town or village. All of the proposed development can draw support, in principle, from part (a), being located either within the strategic tourism opportunities that the LDP has identified for Balloch (the abovementioned site allocations), or elsewhere within the town.

85. It is suggested by some who object to the proposal that, in the case of Balloch, as the LDP has allocated specific parcels of land for visitor experience and mixed-use development, such development types should be restricted to those allocated areas and not allowed elsewhere. Such an argument is contrary to the LDP's identification of Balloch as a settlement and to the support for such development that is provided by Visitor Experience Policy 1 for these types of development on non-allocated as well as allocated land, and even (where within a safe walking distance) on land that is outside a town or village.

86. LDP Visitor Experience Policy 2 seeks to deliver a world-class visitor experience. It requires (among other things not relevant to this proposal) new tourism development to enhance the visitor experience of the national park and, where necessary, to demonstrate viability and market demand. The park authority has not raised any issue with this policy and I too find no reason to find any conflict. For those visitors to the national park who seek the types of visitor experience that the proposal would provide, there is no reason to doubt that the proposals would enhance their experience. Similarly, there is no evidence to suggest that what is proposed would fail in viability or market demand grounds. I consider the evidence of likely socio-economic effects, later in this notice.

87. NPF4 policy 30 part a) offers support to proposals for new or extended tourist facilities or accommodation in locations, such as the appeal site, that are identified in the LDP. This is supportive in principle of the proposal. Other parts of this policy deal with matters of detail, which I discuss later in this notice.

88. Part of the Zone B development area that lies at the southern end of the woodland along the western side of Pier Road, between residential properties on Clairinsh and Pier Road, lies outside the VE1 allocation. However, it is within the Balloch town boundary.

89. It is proposed to use this land (in conjunction with a much larger area of land that is within the VE1 allocation) to provide car parking for the proposed visitor attractions and to provide "park and ride" facilities for the station. For reasons I have already stated, I find the principle of this land use to be supported by Visitor Experience Policy 1. None of this woodland is included in the AWI and there is no evidence to assume that it is ancient woodland. Unlike woodland within Zones D and E, the planning authority has not suggested that it is. The proposals for this land would require the removal of woodland. There is no prohibition on woodland removal within a national park but it is a negative consequence of the proposal that requires careful consideration. I can understand why residents who live close to this woodland would not welcome its replacement with car parking. I consider the proposal's likely effects on amenity, later in this notice, where I find no grounds to suspect any unacceptable effects. Overall, I find the principle of developing this site for part of the proposed car park to be acceptable.

90. Land at the south western end of Zone C, closest to the aquarium and shopping centre, is outside the VE1 site allocation, although still within the Balloch town boundary. This part of the site would be used to create a public square, which is a use that would benefit the visitor experience. Bearing in mind the support that Visitor Experience Policy 1 gives to the principle of such development and the potential it would have to connect with

and enhance the Loch Lomond Shores and aquarium developments, I find the principle of this element of the proposals to be supported by the development plan.

91. Limited development is proposed within Zone D. The majority of this land is a belt of woodland that lies to the immediate south west of the Loch Lomond Shores car park, screening it from Old Luss Road. This is proposed to be retained as woodland, but with a new pedestrian / cycle route, connecting Zone E with the existing Loch Lomond Shores complex. There is also a small site within the wooded promontory opposite the Loch Lomond Shores development where it is proposed to build a boathouse of approximately 95m<sup>2</sup> floorspace for the storage of equipment and the operation of water-based activities. Forming the access path and building the boathouse would require the removal of trees. In the case of the proposed boathouse, the affected woodland is included on the AWI, although the scale of tree removal would be very small in comparison with that of the unaffected woodland. I discuss the implications and acceptability of the proposed tree removal, later in this notice.

92. None of Zone D is allocated for development but all of it is within the Balloch town boundary. The site of the proposed boathouse is also identified in the LDP as open space. That designation extends to all of the woodland to the north and north west of the Loch Lomond Shores development where there is a dilapidated and disused treetop adventure course and various paths on raised wooden walkways. LDP Open Space Policy 2 confirms that development on designated open space will generally not be supported unless it can be demonstrated that: the open space has no community value; alternative high quality provision could be provided; the proposal would complement the principal use of the site and would enhance the open space or improve its management, and would complement its nature conservation management.

93. The planning authority has identified no conflict with this policy. However, I find this element of the proposal to be contrary to the first requirement of this policy, as the open space, although appearing rather neglected in places, clearly retains community value. I have no concerns with the policy's other expectations, as the proposed boathouse would complement other uses of the open space and would enhance it. And in conjunction with the wider scheme, I am confident that overall open space quality and extent would be improved by the proposal. The policy requires all of its requirements to be met, which this proposal would not. Therefore, I find the principle of developing a boathouse in this location (notwithstanding the fact there was once a boathouse there) contrary to Open Space Policy 2. However, due to the absence of harm that the policy breach would cause and the small scale of this element of the proposal, this is not an issue to which I consider significant negative weight should be given when weighing the positive and negative consequences of the proposed development in the planning balance.

94. The planning authority concludes (in reasons for refusal 2 and 3) that, due to what it finds to be an inadequate approach to biodiversity enhancement and an unacceptable effect on woodland including in the vicinity of the proposed boathouse, the proposal would not comply with LDP Natural Environment Policies 6 and 8 and with NPF4 policies 4 and 6. I conclude later in this notice that, subject to appropriate conditions and a planning obligation requiring the developer to include Drumkinnon Wood within its compensation and enhancement proposals, while there would remain conflict with NPF4 policy 6 in respect of the proposed boathouse, these concerns could be addressed.

95. Taking all relevant policies into consideration, I find that, with the exception of the proposed boathouse, the principle of all elements of the proposed development is in accordance with the development plan.

## **Principle of development – other material considerations**

96. The planning authority adopted revised Visitor Experience planning guidance in May 2022. This is not part of the development plan, but is a material consideration that requires to be taken into account when assessing the acceptability in planning terms of what is proposed.

97. The guidance provides greater detail on how the LDP's tourism policies will be applied, but does not (and could not) alter the requirements of those policies. Generally, the document is very supportive of new tourism development, particularly in towns and villages. It highlights that some proposals may require to be accompanied by a business statement, demonstrating viability and market demand. The updated socio-economic study, to which I refer later in this notice, satisfies that expectation. Overall, I find nothing in the guidance that would count against the proposal.

98. Section 1 of the National Parks (Scotland) Act 2000 sets out four aims for national parks. The extent to which a proposal would contribute to the collective achievement of these aims (giving greater weight to the first if it appears to be in conflict with the others) is an important consideration to weigh in the planning balance. The achievement of these aims is also referred to in LDP Overarching Policy 1 as one of the indicators that the national park is a successful, sustainable place.

99. The first statutory aim is to conserve and enhance the natural and cultural heritage of the area. The extent to which any proposal would achieve this aim is likely to depend on the precise details of its design and of the way in which it would be carried out. Such details are not before me at this planning permission in principle stage. However, as I conclude later in this notice that, due to the absence of any evidence to suggest that the natural or cultural heritage of the area would not be (at the least) conserved, there are no grounds to suspect that the principle of what is proposed would be at odds with the first statutory aim.

100. Unlike many parts of the national park, the appeal site has limited natural heritage value. There would be some impact on AWI woodland, but not to any significant degree. Areas of non AWI woodland would be lost but again, the scale of such loss would not be significant. As set out above, the development could significantly affect two of the qualifying species of the Endrick Water SAC. However, (as I confirm later in this notice), subject to careful design and construction techniques, there are no grounds to conclude that the proposal would harm the integrity of that designation.

101. Part of the site (Zone E) has considerable cultural heritage importance, but Historic Environment Scotland has raised no concerns with the proposals and I give great weight to the ability of the proposals to secure a future for the nationally important Woodbank House, which is a key element of the cultural heritage of this part of the national park.

102. Overall, I am satisfied that, subject to appropriate details being finalised, the proposal would be fully in accordance with the first national park aim.

103. The second national park aim is to promote the sustainable use of the natural resources of the area. This does not mean resisting change, but requires that, where the park's natural resources such as its landscape are proposed to be used or developed, this must be in a way that strikes the correct balance between the needs of the environment, the economy and the people who live in and visit the park. The fact that all forms of development will have some negative as well as positive consequences will have been recognised by the planning authority when it allocated significant areas of land in Balloch for the type of development the appellant proposes and when it adopted policies that support

the principle of such development. For reasons I explain throughout this notice, I am satisfied, to the extent that is necessary and possible at this planning permission in principle stage, that the appellant's proposals for all areas of the appeal site are capable of achieving an appropriate balance between the needs of the environment, the economy and society such that they can realistically be described as sustainable. Consequently, I find no conflict with the second national park aim.

104. The third national park aim is to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public. The fourth is to promote sustainable economic and social development of the area's communities. The purpose of the proposed development is to promote recreation and I discuss later in this notice the proposal's predicted socio-economic benefits for the local and wider community. Not all areas of the national park share the same special qualities. Therefore, opportunities that are presented for promoting the understanding and enjoyment of those special qualities will vary across the park. The planning authority has raised no concern over the proposal's ability to contribute to the third and fourth national park aims and I concur with that position.

105. The National Park Partnership Plan 2024-2029 is a material consideration to which I must pay special attention. However, it is not part of the development plan and, while it will influence any future LDP, it cannot alter the content of the current development plan.

106. The partnership plan sets out a long-term vision for the park and the steps that will be taken to achieve it. The vision is that, by 2045 the park will be a thriving place that is nature positive and carbon negative. This reflects the twin crises (climate change and nature loss) that are recognised in NPF4.

107. The partnership plan recognises the park's environmental and socio-economic challenges. It commits the national park authority and its partners to making a step change in how it responds to those challenges. Particular issues that are recognised as requiring to be addressed include the need to tackle the climate and nature crises, to restore nature, to improve access to housing, jobs and skills, and to address inequality of access to the national park. The plan identifies Balloch as one of the Strategic Development and Investment locations, where encouragement is given to "Investment that enhances Balloch as the main visitor and transport interchange hub for the National Park."

108. The planning authority's fifth reason for refusal finds conflict with elements of the partnership plan that deal with tackling the climate emergency and maximising opportunities to deliver or enable nature restoration. The sixth reason for refusal concludes that the proposal, overall, would not support the partnership plan. For reasons I explain elsewhere in this report, bearing in mind the relatively limited biodiversity interest of the site, the absence of evidence that developing it would necessitate more than a limited quantum of woodland removal (and could secure the future retention and enhancement of a significantly greater area of woodland) and the highly accessible (in national park terms) location of the site, I do not agree that negative effects on nature or climate are inevitable consequences of the proposed development. In addition, the partnership plan also requires other socio-economic objectives such as developing employment and business opportunities, and improving accessibility to the national park for those who might not have been able or inclined to visit before.

109. For reasons I explain elsewhere in this report, and subject to what is being proposed being developed sensitively (which is for consideration at the matters specified in conditions stage), when all positive and negative consequences of the proposal are considered in the round, I find no conflict with the National Park Partnership Plan.



## **Principle of development – conclusions**

110. For the reasons I have set out above, like the planning authority, I find the principle of all of the appeal proposal to be in accordance with the development plan. I also find no material considerations that would indicate that, in principle, it should not be supported.

111. It is now necessary to assess the likely environmental and socio-economic effects of the proposal in order to determine whether, notwithstanding the in-principle acceptability of what is proposed, it should, nevertheless, be refused planning permission, either due to conflicts with other elements of the development plan that override its in-principle compatibility, or because other material considerations indicate that planning permission should not be granted.

## **The scale of the proposed development**

112. The scale of proposed development is referred to in the fifth reason for refusal as a reason why the proposal is contrary to the National Park Partnership Plan.

113. The planning authority believes that it would have been inappropriate for it to have considered whether planning conditions requiring a reduced scale of development might have allayed its concerns. I disagree with that conclusion, as it is an approach that is commonly employed when a planning authority has concerns with a development proposal. However, for the two reasons I set out below, I do not find this to be relevant to my determination of this appeal.

114. First, as I confirm elsewhere in this notice, I agree with the findings of the appellant's EIA report and other environmental information that, at the indicated maximum level of development specified in the application for planning permission in principle, the proposal is unlikely to have any unacceptable environmental effects.

115. Second, the quantum of development that is specified in the appellant's parameters plan and described elsewhere in its appeal proposal, is stated to be the maximum level of development that could be carried out. This is the normal approach to an application for planning permission in principle where the proposal is EIA development, as it allows the potential environmental effects of the proposal to be assessed on a "worst case" basis. Approval of planning permission in those terms would not provide any guarantee that such a level of development would ultimately be deliverable. Whether that proved to be the case would depend upon the prospective developer being able to deliver acceptable design and layout details at the matters specified in conditions stage. That would be a matter for the planning authority to assess at that time.

## **Flood risk**

116. The issue of flood risk was assessed in chapter 10 of the EIA report. This was updated in a revised flood risk assessment (FRA) in June 2023 in order to address the latest SEPA flood maps and an increased river flow allowance for the Clyde River Basin District, which are consequences of climate change.

117. SEPA's latest flood maps indicate that most of the West Riverside area adjacent to the River Leven (Zone B and part of Zone A) as well as parts of the Pierhead (Zone C) adjacent to Loch Lomond and the proposed boathouse in Zone D, are at a medium or high risk of flooding.

118. The susceptibility to flooding of land close to the River Leven is not a recent phenomenon. The revised FRA describes a flooding event in December 2006 that had

significant effects. It was therefore, an issue of which the planning authority was aware when it resolved to allocate this land for development. However, as a consequence of the latest understanding of the effects of climate change on peak river flows and associated water levels, the national policy position towards developing land that is at risk of flooding has become significantly more cautious. In addition, the extent of land that is now to be regarded as at flood risk has generally increased. In the case of Loch Lomond, the predicted peak water level has been increased over previous estimates. This gives a flood level for a 1 in 200 year event plus 49% climate change allowance of 10.65m AOD, which could equate to a 200mm floodwater depth across Zone B and part of Zone A.

119. Part of the Woodbank House site (Zone E), has also been identified to be at medium or high risk of flooding from surface water. There is an unnamed watercourse on the eastern boundary of that site which flows through a number of culverts on its way to the Loch. I understand from the community council that flooding of Old Luss Road is known to occur in this location. This may be a consequence of the culverts being significantly blocked with silt, which the FRA noted.

120. NPF4 introduced a revised and stricter approach to the principle of developing land that is at risk of flooding. It is no longer sufficient for a proposal to be able to demonstrate how design approaches such as raising the floor height of buildings and / or land, and providing flood water storage capacity on site, could avoid or minimise risks from flooding; the starting presumption is now that areas that are at risk from flooding should not be developed at all. This is known as the “avoidance principle”.

121. Importantly however, in recognition that some forms of development may be acceptable within a flood risk area and that, even for flood sensitive uses, there may be public interest grounds that outweigh the avoidance principle, part a) of the policy permits exceptions to that principle where that would be justified.

122. LDP Natural Environment Policy 13 also deals with flood risk. However, I find that policy (which does not employ the avoidance principle) to be incompatible with NPF4 policy 22, so I have not considered it further.

123. NPF4 policy 22 a) supports development proposals on land that would be at risk of flooding or in a flood risk area, only where one of four exemptions applies. I agree with SEPA that the boathouse that is proposed for Zone D is a “water compatible use” under the terms of the NPF4 glossary, being a form of “water-based recreation”. As such, that element of the proposal would be supported in principle by part a) ii of policy 22. For the remainder of the proposals, parts a) i to a) iii are not relevant. However, part a) iv is potentially relevant. This applies to *“redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.”*

124. The planning authority contends that this exemption does not apply to any of the appeal site, and that the avoidance principle should be maintained.

125. It is debateable whether the development that is proposed for Zones C and E and for the part of Zone D that lies between Old Luss Road and the Loch Lomond Shores car park is subject to LDP policy 22.

126. Zone C includes land within the 1 in 200 year plus climate change flood risk area, although (presumably based upon the parameters plan) the planning authority has

accepted that all of the proposed built development would be “within an area of elevated ground outside the flood risk area.”

127. For Zone E, the illustrative layout shows the majority of the site being distant from the watercourse that is responsible for existing flooding problems and at a higher level above AOD than the flood water. It is not within the flood risk area in the latest SEPA maps. Most of the area that is shown to be at risk of flooding is proposed in the indicative site layout to be open space. However, a small number (perhaps up to seven) of the proposed lodges are also shown to be within, or very close to, the flood risk area. The revised FRA proposes a finalised site layout that would maintain a minimum 5m buffer between all proposed development and the watercourse. It is possible that this would keep the development out of the flood risk area and avoid the need for it to rely on the Policy 22 a) iv exemption. I note that the planning authority accepts that Zone E “*is not subject to significant flood risk*” and believes that “*avoidance is possible*”.

128. Some of the Zone D woodland adjacent to Old Luss Road, is shown to be at medium or high risk of surface water flooding (presumably from the same source as in Zone E) although not in the location where the proposed footway / cycleway link is indicated in the parameters plan.

129. I consider that, bearing in mind this appeal relates to an application for planning permission in principle, where design details have yet to be finalised, and in order to adopt a cautious, worst-case, approach, it is appropriate to include Zones C, E and the part of Zone D woodland adjacent to Old Luss Road, within the remit of policy 22.

#### *The redevelopment of previously used land?*

130. The first requirement for land in a flood risk area to potentially qualify for the exemption to the presumption against development, is that the proposal would be the “redevelopment of land that has been previously used”.

131. NPF4 contains no definition of the terms “redevelopment” or “previously used”. Therefore, their everyday meaning and the context in which those words are used within policy 22 a) iv (which applies to a scenario where there is a public interest argument in favour of development that has sufficient weight to overcome the newly-introduced avoidance principle) must be considered when interpreting what they mean.

132. In my view, “previously used” is intended to exclude land that, as a consequence of having avoided previous use, has retained a degree of naturalness that, in accordance with the weight that NPF4 requires to be given to the climate and nature crises, would count against its development as an exception to the avoidance principle. Such land, having not been developed in the past, could not be “redeveloped”.

133. I do not accept as helpful, the planning authority’s attempt to draw a distinction between its acceptance that the appeal site has been used “previously” and the phrase “previously used” in policy 22. For reasons I explain below, I do not agree that any of the appeal site could reasonably be described as having become naturalised, but even if that had been the case, there is no exception written into policy 22 to exclude such land.

134. There is also no basis in NPF4 for the planning authority’s assertion that a more appropriate term for “previously used” would be “previously developed” or “brownfield”, as there is no evidence to support an assumption that those who prepared NPF4 intended those terms to be synonymous. And even if there were, NPF4 policy 9 confirms that “brownfield” land which has naturalised does not cease to be brownfield.

135. The phrase “previously used” could be interpreted to include only land that is no longer in use (in other words, land that is not “currently used”). However, as it is quite conceivable that an existing use of land may no longer be the optimal use of that land, such an interpretation (which would exclude land that retained an active but undesired use) would be illogical in a policy provision that aims to allow redevelopment to take place where that would be in the public interest.

136. Therefore, I have interpreted the term to mean land that has either been used in the past and is now dormant, or land that remains in use. In my view it should only exclude land that has not previously been used. I have interpreted “redevelopment” in its everyday sense (so as only to exclude land which has never been developed before).

137. Part of Zone A has previously been used for (and either still is, or shows the visible remains of) car parking and a tourist information office. The northern part of Zone A and all of Zone B is in use as public open space, being a combination of grassed areas, woodland and paths. No built development is evident in Zone B, but I am not convinced that this would exclude it from being “previously used”.

138. Even if the current use of Zone B and the northern part of Zone A were not regarded as relevant, the authority has not challenged the appellant’s evidence (confirmed by photographs in its design statement) that this land was railway sidings for over a century until 1986 (which has left a legacy of contamination in some places) and is also bisected by an oil pipeline. All of this is evidence of previous use in my view.

139. I have considered the planning authority’s arguments over NPF4’s reference to the terms “brownfield”, “derelict”, and “vacant” and the absence of Zones A and B from the authority’s Vacant and Derelict Land surveys. However, I do not find any of these to be persuasive. It is not necessary for land to be vacant, derelict or brownfield for it to potentially benefit from NPF4 policy 22 a) iv. It merely requires to have been “previously used”.

140. Applying the everyday meaning to this term, I have no doubt that the entirety of Zones A and B is “previously used” land and that what is now proposed would be its “redevelopment.”

141. Much of Zone C is an area of trees surrounded by a hedge that provides landscaping for the adjacent Loch Lomond Shores / aquarium development. The relatively young (and uniform) age of the trees suggests that, rather than being a legacy of earlier woodland, they were planted specifically to perform this function. I note that the planning authority’s trees and woodland officer describes these trees as a relatively young amenity woodland (less than 25 years old). But even if some of this landscaping is a remnant of earlier woodland, the land on which the proposed Zone C development would take place has been previously used (and remains in use) to provide landscaping for the adjacent development. It is not undeveloped, natural land that could reasonably be excluded from the definition of “previously used” land. And, most significantly, this land too has a legacy of earlier uses including the aforementioned railway use. This land is, therefore, “previously used” and what is now proposed would be its “redevelopment.”

142. The part of Zone D, where it is proposed to form a walkway / cycle way connecting Zone E with the Loch Lomond Shores development, has the appearance of natural woodland. However, on its Old Luss Road frontage it is enclosed by a well-constructed traditional stone wall and on the side that faces the car park access by well-maintained beech hedging. Therefore, it has clearly previously been used (and remains in use) to provide landscaping for the adjacent development and appears to have been used before

that presumably in connection with Woodbank House on the opposite side of Old Luss Road. I am satisfied that it is previously used" land and that what is now proposed would be its "redevelopment."

143. Similarly for Zone E, the site has been previously used to provide the buildings and policies of Woodbank House. It is "previously used" land and what is now proposed would be its "redevelopment."

*Located within a built-up area?*

144. The second requirement is that the site is located in a built up area. That term is not defined, so it is necessary to apply it in its everyday sense, having regard to the context within which that requirement is stated.

145. The parties disagree over whether this expectation applies to the entire appeal site or only to those parts of the site that are at risk of flooding. I confirm below that I have assumed that the issue of flood risk is relevant (to a greater or lesser extent) to all parts of the appeal site where compliance with policy 22 a) iv is necessary. Therefore, I do not believe it matters which interpretation is correct.

146. All of Zones A and B lie within the LDP-defined Balloch town boundary. I find that to be an important, but not conclusive factor in deciding whether these parts of the site are in the built up area. To the immediate south of Zone A is the town centre of Balloch. There are roads and buildings surrounding Zone A on three sides. To the north of Zone B, is existing development at Pierhead (including quite extensive road and parking infrastructure), and to the west is Pier Road, which does not have buildings along most of its length but has a very obvious developed presence in itself. To the east, the site abuts the River Leven. Within the river channel are extensive moorings, jetties and associated boats parked on a long-term basis. And beyond the river and the open space that lies on its eastern bank, there is further extensive development within the built up area of Balloch.

147. Taking all factors into account, I agree with the appellant that, from a simple commonsense interpretation of the term, it is appropriate to describe Zones A and B as being located in a built up area. The fact that the majority of the land itself is not developed with buildings is not relevant to that definition.

148. All of Zone C also lies within the Balloch Town boundary. It is immediately to the east and north east of the Loch Lomond Shores and Loch Lomond Aquarium developments. Further to the east and north are existing roads, car parking and buildings serving the existing slipway and pier facilities. It is therefore situated between two "built up" sites. To the south is Ben Lomond Way, which provides a main access route to car parking and servicing facilities for those developments. To the north is the loch, which marks the edge of the LDP-defined town boundary, but there is no reason why a site must have development on all sides in order for it to be considered to be in a built up area. Adjoining land is predominantly developed and I conclude that Zone C is within a built up area.

149. All of Zone D is within the LDP-defined Balloch town boundary. The area of woodland where it is proposed to create a new footway / cycle route linking Zone E and the Loch Lomond Shores development, lies between the extensive car park for that development and Old Luss Road. To the immediate south east, on both sides of Old Luss Road are existing bungalows. To the north west is holiday cottage and golf course development and on the opposite side of Old Luss Road is the former Woodbank House and its grounds. I conclude that this part of Zone D is within a built up area.

150. Zone E is again within the Balloch town boundary. To the north east is Old Luss Road and the extensive Loch Lomond Shores car park. To the south, across Lower Stonymollan Road are bungalows and a holiday caravan park. To the west is the A82, which provides the main access route for north / south travel and to the north, across Old Luss Road are holiday cottages and a golf course. When visiting this part of the appeal site, one has the sense of being at the edge of the town. However, given the nearby land uses, I am satisfied that it is within the built up area of Balloch.

*A need identified in the LDP to bring the land into positive use?*

151. The next expectation of policy 22 a) iv is that the LDP has identified a need to bring the land into positive use. I agree with the appellant that the planning authority's decision to allocate this land for development in the LDP must be given significant weight when addressing whether this expectation applies.

152. The planning authority argues that the site's allocation did not arise from any need to bring the site back into positive use. Rather, it was "*prompted by a long-standing desire and opportunity for development to contribute to enhancing a strategic link between Balloch Station and the Pierhead/Loch Lomond Shores.*"

153. Policy 22 a) iv does not require evidence that the LDP intended to encourage precisely the form of development that is now proposed. It merely requires that it "identified a need to bring the land into positive use". The "long-standing desire and opportunity for development to contribute to enhancing a strategic link" that the authority now claims was the motivation behind the allocation (and which the proposal would deliver), is enough to satisfy that expectation.

154. In addition, while I accept the theoretical possibility that a site could be allocated for development merely to provide an indication that there was an opportunity for such development, without a decision having been taken by the planning authority that there was a "need" to bring that site into positive use, the circumstances when it would be reasonable to draw such a conclusion seem very limited to me.

155. In this instance, as I have explained above, new or improved, expanded or altered visitor facilities, accommodation and visitor infrastructure (including recreation and access proposals), can draw support from LDP Visitor Experience Policy 1 without needing to be situated within a site that has been allocated for such purposes. Therefore, had the planning authority been essentially neutral as to the need for such development to take place on the appeal site, there would have been no need to allocate the site for "visitor experience" development; Visitor Experience Policy 1 would have provided sufficient confirmation that such opportunities existed. And the land between the station and the pierhead (Zones A and B in the appellant's proposal) could have been allocated solely for the provision of a strategic link had that been the only need for the site to acquire a positive use.

156. The parties disagree, in the context of the need question, over the risk of known ground contamination within Zone B being released. However, there is nothing in policy 22 a) iv to suggest that there must have been a "push" factor (such as a requirement to address site contamination) behind the need identified in the LDP to bring the site into positive use, rather than a "pull" factor such as the socio-economic benefits that a positive use could deliver. Therefore, even if the planning authority is correct that the known contamination of Zone B will not be released to the wider environment as a consequence of increased flood risk in the future, this does not affect my conclusion that the LDP has identified a need to bring the site into positive use.

157. The planning authority has not raised this “need” argument in respect of other areas of the proposed development

158. Taking all factors into account, for those parts of the site (the great majority) that have been allocated for development in the LDP, I am satisfied that a need has been identified in the LDP to bring the land into positive use.

159. For those parts of the site that are not allocated in the LDP and which require to rely upon the policy 22 a) iv exemption from the avoidance principle: the Zone D woodland where a new footway / cycleway link is proposed, the south western end of Zone C, closest to the aquarium and shopping centre, where it is proposed to create a public square; and part of the car park that is proposed within Zone B at the southern end of woodland to the west of Pier Road, this would not be the case. For those parts of the proposed development, therefore, despite those elements of the proposal being able to draw support from development plan policy, this requirement of part a) iv would not be satisfied.

*Long-term safety and resilience secured?*

160. The final requirement of policy 22 a) iv is that proposals must demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.

161. The planning authority’s position in respect of land lying close to the River Leven (Zones A and B) is that, in the absence of further flood risk modelling, long-term safety and resilience has not been demonstrated. It has raised no flood risk concerns for other parts of the appeal site.

162. If there were grounds to suspect that it would be impossible to develop Zones A or B (or indeed any other, part of the site) in a safe and resilient manner then one would have expected SEPA to have objected to the proposals, which it has not.

163. Despite the fact that the proposed lodges would fall within the “Most Vulnerable” land use category, SEPA’s position is that, if it is determined by those with responsibility for planning policy interpretation that the proposal qualifies for an exception to the avoidance principle, then it is satisfied that some development in Zones A and B may be possible. Like the planning authority, it has raised no flood risk concerns for any other parts of the proposed development.

164. The work that the appellant has carried out to date contends that, with appropriate flood mitigation works, it would be possible for the site to accommodate the maximum quantum of development that was described in the planning permission in principle application. SEPA has not, at this stage, confirmed its acceptance of this. It has confirmed that *“Development to the parameters and indicative layouts outlined in the planning submission may not be fully deliverable.”* And that *“It is possible further modification and alteration to the site designs would be required.”*

165. SEPA has accepted the appellant’s calculations of the 1 in 200 year plus climate change flood level, but requires further information on how a flood at that level might affect development within Zones A and B. In order to determine the likely severity and distribution of flooding across those zones, SEPA suggested that the then applicant carry out further works to demonstrate the effects of flooding if the existing riverside embankment were ignored (presumably on the basis that this feature is not a piece of formally designed and maintained flood defence infrastructure), to assess the potential blockage effects of the proposed raised paths, to incorporate a 600mm freeboard into its raised path designs and

to update as necessary, earlier calculations on the quantum of compensatory flood storage capacity that might be necessitated by this further work.

166. As this work has not been completed, SEPA's position remains one of not objecting in principle to the development but requiring further information in order to determine the scale and distribution of development within Zones A and B that would be acceptable in flood risk terms.

167. I disagree with the planning authority that it is essential that these design details are finalised prior to determining whether the principle of development can be supported. The appeal proposal seeks planning permission for up to the maximum quantum of development that is described in the application. SEPA has not ruled out the possibility that the maximum quantum might be acceptable; it has merely indicated that this "*may not be fully deliverable*." If, following further flood modelling and site design works, it proved impossible to develop Zones A and / or B in a safe and resilient manner without changes to the scale, layout or design (in comparison with what has been shown indicatively to date), then that would be a matter to be resolved at the matters specified in conditions stage.

168. For Zone C, the planning authority accepts that the parameters plan shows built development restricted to areas outside the flood risk area. There is no evidence to suggest that the long term safety and resilience of that development could not be secured. The planning authority and SEPA have raised no concerns over the proposed public square being within the flood risk area.

169. For the Zone D woodland area adjacent to the Loch Lomond Shores car park, the only development that is proposed is a pedestrian / cycle link. The parameters plan shows this located outside the area of the site that is at risk of surface water flooding, but even if it were moved (or if multiple access routes were created, as is shown indicatively in the illustrative masterplan) there is no reason to conclude that this could not be achieved in a manner that was safe and resilient in the long term. If land raising were required, the potential effect on trees of such works and any compensatory flood storage would require to be addressed. However, the need for such works is not inevitable and could be addressed at the matters specified in conditions stage.

170. For Zone E, the watercourse that is the source of potential flooding is at the very edge of the site. There is no evidence to contradict the finding of the FRA that existing ground levels mean any blockage of the culverts below Old Luss Road would lead to flooding of the road and an adjacent garden rather than the appeal site. Indeed, this appears consistent with the community council's observations. The finalised design for this part of the development would need to demonstrate how long-term safety and resilience could be secured, but there is no reason for me to disagree with the conclusion of SEPA and the planning authority that this would be achievable. A proposed trash screen would also help to address the issue of culvert blockage and therefore provide benefits to the wider community.

#### *Conclusions on NPF4 policy 22 a)*

171. Overall, I am satisfied that all elements of the proposed development that lie within land allocated for development in the LDP can benefit from the exemption to the avoidance principle that is set out in LDP policy 22 a) iv. This is the majority of the proposed development.

172. The proposed boathouse, being a water compatible use, is supported by Policy 22 a) ii. However, other elements of the proposed development that are not allocated in the LDP



would not qualify for support from the Policy 22 a) exemption to the avoidance principle. This includes the Zone D woodland where a new footway / cycleway link is proposed (where flood risk affects only a very limited part of the site), the public square that is proposed within Zone C (where SEPA has raised no concerns and where flooding is unlikely to be a more significant issue than at the immediately adjacent Loch Lomond Shores and Loch Lomond Aquarium developments), and the southernmost end of the car park that is proposed within Zone B to the west of Pier Road (which is outside the SEPA flood risk area and therefore unlikely to flood).

173. Taking all matters into consideration, I am satisfied that, notwithstanding the susceptibility of some areas of the site to flooding and NPF4's avoidance principle, the proposal is acceptable in principle in flood risk terms.

174. Part a) of policy 22 also requires an applicant to demonstrate that: all risks of flooding are understood and addressed; there is no reduction in floodplain capacity, increased risk for others, or a need for future flood protection schemes; the development remains safe and operational during floods; flood resistant and resilient materials and construction methods are used; and future adaptations can be made to accommodate the effects of climate change. I can identify no grounds to suspect that any of these issues would be problematic once detailed proposals for the site were drawn up and neither SEPA or the planning authority has suggested otherwise.

175. Additionally, for development proposals meeting criterion iv), where flood risk is managed at the site rather than avoided, policy 22 also requires: the first occupied/utilised floor, and the underside of the development if relevant, to be above the flood risk level and have an additional allowance for freeboard; and that the proposal does not create an island of development so that safe access/ egress can be achieved. Again, these are matters that the appellant has considered in outlining its proposals and could be finalised at the matters specified in conditions stage.

176. The remainder of policy 22 is either inapplicable to this proposal (being directed at small-scale developments) or deals with flooding and water management matters that the appellant's various studies have addressed in sufficient detail to assure me that satisfactory proposals could be finalised in later stages of the consenting process. This includes the use of SuDS systems, accessibility to mains water supplies and the provision of natural flood risk management.

177. I note the concern that has been expressed by a number of local residents that, at times when flooding encroaches upon Zone A, existing sewerage infrastructure discharges onto the ground. However, there is no evidence to suggest that the proposals, which would be required to meet the latest SEPA, drainage authority and Scottish Water design standards, would inevitably exacerbate that problem. And it would clearly be in the developer's interest to ensure that any such problems (as they would directly affect the proposed development), were fully resolved.

178. Overall, I conclude that the proposal complies with NPF4 policy 22 and is acceptable in flood risk terms. There are no grounds to conclude that the proposal would cause any significant flooding effects.

## **Effects on natural and cultural heritage**

### *Woodland, ecology and biodiversity enhancement*

179. NPF4 confirms there is a global nature crisis. Policy 1 requires significant weight to be given to that crisis when considering all development proposals. I agree with the planning authority that there is a particular issue with biodiversity in Scotland, which is due to a range of factors including inappropriate development.

180. Woodland, whether of ancient origin or not, often has great biodiversity value and is also important for its contribution to visual amenity and landscape quality. There is therefore, a general presumption in both policy and guidance that woodland and even individual trees, should not be removed unless fully justified.

181. The planning authority's second reason for refusal, which is concerned with the proposal's effects on biodiversity and nature networks, concludes that the proposal would conflict with NPF4 policy 3, LDP Overarching Policy 2 and LDP Natural Environment Policy 6. Its third reason for refusal identifies a failure to demonstrate that appropriate and sufficient woodland compensation would be provided in order to address the proposed loss of woodland, including ancient woodland. For this reason, the planning authority finds conflict with NPF4 policies 4 a), 6 b) and 6 c) and LDP Overarching Policy 2 and Natural Environment Policy 8 (a), and 8 (c).

182. NPF4 policy 3 aims to enhance biodiversity and habitat connectivity. Part a) of the policy requires all proposals to contribute to the enhancement of biodiversity including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible. Part b) of the policy confirms that larger scale projects such as the appeal proposal will only be supported where it can be demonstrated that they would conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. Future management of the biodiversity enhancements is also expected. Five assessment criteria set out a series of requirements that all prospective developers must meet. I consider each in turn below.

183. There is disagreement between the appellant and planning authority over the extent and nature of woodland in two areas of the site, which leads the authority to conclude that, contrary to policy 3 a) i, the appellant does not have a full understanding of the site characteristics.

184. The first relates to part of area 3d within Zone E. This is indicated in the parameters plan as a site for up to 37 countryside lodges and up to 25 woodland lodges. Most of that area is open fields, but that to the rear of Woodbank House, comprising its walled garden and land to the south (where the illustrative masterplan suggests up to 25 woodland lodges would be sited) has tree cover, which, in places, is extensive. There is also woodland between the house and its outbuildings, most, if not all, of which would require to be removed in order to facilitate the proposed conversion of those listed buildings.

185. The planning authority considers the land to the south of the walled garden and to the north of the house (between it and the outbuildings) to be ancient woodland (long established woodland of plantation origin or LEPO), although it accepts that it is in poor condition. It has not suggested that the appellant has misunderstood the biodiversity value or other characteristics of these trees, merely that it has erroneously excluded them from LEPO classification.

186. The appellant's Existing Tree Cover 2022/23 drawing at Appendix 6.1.4 to the EIA report addendum and the accompanying commentary in Table 6-4: Areas of Tree Cover in that addendum, identify four areas of tree cover within Zone E. These are all to the west and north west of Woodbank House. Area E.4 (extending to 0.37 hectares) is the former

walled garden and land to the immediate east, between the house and its outbuildings. The other three areas of tree cover (extending to 1.82 hectares), which are further to the north, were originally proposed to accommodate woodland bothies, but that element of the proposal was withdrawn prior to determination of the planning application that has led to this appeal.

187. The appellant describes area E.4 as “*Scrubby mixed deciduous native trees (dominated by willow and birch) on brownfield and disturbed ground including former walled garden and greenhouses.*”

188. The Ancient Woodland Inventory (AWI) provides a guide to the location of ancient woodland in Scotland. The planning authority accepts, and I agree, that it does not provide definitive evidence of the existence of ancient woodland. There may be woodland identified in the inventory that is not ancient semi-natural woodland and there may also be woodland not identified on the inventory that is of that importance.

189. The AWI does not include the former walled garden. This is unsurprising given the confirmation that historic Ordnance Survey maps provide that this garden has existed since at least 1897, and the reasonable assumption that its creation will have involved the removal of all traces of woodland, including understorey vegetation and the seedbank (assuming that it existed on this part of the site previously).

190. Bearing in mind its exclusion from the AWI, the appellant’s description of the trees within area E.4, and what I saw on site, I believe it is reasonable to assume the former walled garden contains no ancient woodland. It is however, identified as “nearly native woodland” in the Native Woodland Survey and is not without value.

191. The AWI does include the land to the north of the walled garden, which the appellant accepts is ancient woodland, as well as land to the immediate east (to the north of Woodbank House) and south.

192. The trees to the immediate east of the walled garden fall also within area E.4. They are described by the appellant similarly to those within the walled garden - “scrubby mixed deciduous trees”, which accords with what I saw on site. They are included (along with the woodland within the former walled garden) within the appellant’s prediction that 0.37 hectares of woodland would require removal. No ancient or veteran trees have been identified here or any ancient woodland indicator plants such as wild garlic or sorrel (which the appellant’s ecological survey found only in the most north-westerly part of the Woodbank House site, which the parties agree is ancient woodland and where no development is proposed).

193. It seems plausible that the land on which these trees now grow – lying between Woodbank House and its outbuildings, would have been cleared of tree cover in the distant past in order to meet the operational needs of Woodbank House at that time. However, the land has regenerated into woodland over time and, lying adjacent to the main block of ancient woodland to the north, retains the potential for colonisation of species from that land. Therefore, despite its lack of features that one would associate with ancient woodland, adopting a cautious approach, I have assumed that it is.

194. The EIA report addendum confirms that all other areas of tree cover within the site (that is, those not identified in Table 6-4: Areas of Tree Cover) were found to be too small or had insufficient canopy cover to be categorised as “woodland”. Therefore, the land to the south of the walled garden, which is indicated to be LEPO in the AWI, is not regarded as woodland (let alone ancient woodland) by the appellant.

195. The appellant suggests that inclusion of this part of the site within the AWI is due to mapping errors. It is also argued that, as there has been progressive development of Woodbank House over many years, which involved significant tree clearance, even if this part of the site was once woodland, it has not been woodland for many years.

196. I accept the appellant's evidence that there appear to be obvious inaccuracies in the shape of the AWI polygon around Woodbank House. It appears to be slightly rotated relative to current features and positioned about 20 metres to the north and about 10 metres to the east of current and past physical features such as boundaries and buildings.

197. I also accept that, even if land south of the walled garden had once been ancient woodland, its current condition suggests that has not been the case for a very long time. The appellant's ecological survey work found no ancient woodland indicator plants. Its Tree Survey Report and Tree Constraints Plans for the Woodbank House site (which surveyed all trees within the site and not just the areas that the appellant regards as woodland) found the trees in the land south of the walled garden to be few in number, generally quite widely spaced and of no particular merit. I have borne in mind that this plan does not include trees with a stem diameter below 75mm.

198. The parties are in agreement that these trees are in poor condition. That was also the impression I gained when I visited the site. It was also clear that the extent of tree cover here is far less than within the woodland to the north. These trees lie at the very edge of the wooded area within Zone E and cannot reasonably be described as forming "integral open space" within the woodland to the north, which I accept may enable open areas within woodland to be regarded as part of that woodland.

199. These trees are further from the main block of LEPO than the trees to the north of Woodbank House and are separated from it by the former walled garden. Taking all factors into consideration, I find that the land to the south of the walled garden in Area E should not be regarded as either woodland or ancient woodland. The appellant's appeal statement confirms its intention is to avoid any tree felling in this area by positioning the proposed lodges within the trees, observing root protection zones and employing low impact foundation solutions. However, while I do not doubt that commitment, and while the spacing between trees suggests it may be achievable, adopting a worst-case assumption I have anticipated the need to remove some of these trees, which would be a negative consequence of the proposal that requires to be taken into account.

200. I explain below that, despite concluding that these trees are not woodland, I find the proposals to be contrary to LDP policy 6 overall. The planning authority accepts they are in poor condition and is content that the benefits of finding a viable new use for the listed buildings, justifies (subject to appropriate compensation and enhancement, which I discuss later in this notice) the proposed tree and woodland loss within Zone E. Therefore, the question of whether these trees should be categorised as woodland or ancient woodland is not critical to my assessment of the appeal proposal overall.

201. The Scottish Government's Control of Woodland Removal Policy sets out a strong presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. In appropriate cases, any proposals for compensatory planting can be taken into account. One of the criteria identified in the policy for determining the acceptability of woodland removal is the enhancement of designated historic environments. This factor (in terms of the provision of a viable future use for the nationally important Woodbank House), along with the proposal's wider socio-economic benefits and the enhancement the appellant has committed to provide for ancient and other woodland (which I discuss later in this notice)

are matters to weigh in the balance when considering the acceptability of any tree and woodland removal that would be required in order to implement the development proposals.

202. The implementation guidance to the Control of Woodland Removal Policy (but not the policy itself) confirms there should be a particularly strong presumption against the removal of woodland in a national park where, as I conclude is the case for this national park, it is a significant contributory feature of the designation. This is a further factor to bear in mind when considering the acceptability of what is proposed.

203. The Control of Woodland Removal Policy and NPF4 policy 6, while recognising the importance of all woodland, emphasise the particular importance of certain woodland types. Policy 6 b) i presumes against any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition. Part ii takes a similar position in respect of native woodlands, hedgerows and individual trees of high biodiversity value, or those which have been identified for protection in an LDP's Forestry and Woodland Strategy.

204. As set out above, the appellant's proposals for Zone E would avoid the majority of the site's ancient woodland. Proposals to manage and restore that woodland in conjunction with the development of the remainder of the site would be to its benefit. At present, this woodland is in poor condition, being dominated by invasive and non-invasive non-native species. However, contrary to policy 6 b) i, there would be some loss of ancient woodland (albeit also in poor condition) close to Woodbank House and its outbuildings in order to facilitate their conversion. My conclusion, below, that the tree removal associated with the proposed boathouse would also involve ancient woodland, is further evidence of conflict with part b) i.

205. I find no evidence that any of the woodland or individual trees that are likely to be removed could reasonably be described as having (in comparison with woodland and trees generally) high biodiversity value. The planning authority has not suggested that any of the appeal site has been identified for protection within a Forestry and Woodland Strategy. According to the Native Woodland Survey extract at Appendix 6.1.2 to the EIA report addendum, the woodland in Zone E is not "native woodland" but "nearly native woodland". However, woodland within Zones B and D is identified as "native woodland". Therefore, despite the limited extent of such woodland that is proposed to be removed, I find the proposal to conflict with policy 6 b) ii.

206. Part b) iii of policy 6 presumes against the fragmentation or severance of woodland habitats unless appropriately mitigated. The removal of woodland close to Woodbank House and from its walled garden would introduce some fragmentation and habitat severance within Zone E. On a pessimistic assumption that mitigation in the form of replacement planting within and around the proposed woodland lodge development would not fully mitigate that effect, I find the proposal to be in conflict with this requirement. I find no grounds to suspect woodland fragmentation elsewhere.

207. Unlike part b) i and ii, part c) of the policy applies to woodland in general (what the EIA report refers to as "ordinary woodland" as well as ancient woodland and "native woodland"). This confirms that development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. It also stipulates that, where woodland is removed, compensatory planting will most likely be required. I conclude later in this notice that the proposal would offer significant public benefits. The proposal also incorporates compensatory tree planting. Therefore, subject to appropriate planning conditions, I find no conflict with policy 6 c). I discuss the quantum of proposed compensatory planting, later in this notice.

208. The appellant's parameters plan commits it to retaining and managing existing woodland throughout Zone E, and the form of development that is proposed indicatively for Area E.4 (lodges connected by pedestrian walkways) would not necessarily require a cleared site. This means my worst-case assumption that this woodland would be lost may prove to have been unduly pessimistic. Indeed, the illustrative masterplan shows the lodges sited within a dense woodland setting. However, this is merely illustrative of how the site might be developed and it was clear from my site inspection that the restoration of Woodbank House and its outbuildings, even without the proposed lodge development, would require some woodland loss due to the encroachment of some of the trees upon the listed buildings.

209. Returning to policy 3, and taking all of the evidence about the Zone E woodland into account, I conclude that, in accordance with NPF4 policy 3 a) i, despite the disagreement over how trees and woodland within Zone E should be categorised, the appellant does have a full understanding of the site characteristics.

210. The second area of dispute over the appellant's understanding of the site characteristics involves woodland in Zone D where the boathouse is proposed. Once again, the planning authority believes that (as is indicated in the AWI) there is LEPO Ancient Woodland in this location, which the appellant has not identified.

211. I agree with the planning authority that ancient woodland need not remain in pristine condition for it to retain the importance (and associated elevated level of protection) that is afforded to such woodland by policy and guidance. Even following tree felling, the land can retain significant ecological and archaeological value, and merit a higher level of protection from development than ordinary woodland. In the case of the land where the proposed boathouse would be built, the appellant's unchallenged evidence is that there was a break in tree cover from at least 1914 until 1960, and its walkover survey indicated that there were only young to semi-mature trees present.

212. No evidence has been presented to demonstrate that ancient woodland indicator species are present within this location or that there is any other reason to conclude that, since the site was cleared of trees over 100 years ago, the nature and extent of its regeneration would merit ancient woodland classification. The planning authority describes this area as regenerating scrub / coppice.

213. Nevertheless, taking a cautious approach, which recognises the location of this woodland within a wider area of LEPO and the potential for it to regain ancient woodland characteristics if left undeveloped, I consider it reasonable to regard this part of the site as ancient woodland.

214. The woodland on this shore of the loch is protected by a woodland tree preservation order (TPO). The grant of planning permission in principle would not enable trees protected by this order to be removed. These would remain protected until either a final design for the boathouse had been approved at the matters specified in conditions stage or permission for tree removal had been granted by the planning authority under the order. Therefore, the existence of the TPO is not a matter to which I have given any significant weight.

215. As with the Zone E trees and woodland, the planning authority recognises the poor condition of the trees that the proposed boathouse is likely to require to be removed, and (subject to this being appropriately compensated for and biodiversity being significantly enhanced) has no objections to this happening. It has not been suggested by the planning authority that the appellant has misunderstood the biodiversity value or other characteristics of these trees, merely that it has erroneously excluded them from LEPO classification.

216. Taking all considerations into account, I conclude that, despite the disagreement over how the trees should be categorised, the appellant has demonstrated that, for the location where the boathouse is proposed within Zone D, it has a full understanding of the site characteristics in accordance with the requirement of policy 3 b) i.

217. A further requirement of Policy 3 b) i is that a prospective developer recognises the presence of any irreplaceable habitats. As I discuss later in this notice, in accordance with that requirement, the appellant has identified ancient woodland in those terms.

218. Earlier in this notice, in my discussion of the principle of development, I identified other areas of woodland within the site where development is proposed. None of those areas are ancient woodland or have features that indicate they should be afforded an enhanced level of protection. It would be for the matters specified in conditions stage to ensure that finalised layout proposals for the site took appropriate account of all of the site's woodland and compensated for any loss that could not be avoided.

219. The planning authority is not convinced by the clarity or the accuracy of the appellant's calculations of the extent of tree loss that is likely to be required. Specific reference in this regard is made to Zone B. This conclusion is based upon its assumption that development would proceed at the maximum level that is set out in the parameters plan and that inadequate regard has been paid to the effects of the proposed monorail on existing tree cover.

220. The authority questions whether it is the appellant's intention to clear trees from site B and then replant around the proposed development, which would mean that, rather than the apparently low level of net woodland loss, there would, in fact, be extensive loss of existing woodland and its replacement with new planting that would take many years to become established. The authority contends that the majority of the woodland in Zone B immediately adjacent to the East of Pier Road, is likely to require removal due to challenges in constructing the proposals with this woodland remaining in place. It also notes that the indicative route for the proposed monorail is shown to the immediate east of Pier Road.

221. The submitted parameters plan confirms that the key development parameter for all areas of the site that are identified as either "Managed Woodland" or "Managed Woodland with SuDS" (which includes the woodland strip to the east of Pier Road) is for existing woodland to be "managed and retained". Planning conditions could ensure that all areas of the site that are so designated were protected during the construction process and that trees were retained and managed subsequently. However, if the proposed monorail were to intrude into this strip of woodland, as it is reasonable to assume that it would, based upon the parameters plan, I agree with the planning authority that it does not seem realistic to predict no loss of woodland to the immediate east of Pier Road.

222. At this in principle stage, it is simply not possible to have certainty as to the exact quantum of woodland loss that would be required. But, even if the site were developed at the maximum level that is specified in the application, and if all of the planning authority's arguments are accepted, the extent of required woodland removal would remain small. For example, the uplift in woodland removal that the planning authority argues should be allowed for in respect of the proposed boathouse (which relies upon its own calculations for how big such a structure might be and how large a buffer it would require) only amount to an additional 0.02 hectares of woodland loss. And the extent of the dispute between the parties in respect of land east of Pier Road is a net gain in woodland of 0.31 hectares according to the appellant or a net loss of 0.11 hectares according to the planning authority. While I appreciate that neither of these estimates appears to have accounted for the effect of the proposed monorail requiring further tree removal, even if one adopted a pessimistic

approach, I do not find the likely extent of tree and woodland removal, either in absolute terms or when compared with the area of the application site (18.9 hectares) or that of Drumkinnon Wood (approximately 7 hectares), to be significant.

223. I am not convinced that the absence of specific reference to windblow, which is a matter to which the planning authority's trees and woodland officer attaches particular importance, is a flaw in the appellant's proposals. The possibility that a greater than expected level of tree loss might arise due to a proposal introducing increased windblow potential can only be modelled when a finalised layout for that development is known.

224. In addition to considering very carefully the evidence in support of and opposition to the proposals, I have visited all of the woodland where development is proposed, in order to evaluate the significance of its potential loss. In so far as it is possible when the finalised scale and layout of development has yet to be determined (and subject to the above-mentioned comments about the monorail), I am satisfied that the appellant has properly accounted for the proposal's likely effect on trees and woodland. I discuss the planning authority's comments on the scale of new planting needed to provide a suitable net gain in woodland cover, in my discussion of biodiversity enhancement, later in this notice.

225. My conclusions on NPF4 policy 6 are that, contrary to parts b) i and ii, there would be some adverse impact on ancient woodland and "native woodland". However, it is a relevant consideration that the trees and woodland areas likely to be so affected are in poor condition. For reasons I explain later in this notice, I find that the removal of this and other woodland would, in accordance with part c) of the policy, be justified by the proposal's achievement of significant and clearly defined public benefits. However, given the importance of ancient woodland and native woodland, I find the proposal remains in conflict with policy 6 overall.

226. LDP Natural Environment Policy 8 takes a less strict approach than NPF4 policy 6 b) i to proposals that would cause the loss or deterioration of an ancient or long-established plantation or semi-natural woodland. Rather than offering no support to such proposals, the policy offers support where there are overriding public benefits from the development that outweigh the loss of the woodland habitat. Its approach is therefore similar to that of NPF4 policy 6 c) to woodland generally (rather than woodland of particular value). For the reasons I have set out above, in accordance with Natural Environment Policy 8, I find the proposal's public benefits would outweigh the very limited loss of ancient woodland that is likely to be required. However, the conflict with NPF4 policy 6 would remain.

227. The second part of Natural Environment Policy 8 does not support proposals likely to lead to the loss of, or damage to, important individual trees, hedgerows or groups of trees or woodlands that contribute to local amenity, the character of the area and / or are of nature conservation value or historic significance. However this paragraph then goes on to confirm that where development is accommodated, compensatory planting is to be undertaken. This suggests that there is no absolute presumption against the loss of such trees and woodland.

228. One of the wide-ranging requirements of LDP Overarching Policy 2 is that proposals protect and / or enhance a range of environmental assets including ancient and semi-natural woodland. The proposal would not achieve this expectation. However, (as I discuss elsewhere in this notice) it would satisfy other expectations of this policy and I find it to be in compliance overall.

229. Returning to NPF4 policy 3 b), the second criterion that must be met in order to demonstrate that, as a consequence of a major development proposal, biodiversity would



be conserved, restored and enhanced to be in a better state than without intervention, is that wherever feasible, nature-based solutions have been integrated and made best use of.

230. The appellant's proposed approach to biodiversity conservation, restoration and enhancement would employ features such as the planting of an understorey of native species within retained woodland, the seeding of retained former pasture land with native wildflowers, and the selection of tree species for the proposed planting works that are favoured by squirrels, bats and birds. I am satisfied that this accords with the NPF4 expectation for nature based solutions and satisfies the expectations of this part of policy 3 b).

231. Criterion iii of policy 3 b) requires an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements.

232. The EIA report (and addendum report) identified potential negative effects that could detract from biodiversity. It then set out how these would be mitigated, either through avoidance (the preferred option according to the mitigation hierarchy) or other measures.

233. In chapter 5, which considered effects on ecology, the EIA report and EIA report addendum identified potential negative effects on 14 receptors during both the construction and operational phases of the proposed development. Following mitigation, the following residual significant negative effects were identified:

- A significant adverse ecological effect at the site level on ancient woodland and on mixed broad-leaved woodland during the construction period and a significant adverse ecological effect at the site level on ancient woodland during the operational period.

234. In chapter 6, which considered trees and woodland effects, the study of potential negative effects was organised around six elements of the proposed development. Potential negative effects were identified for all six. Following mitigation, the following residual significant negative effects were identified:

- The loss of two areas of woodland (young / semi-mature plantation) at pierhead (a major negative effect); and
- Removal of the majority of the woodland in the proposed parking area west of Pier Road (a moderate negative effect).

235. However, following "additional mitigation" in the form of compensatory planting and a woodland management plan, Appendix 6.5 to the EIA report addendum concludes that there would be no significant adverse effects on trees or woodland.

236. In chapter 10 of the EIA report and addendum, which considered water, hydrology and flood risk, potential negative effects on biodiversity were identified for both the construction and operational phases from the risk of pollution of the loch, watercourse and groundwater with chemicals and sediments. However, following mitigation, no significant effects were predicted.

237. All of the above conclusions were informed by detailed investigative work that followed accepted best practice. I find no evidence to undermine the conclusions drawn. I am satisfied that this work meets the requirement of policy 3 b) iii to assess a proposal's negative effects before going on to propose mitigation for those effects and subsequent enhancement.

238. The next requirement of policy 3 b) iii is that such negative effects are fully mitigated in line with the mitigation hierarchy. The EIA report addendum accepts that effects arising from the loss of woodland including ancient woodland cannot be fully mitigated. This is because compensatory planting would take decades or centuries to become established to such an extent that it would be comparable to the woodland that would be lost. I agree with that conclusion, which means the proposal does not satisfy the expectations of policy 3 b) iii. The limited scale and generally poor quality of the woodland that would be lost (even assuming the planning authority's rather than the appellant's calculations are correct), are relevant to an assessment of the significance of this policy conflict.

239. I do not agree with the planning authority that the appellant's inability to neutralise the proposal's effects on woodland biodiversity means there is no robust baseline upon which to consider enhancement. Provided that incomplete mitigation is acknowledged and is factored into the enhancement proposals, I find no reason in principle, why the sufficiency of proposed enhancement measures could not be assessed. Therefore, a failure to satisfy the mitigation requirements of policy 3 b) iii need not prevent compliance with the enhancement requirements of policy 3 b) iv. To conclude otherwise would mean a proposal that required the loss of poor quality ancient woodland (on a reasonable conclusion that this cannot be mitigated) could never demonstrate biodiversity enhancement.

240. Criterion iv of policy 3 b) requires that, over and above any mitigation of adverse effects, significant biodiversity enhancements are provided. These should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate.

241. The authority recognises that the appellant has proposed a number of measures that would contribute to enhancing biodiversity. However, it does not accept that these qualitative enhancements (some of which it argues are actually mitigation for adverse effects of the development rather than enhancement) are sufficient. It points out that policy 3 b) iv requires significant biodiversity enhancements.

242. The appellant argues that, through its commitment to acquiring and managing Drumkinnon Wood, it could deliver (via a proposed habitat management and improvement plan) a significant element of biodiversity enhancement in addition to what is proposed within the application site. The planning authority accepts that there are invasive non-native species in Drumkinnon Wood, the management of which would help to improve its condition. However, it believes that those parts of the wood that are LEPO woodland are in relatively good condition and argues that there is little that can be done to improve its biodiversity status.

243. My inspection of this woodland did not reveal any obvious differences in condition between those areas that are indicated (but not categorically defined) as ancient woodland in the AWI, and the remainder (around 40% of the woodland area) that is not. And even if there was evidence to support the authority's claim that non-native invasive species are confined to the non-LEPO area, there is no reason why the authority's position in respect of woodland elsewhere – for example in Zone E – that woodland that is adjacent to ancient woodland has the potential to become more important over time, should not apply to the non-LEPO woodland within Drumkinnon Wood.

244. The authority is concerned that the proximity of Drumkinnon Wood to the proposed development, and the appellant's commitment to improve public access routes through the wood as part of its Lomond Promise, could negatively affect it. I agree that a careful

balance would need to be struck between protecting the woodland for its biodiversity value and offering improved access. But the wood is already used recreationally and there are no grounds to suspect that appropriate arrangements could not be devised.

245. The authority also argues, as a reason for not supporting the appellant's Drumkinnon Wood proposals, that the owner of the wood would need to be a party to any agreement. However, the appellant has confirmed the land owner's confirmation in writing that it would be prepared to sign an agreement, ahead of the transfer of the wood to the appellant, safeguarding this woodland in perpetuity, in accordance with an approved biodiversity enhancement plan. Therefore, there are no grounds to downplay the significance of the appellant's offer.

246. There is no definition in NPF4 of "significant biodiversity enhancement." I find no fault in the appellant not having used the English biodiversity metric to assess the biodiversity effects of its proposals, as that has no status in Scotland.

247. The planning authority recognises that biodiversity enhancement does not necessarily require the identification of additional land. However, its position is that significant enhancement cannot be achieved without increasing the area of land given over to natural habitat.

248. It has calculated that 2.26 hectares of compensatory tree planting is proposed, which is less than the area that would be lost to development. And it believes that, due to the small size of the land parcels involved, much of this new woodland would be of low value. Overall, it calculates a net loss of 0.5 hectares of woodland and argues that the appellant's proposed qualitative enhancement measures cannot simultaneously make up for both a quantitative deficit in natural habitat and provide significant ecological enhancement.

249. The appellant provides different figures for the extent of woodland loss. It believes there would be a net gain of 0.41 hectares compared with the planning authority's estimate of a 0.5 hectare loss. As already stated, the precise quantum of woodland loss or gain cannot be calculated until finalised drawings are prepared. However, what can be concluded is that, even if one uses the maximum quantum of development for which planning permission in principle is sought, and adopts the planning authority's more pessimistic calculation for woodland loss, the level of predicted woodland loss is low, both in absolute terms and in comparison with the size of the appeal site (18.9 hectares) and Drumkinnon Wood (around 7 hectares) which is proposed to be acquired and managed for (among other things) the purposes of biodiversity enhancement.

250. There is no policy basis for the planning authority's position that significant biodiversity enhancement must require additional land to be given over to natural habitat. For woodlands where there is a strong presumption against removal, the quotation from the 2019 implementation guidance to the Control of Woodland Removal Policy, to which the planning authority has referred me, states "*Where woodland removal is justified, the [compensatory planting] area must exceed the area of woodland removed to compensate for the loss of environmental value.*" This is guidance and not policy, applies only to woodlands with a strong presumption against removal, and recognises the relevance of environmental value, which is not a factor to which I believe the planning authority has paid sufficient attention in its assessment of the biodiversity consequences of the appeal proposals.

251. Biodiversity enhancement can take many forms and need not involve a quantitative increase in the extent of a particular habitat. However, I agree with the planning authority that, for a proposal of this scale, if NPF4's expectation for "significant enhancement" is to be

met (which bearing in mind the need to apply the policies of NPF4 as a whole, the Scottish Government's Chief Planner has confirmed may not always be achievable), evidence of biodiversity enhancement, and not merely mitigation or compensation, should be clear.

252. The Scottish Government has published draft guidance on biodiversity that aims to provide greater clarity on the expectations of NPF4. Until it is adopted, I can give it limited weight, but it remains a useful indicator of current thinking. It refers to an intention to introduce a biodiversity metric, which is likely to make the assessment of biodiversity enhancement more objective. However, as no such metric is yet in place, a subjective assessment remains appropriate.

253. The draft guidance recognises that, in order to determine whether there would be biodiversity enhancement, there needs to have been an adequate assessment of the existing biodiversity of the site. I am satisfied that the survey work that informed the EIA report (and addendum) was in accordance with best practice and provided a suitable basis for identifying where improvements to biodiversity could and should be made as part of the development proposals.

254. The draft guidance confirms that for biodiversity enhancement to be proven, it needs to be demonstrated that biodiversity will be in an overall better state than before intervention. Therefore, the actual biodiversity value of the land that would be affected by the proposed development (irrespective of any categorisation it may have) is a critical consideration.

255. Arguments over whether land is woodland and, if so, ancient woodland, are relevant to the proposal's assessment against certain development plan policies. But what is also highly relevant to the question of whether biodiversity enhancement would be achieved, is the current state of the land that would be developed. The planning authority accepts that, notwithstanding its position that certain areas of the site have been incorrectly excluded from the definition of ancient woodland, the condition of the trees and woodland in those areas is poor. It has also not challenged the appellant's survey findings that, in those areas, indicators of high biodiversity value such as the presence of an understorey of ancient woodland indicator plants, are absent. And the authority has confirmed that it has "*on balance, accepted development in principle within these areas, notwithstanding their LEPO status.*" The authority has also not challenged the appellant's evidence that the LEPO woodland at the north western side of Zone E, where the appellant proposes invasive non-native species removal and other enhancement works, is also in a biodiversity-depleted state.

256. The draft guidance recognises that, in nearly all circumstances, retaining and enhancing existing nature is of greater benefit than seeking to provide replacement habitats that will require time to become established and for associated benefits to accrue. I find the appellant's proposals for Drumkinnon Wood, and for areas within the site that would be retained and enhanced as woodland, to be consistent with that approach – seeking to safeguard and improve an existing biodiversity resource rather than to create one from scratch.

257. I agree with the appellant that, assessing the appropriate level of biodiversity enhancement is less straightforward when a proposal seeks planning permission in principle and when the scale and form of the proposals (subject to their not exceeding the maximum limits specified in the application) have yet to be determined. However, in order to account for a "worst-case" scenario, I have based my assessment of the adequacy of the proposed biodiversity enhancement on an assumption that the quantum of development

that would be delivered is equal to the maximum level specified in the application for planning permission in principle.

258. The illustrative masterplan drawing indicates how proposed new woodland planting would seek to connect disparate woodland together in order to improve nature networks across the southern end of Loch Lomond, ensuring habitat permeability across site boundaries. For example, the illustrative proposals for Zone B show the open grassed area that currently occupies the majority of the southern end of that site, planted with new woodland that would link existing woodland along the River Leven with that along Pier Road. Similar connectivity improvements are shown within the proposals for Zone E, where new areas of tree planting, including along the Old Luss Road frontage, are shown. These are merely illustrative at this stage. However, there is no reason why, when finalised design and layout details were submitted for approval at the matters specified in conditions stage, these and other connectivity improvements could not be secured.

259. With regard to the proposed infilling of the open areas of Zone B with new planting, the planning authority's dismissal of the potential for connectivity benefits to arise, on the basis that new wooded areas would be small in size and subject to ongoing footfall and disturbance, needs to be judged in the context of the existing woodland within Zone B, which is separated into narrow strips by the area of open space and the main path through the riverside woodland, and already experiences ongoing footfall and disturbance along the network of informal paths that has been formed within the trees. Subject to careful design I find no grounds to conclude that the proposals for this part of the site would not deliver meaningful connectivity benefits.

260. Within the area within Zone E that is agreed to be ancient woodland (to the north west of the listed building), the appellant proposes an Ancient Woodland Restoration Plan, which would include the removal of invasive non-native species. The EIA report calculates the extent of this issue to require the removal of 0.27 hectares of dense bamboo, 1.2 hectares of dense and more scattered rhododendron and 0.16 hectares of cherry laurel. This is a significant level of work in a woodland of that size. Proposed operational stage biodiversity enhancements would include a Landscape and Biodiversity Management plan, which would secure long-term management.

261. The appellant has offered a section 75 planning obligation to implement a habitat management and improvement plan aimed at enhancing the existing level of biodiversity within Drumkinnon Wood. The area of that woodland far exceeds that which would be lost to development, and the planning authority has accepted that the control of invasive non-native species there would be beneficial. I find that proposal to offer significant biodiversity enhancement potential, which could be delivered within a reasonable timescale and with reasonable certainty, with management and monitoring provisions secured.

262. The final criterion of part b) of NPF4 policy 3 requires that consideration is given to local community benefits of the biodiversity and / or nature networks. To the extent that is possible at this stage, I am satisfied that the appellant has addressed this consideration. As the planning authority has pointed out, there can be tension between an objective to maximise the biodiversity value of land and one seeking to maximise its benefit to the local community. Care will need to be taken at the matters specified in conditions stage to ensure that the provision of public access to woodland, which will be an important element of the finalised proposals, did not threaten proposed biodiversity enhancement works. However, there is no reason to fear that designing an appropriate compromise would be impossible.

263. Part c) of policy 3 is not relevant to a proposal of this scale. Part d) requires any potential adverse impacts, including cumulative impacts, of development proposals on

biodiversity, nature networks and the natural environment to be minimised through careful planning and design. As I have set out above, I am satisfied that, to the extent that is possible in the absence of finalised proposals, the appellant has fully addressed all potential adverse impacts of its proposals on these interests and has indicated how these could be minimised. And I have not been directed to any potential cumulative effects with other development that have not been adequately assessed.

264. NPF4 policy 4 seeks to protect, restore and enhance natural assets, making best use of nature-based solutions. The planning authority finds conflict with part a) of this policy, which presumes against development proposals which by virtue of their type, location or scale would have an unacceptable impact on the natural environment.

265. Having expressed no concern over the proposal's likely effect on protected species (which I discuss below), it must be assumed that the planning authority's conclusion of conflict with policy 4 a) relates to the loss of trees and woodland. As already stated, I do not accept the conclusion that, even at the maximum levels of development that were shown indicatively in the application for planning permission in principle, the extent of tree and woodland loss would have an unacceptable impact on the natural environment. And, it will be a matter for the planning authority's consideration of matters specified in conditions whether the scale of development that proves to be appropriate for the site is found to be less than that.

266. In accordance with the requirement of part b) of policy 4, I carry out an appropriate assessment of the proposal's likely effects on the Endrick Water SAC, later in this notice.

267. Part c) of policy 4 relates to proposals that could affect the objectives of designation or overall integrity of nationally important designations including national parks. It also expects any significant adverse effects on the qualities for which the area has been designated to be clearly outweighed by social, environmental or economic benefits of national importance. The planning authority has not suggested any conflict with this part of the policy and I have identified no potential for significant adverse effects on the qualities for which the national park was designated to arise.

268. As none of the appeal site is designated as a local nature conservation site or landscape area in the LDP, part d) of the policy does not apply.

269. Part e) expects the precautionary principle to be applied in accordance with relevant legislation and Scottish Government guidance. This principle requires that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. In this instance, there is sufficient scientific certainty at this stage to be able to determine whether planning permission in principle should be granted and the nature of any conditions to which it should be subject. The evidence does not support a conclusion that what is proposed would cause serious or irreversible environmental harm and at the matters specified in conditions stage, when fuller details of the proposals are known, the planning authority will remain able to exert further control via appropriate conditions over any matters of detail.

270. I find the proposal to comply in all respects with NPF4 policy 4.

271. Aside from the ancient woodland status of some parts of the site, none of the appeal site has any ecological designation. There are several designated ecological features within two kilometres of the site, but none that the EIA report suggests would be affected by the

proposal. That conclusion has been accepted by the planning authority and NatureScot and I find no grounds to disagree.

### *Protected species*

272. The appellant's assessment of the proposal's likely effects on ecology, including its investigations into the extent to which the appeal site is used by protected species, are summarised in chapter 5 of the EIA report and (in an amended form) in the addendum to that report,

273. The appellant's approach to assessing such effects was found to be acceptable by the planning authority and all statutory consultees. I agree that it followed best practice. These investigations found no evidence of protected species other than bats, living within any part of the appeal site, and proposed a range of mitigation and habitat enhancement measures for bats and for other species that are likely to use the land for foraging (such as birds and squirrels) that the planning authority and statutory consultees have accepted as sufficient to ensure there would be no adverse effect on any protected species. I note that objectors to the proposal fear that there could be harm to wildlife as a consequence of the proposals. But as such concerns are not supported by the evidence or by any agency that has responsibility for wildlife protection, I can give those concerns little weight.

274. Taking all matters into account, I agree with the planning authority that the provision of suitable mitigation for the benefit of protected species could be finalised at the matters specified in conditions stage and that there are no protected species grounds to withhold planning permission in principle.

275. The EIA report addendum predicts no significant residual ecological effects beyond the effects on woodland including ancient woodland that I have already described. I find no reason to question those conclusions, which have been accepted by the planning authority and all relevant agencies.

### *Ground conditions*

276. Chapter 9 of the EIA report examined the site's ground conditions. This chapter was not amended in the EIA report addendum. It considered both the likely effects of the proposed development on ground conditions, and also the likely effect of ground conditions on the proposed development. Receptors that were considered include human health, the water environment, ecological systems, property (land, buildings and other structures) and archaeology.

277. In 2017, 57 boreholes were drilled across the site. As the site has not been significantly disturbed or developed since then, there is no reason to regard the findings of this work as out of date. It is possible that further site investigation work would be required once the precise design and location of the development had been finalised. That could be controlled by planning condition. At this planning permission in principle stage, what requires to be determined is whether ground conditions present any reason to resist the principle of what is proposed.

278. The planning authority has raised no concerns over ground conditions, but the issue of land contamination has been raised by objectors to the proposal.

279. Having considered all of the available evidence, I am satisfied that the only issue that requires further exploration in this notice is the issue of land contamination within Zones B and C. This has been raised in two contexts: first, that contamination could pose a risk to human health or the environment as a consequence of the land within which it lies being

developed; and second, that, if the site were not developed, the increased likelihood of future flood events could create a potential pathway for contamination to become mobilized (thereby potentially posing an increased risk to human health or the environment) in any event.

280. Having established baseline conditions, the EIA report adopted the normal source – pathway – receptor approach to identifying potentially significant contamination risks. Its assessment of the significance of contamination used the most conservative assumption of future land use (residential gardens). If the site is capable of being decontaminated to a level appropriate for such an end use, then I find it reasonable to conclude that the types of development that are proposed for Zones B and C (which unlike a domestic garden would not involve potential cultivation) could be accommodated without any concern for either construction workers or future users of the land. The EIA report notes that, in any subsequent assessment of this issue, a revised assessment that reflected the less sensitive end users could be employed. However, no such assessment is before me.

281. As I referred to above, parts of Zone B and C have known contamination. This is believed to be a legacy of the railway line / yard that occupied this part of the site. As is evidenced by the nearby housing development, which occupies a site formerly used as a dye works, a history of contaminating use does not preclude a site being redeveloped for a use that would be sensitive to contamination, provided that the contamination is dealt with appropriately.

282. No evidence of asbestos has been detected. However, elevated levels of heavy metals were found within made ground to the east of Pier Road and north of Ben Lomond Way. This is thought to be due to the railway use and possibly offsite dumping from the formerly adjacent dye works. In some locations, concentrations of heavy metals were also found in groundwater. However, due to the marginal levels of such concentrations, the likely low mobility of such contaminated ground water through the site, and the diluting effect that would occur if groundwater entered the River Leven and / or the loch, this aspect of the site's contamination was not found likely to cause a significant effect. Levels of carbon dioxide and methane were also found to be slightly elevated in locations within Zones B and C. However, flow rates were low.

283. The appellant proposes to carry out further site investigation works in order to more precisely identify the implications of site contamination at the stage when detailed proposals for the site are known. This could be secured by a planning condition.

284. In order to address the identified contamination issues (and also a range of other potential issues such as pollution from fuel spillages), the appellant also proposes a Construction Environmental Management Plan (CEMP), the details of which would be for subsequent approval. The CEMP would control the site development process (thereby ensuring the safety of construction workers and adjacent land users) and would ensure that any ground contamination that is either already known about or was encountered during construction, was appropriately remediated (thereby mitigating the effect on human health for future users of the site, and the wider environment). A planning condition is proposed to secure this. This is a standard approach to this issue and I find no evidence to cast doubt on its likely effectiveness.

285. The appellant proposes to mitigate the possibility of a significant effect from ground gases via detailed building design measures. Again, this is a standard approach, with which I am in agreement.



286. There is no reason to suspect, as has been suggested by an objector, that the proposed development would increase the potential for existing contamination to become more readily mobilised by floodwater. The proposed removal or capping of any encountered contamination suggests strongly that, as a worst-case assumption, the potential for contamination to affect the water environment or human health via this pathway would remain at the existing low level. In reality, it is likely that addressing existing site contamination would reduce the potential for the problems the objector fears.

287. Therefore, in the absence of any evidence to the contrary, I find no reason to disagree with the EIA report's conclusion that effects from groundwater contamination would not be significant.

288. The decontamination of land that is required to accompany its redevelopment can be a benefit of development if it addresses a risk that the contamination could otherwise lead to adverse environmental effects. The EIA report contends that higher water flows and more intense rainfall events that are likely to affect the site in the future due to climate change, could increase the potential for a groundwater pathway to form between ground contamination and nearby waterbodies and, possibly, human health receptors. It is argued that the removal or isolation of contamination in association with the redevelopment of this site could reduce the likelihood of such an occurrence. I note that a 2019 University of Stirling research paper found that contaminants can be mobilised during flood events.

289. As set out above, I accept that the proposal could reduce this risk. However, due to the absence of certainty as to how the existing low risk of effects from this source might increase as a consequence of climate change, this potential benefit is not a factor to which I have given any significant weight.

290. LDP Natural Environment Policy 11 seeks to protect the water environment. It requires development to ensure no significant adverse impact on the water environment in seven ways, some of which are not relevant to the assessment of this proposal.

291. The planning authority has identified no conflict with this policy and, for reasons set out above (and confirmed below in my appropriate assessment under The Conservation (Natural Habitats &c) Regulations 1994) I am satisfied that, subject to careful control at the matters specified in conditions stage, the proposal would protect and enhance the ecological status and riparian habitat, natural heritage, landscape values and physical characteristics of water bodies, would avoid significant impact on protected species and their habitats, have no adverse impact on drinking water and (given that it qualifies for an exemption to the avoidance principle) would protect and enhance existing flood plains.

292. LDP Natural Environment Policy 16 deals with land contamination. It requires prospective developers of such land to provide a risk assessment, which demonstrates that potential impacts on human health and the wider environment have been investigated and addressed and that the proposal would provide appropriate remediation. For the reasons I have set out above, like the planning authority, I find no conflict with this policy.

293. Also as I confirmed earlier in this notice, there are no grounds to suspect that the proposal would not satisfactorily manage surface and waste water. Accordingly, in common with the planning authority, I find no conflict with LDP Natural Environment Policy 12.

#### *Air quality*

294. Chapter 8 of the EIA report, which was not altered in the addendum to that report, considered the potential for significant air quality effects to arise. This used existing council

operated monitoring equipment to establish baseline conditions along with the modelled traffic increase that the proposed development would generate.

295. The predicted significance of the proposal on air quality in the locality is “no effect” to “negligible”. This conclusion is supported by the evidence and there are no grounds to disagree with it.

*The Conservation (Natural Habitats &c) Regulations 1994*

296. The Endrick Water SAC is approximately eight kilometres from the site but there is the potential for it to be significantly affected due to the River Leven, which is immediately adjacent to Zones A and B, being used by SAC qualifying species (Atlantic salmon and river lamprey). Effects could include pollution of the watercourse from silt or chemicals, possible effects on feeding or fish passage as a result of light pollution, and potential noise and vibration effects causing harm to fish or their habitat during the construction period if piling were required.

297. The planning authority’s ecologist prepared an appropriate assessment (which now has the status of “shadow” assessment, as the authority is no longer the competent authority under the Habitats Regulations). This was presented as Appendix 4 to the report to the authority’s Board of 16 September 2024. The assessment, which took into account the views of NatureScot and other relevant bodies, concluded that there would be no adverse effect on the integrity of the SAC provided that the following mitigation measures were implemented:

- A Construction Environmental Management Plan (CEMP). This must include details of pollution prevention measures during the construction period, full details of any piling works including measures to minimise the impacts of noise and vibration and restricting piling activity to the period outside the peak salmon migration period, and confirmation that there would be no direct or indirect lighting of the River Leven.
- The appointment of an Environmental Clerk of Works.
- A scheme for the treatment of surface water drainage for the entirety of the application site and a requirement to connect foul drainage to the public sewer. And
- A lighting plan to control operational stage external lighting so as to ensure that there was no direct lighting of the River Leven and to minimise light spillage.

298. The planning conditions that are set out in Schedule 1 address all of these matters.

299. The assessment concluded that there was no potential for adverse in-combination effects with three other developments in the vicinity of the River Leven, on the integrity of the SAC to arise.

300. No party has disputed the findings of the authority’s shadow appropriate assessment. I agree with them and adopt them as my own. At section 5.7 of the EIA report addendum, the appellant also set out its own shadow appropriate assessment. This reached very similar conclusions to the planning authority’s.

301. Taking all of the available environmental information into account, I conclude that, subject to the conditions that are set out in Schedule 1, the proposal would have no adverse effect on the integrity of the Endrick Water SAC, either alone or in combination with any other project or plan. In this respect, it would satisfy the requirement of LDP Overarching

Policy 2 to protect and / or enhance the biodiversity, geodiversity, water environment, sites and species designated at any level.

### *Wider sustainability concerns*

302. NPF4 policy 1 requires that, when considering all development proposals, significant weight is given to the climate and nature crises. When considering the proposal against these expectations, one cannot ignore the existence of an LDP allocation, covering almost all of the appeal site, which seeks to encourage the types of development that are now proposed. The decision to allocate the site in those terms accepted the principle of carrying out a significant visitor experience development on this land and provides the backdrop against which any assessment of the proposal's effects on the climate and nature crises must be considered.

303. However, the introduction in NPF4 of a specific instruction to give significant weight to the climate and nature crises, gives these matters increased importance when compared with the policies of the LDP. Therefore, these matters require to be given particularly careful scrutiny, notwithstanding the allocated status of most of the site.

304. The appellant has committed to the proposed development being Scotland's first "Whole Life Zero Carbon" resort. This would involve the developer preparing and then implementing a plan that would aim to make the development "net zero" by no later than 2035. The appellant submitted a Sustainability Statement, which describes how this aspiration would be achieved. This identifies potential opportunities to generate heat and electricity using low carbon solutions, to design efficiencies into the development and to engage with the community to advance carbon reductions locally.

305. The suggested measures include "super-insulation" of buildings, the provision of EV charging points in proposed car parks, LED lighting, photovoltaic panels, battery storage, electric site vehicles, "green" hydrogen-powered combined heat and power units, heat pumps and micro-turbines. Details of these would be for approval at the matters specified in conditions stage. It seems likely that these measures would all fall within the development parameters that have been specified in the application for planning permission. Again however, that would be a matter for the planning authority to consider at the detailed design stage.

306. I find the proposed measures, subject to subsequent approval of their details, to be an appropriate response to the climate crisis. Conditions 7 and 28 would secure their provision.

### *Effects on archaeology and cultural heritage*

307. Chapter 13 of the EIA report and addendum present the appellant's conclusions on the significance of the proposal's likely effects on these receptors. This considered the potential for physical effects within the appeal site and effects on the setting of heritage assets elsewhere.

308. I note that Historic Environment Scotland, which is the statutory consultee for category A listed buildings such as Woodbank House, has no objections to the proposal. Indeed, it welcomes the proposed redevelopment of that building and concludes that any adverse effect on the setting of the building from the proposed lodges within its grounds, would be mitigated by the significant beneficial impacts derived from the conservation of the fabric of the house.

309. The planning authority agrees that redeveloping the house and outbuildings would be an opportunity to preserve their history and architectural significance, but considers there is uncertainty over the details and feasibility of the works and questions the absence of a firm commitment to timeframes. An objector to the proposal fears that this element of the proposal might be left to the final phase of development.

310. The Historic Environment Policy for Scotland sets out the vision and key principles for Scotland's historic environment. One of the concepts this deals with is "enabling development."

311. As I have concluded that the appellant's proposals for Zone E are consistent with the LDP site allocation, they do not need to qualify as enabling development in order to be supported in principle. This means the financial viability tests that typically apply to proposals that seek to rely upon an enablement argument do not apply to this proposal. However, other considerations that inform an assessment of an enabling development proposal - the ability of the proposals to secure a new use for the listed building, and the likely effect of what is proposed to be developed within its grounds upon the setting of that building are important considerations.

312. The appellant submitted a structural inspection report for Woodbank House and its ancillary buildings that is dated May 2017, and a conservation architect's report from June of that year. These found numerous structural issues with the house and, especially, with its ancillary buildings. However, it was not concluded that the house was so dilapidated that conversion and reuse would no longer be possible (although the nature of the conversion works would involve extensive new build works behind the original facades). In the subsequent eight years, the condition of the building may have deteriorated further. But there is no evidence to suggest that, contrary to what I observed on site, the remains of Woodbank House no longer have the potential for conversion without substantial demolition and rebuilding.

313. Final details of how such works would be carried out would be for determination at the matters specified in conditions stage. Listed building consent would also be required.

314. Section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

315. LDP Historic Environment Policy 1 only supports proposals to alter or extend a listed building where it would conserve and/or enhance its character, integrity and setting and where details of the proposals are appropriate to the building and its setting (not ruling out high quality contemporary design). To the extent that is possible at this planning permission in principle stage, these requirements of this policy are met. Fuller consideration against the requirements of this policy would be for the matters specified in conditions stage.

316. In accordance with the statutory requirement and all relevant policy and guidance, I am satisfied that the proposals for Woodbank House are acceptable in principle. I agree with the conclusion of the EIA report that the restoration of Woodbank House and its stables would be a major (significant) beneficial cultural heritage effect.

317. The development of lodges within the grounds of the listed building (however sensitively they were designed and sited and however well screened by new and existing trees) would detract from the openness of the site and from the visual dominance the house has previously had over its surroundings. I agree with the EIA report that, without mitigation,

this would be a moderate (significant) adverse effect on the setting of the listed building. The appellant proposes to mitigate this potential loss of appreciation and understanding of the building's former role and significance by producing interpretative materials for display on site, perhaps as part of a heritage trail. The details of this would be for approval at subsequent consenting stages. For the purposes of assessing the current proposal, I am satisfied that such measures would reduce the effect of the proposal on the setting of the listed building to a minor (not-significant) level.

318. With regard to the timing of when such works should take place, given the significance I attach to the benefit of securing a viable future for this nationally important building at risk, and the potential for the building to deteriorate further if action is not taken, I agree that it would be desirable if the restoration and reuse of the building were not left until the very end of the predicted six year construction period. At the same time, it needs to be recognised that commercial considerations will inform the appellant's decisions over the order in which the various proposed elements are carried out. I consider an appropriate solution to be a planning condition requiring the restoration of Woodbank House to be the first element of any development that is carried out within Zone E, without stipulating when, within the overall project, Zone E is to be redeveloped.

319. With regard to potential effects on other heritage assets, Historic Environment Scotland is satisfied that the proposal would not unacceptably affect the setting of the slipway and engine house at Pierhead or that of Balloch Castle Garden and Designed Landscape and earthwork. I find no reason to disagree and find the proposal to meet the requirements of LDP Historic Environment Policies 3 and 4, which seek to avoid or mitigate adverse impacts on such assets.

320. The site has the potential to contain undiscovered archaeology including prehistoric and Medieval remains. I agree with the EIA report that there is the potential for a moderate (significant) adverse effect from development on such remains. However, a planning condition could secure appropriate archaeological supervision of site works and any necessary excavation and recording. I agree that this would meet the requirements of LDP Historic Environment Policies 7 and 8 and would reduce the significance of effect to a non-significant level.

## **Effects on amenity**

### *Noise and vibration*

321. Chapter 7 of the EIA report considered noise and vibration effects. This chapter was not modified in the addendum to that report. The principal focus of the work that informed this chapter was the potential for significant noise or vibration effects to arise as a consequence of the road traffic that would be generated by the proposed development. Such effects were considered in isolation and in combination with other developments. The EIA report also considered the potential for construction-stage noise and vibration to affect ecological interests, which is an issue that fed into my appropriate assessment.

322. I appreciate why those who live closest to the site would prefer it to remain undeveloped. However, I am satisfied that following an objective analysis based upon accepted methodology, the EIA report found no likelihood of significant noise or vibration effects arising. And, in the absence of any evidence (as opposed to understandable, but unsubstantiated fears) to the contrary, I accept these conclusions.

### *Design quality, landscape and visual effects*

323. Chapter 11 of the EIA report considered the proposal's likely landscape and visual effects. Slight updates were made in the EIA report addendum to reflect the removal of 22 woodland bothies from Zone E and the deletion of proposed staff accommodation.

324. The appellant's consideration of this issue followed a conventional approach – employing zones of theoretical visibility to determine locations where landscape character and / or the amenity of visual receptors could potentially be affected and then investigating likely effects (including cumulative effects) at such locations and displaying indicative visualisations (for both summer and winter conditions) to give an impression of such potential effects. This took account of any tree removal likely to be necessary. The study also considered the extent to which the proposals would alter the physical fabric of the landscape. Particular attention was paid to the national park's special landscape qualities.

325. Views of Zones A, B, C and D from land are significantly restricted by existing built development and trees, even in winter. The clearest views of these parts of the site are from adjacent roads and from the loch and / or River Leven. What is proposed for Zone E would also not be widely visible, although from its immediate surroundings, particularly from Old Luss Road, the proposed lodges and the restored listed buildings would be locally prominent, at least until proposed tree planting became mature. As it is proposed to reintroduce public views of Woodbank House via the removal of the most closely encroaching trees and to maintain open areas within the site, that element of the development is likely to become more prominent, albeit in a positive way.

326. During the construction period (which is likely to last for several years) a moderate (albeit highly localised) risk of loss or damage to four of the national park's special qualities is anticipated (a moderate (significant) adverse temporary effect), as is a locally significant temporary adverse effect on landscape character type (LCT) 236 (a moderate (significant) temporary effect). Moderate to major (significant) temporary adverse visual effects are predicted at 13 out of the 18 viewpoint locations that the appellant studied. Such effects are to be expected of a construction project of this scale, but due to the screening that is provided by existing buildings and woodland, they would be unusually localised in extent.

327. Based upon the maximum scale of development that is referred to in the parameters plan, the appellant predicts operational phase effects to include a moderate (albeit highly localised) risk of loss or damage to four of the national park's special qualities (a locally moderate (significant) permanent adverse effect), and a locally significant permanent adverse effect on landscape character type (LCT) 236 (a moderate (significant) permanent adverse effect). Moderate (significant) permanent adverse visual effects are anticipated at seven locations. Again, such effects are what one would expect from a visitor experience development of this scale. They will have been anticipated by the planning authority when it allocated significant areas of land in Balloch for such development.

328. The planning authority has raised no objections to the proposal on landscape or visual effects grounds. Having regard to the character of the site's surroundings, the very limited radius within which any significant landscape or visual effects would be experienced and the identification of Balloch as the location to which this type of development should be directed, I conclude that, while any adverse effect requires to be weighed in the planning balance, there is no reason to suspect that, when detailed proposals for the development are finalised, such effects would attain a level of significance that they would outweigh the positive consequences of development that I have identified.

329. I find no evidence to cast doubt on the planning authority's conclusion that effects on the wider landscape or on the wider national park's special qualities would not be

detrimental. The authority is confident, and I agree, that there is no likelihood of significant effects on the integrity of the national park.

330. The design approach, choice of external finishing materials, and all other aspects of the proposal's external appearance would be for the planning authority to agree at the matters specified in conditions stage. The planning authority is content that such details are capable of resolution at that stage.

331. I find the proposals to satisfy the requirement of NPF4 policy 4 c) i to respect the objectives of designation and overall integrity of the national park. The planning authority has not argued that, beyond the immediate vicinity of the site, the proposal would have any significant adverse effects on the qualities for which the national park has been designated. Therefore, I conclude that the requirement of part c) ii of that policy to demonstrate that it would deliver social, environmental or economic benefits of national importance, does not apply. For the same reasons, I find the proposal to comply with the requirement of LDP Natural Environment Policy 1 for development proposals to protect the national park's special qualities, to be sympathetic to their setting and to minimise visual impact.

332. NPF4 policy 30 b) ii requires proposals for tourism related development to take into account its compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors. The planning authority has not suggested that what is proposed for any element of the appeal site would be incompatible with the surrounding area. This is consistent with the decision it took to allocate the majority of the appeal site for the types of development that are now proposed, and its identification of Balloch as a strategic location for such development. However, this is a concern that has been raised by other interested parties.

333. I find no grounds to question the suitability in principle of what is proposed in these terms. The increased number of visitors that the proposal would attract to Balloch would clearly be detectable by those who live and work in the town and by visitors. But the location and maximum scale of what is proposed would not be out of scale with the settlement or out of character with its existing role as a key provider of visitor experience services. And the matters specified in conditions stage would enable the planning authority to ensure that the detailed design of all elements of the proposals was compatible with its surroundings.

#### *Protection of open space*

334. A large number of objectors have referred me to the importance of the site for informal recreation. This includes the woodland and open areas adjacent to the River Leven in Zone B, Drumkinnon Bay beach, which is immediately adjacent to the site of the proposed Pierhead visitor destination in Zone C, and the fields and woodland around Woodbank House in Zone E.

335. LDP Open Space Policy 2 does not support proposals to develop formal or informal open space unless four criteria are satisfied. Earlier in this notice I found conflict with this policy in respect of the proposed boathouse in Zone D. This was on the basis that the land on which that element of the proposal would be built has community value and has not been allocated for development (it has, in fact, been specifically identified in the LDP as "open space").

336. None of the other land within the appeal site is identified in the LDP as open space but, as Open Space Policy 2 does not confirm that it only applies to designated open space, this fact alone does not exempt it from the requirements of the policy. However, what I do

find to be directly relevant to the applicability or otherwise of this policy is the fact that the authority has allocated for development, all of the land that has been referred to in these objections. In deciding to allocate this land for development, the authority will have weighed the benefits of such development against the loss of existing opportunities for informal recreation and concluded that the former should prevail. My assessment of an outline proposal for development that accords with the planning authority's earlier decision does not provide an opportunity to revisit that decision. Therefore, I find LDP Open Space Policy 2 not to be applicable to any of the land that has been allocated for development.

337. I do not doubt the extent to which this land is valued by the local community and by visitors to the town. However, bearing in mind the allocated status of the affected areas, and the opportunities the appellant has suggested for maintaining and improving access, I am unable to give such concerns much weight in my assessment of the planning balance.

### **Sustainable travel and effects on the road network**

338. Traffic and transport effects were considered in chapter 12 of the EIA report. No changes were made to that chapter in the addendum to that report.

339. The potential for the proposed development to generate significant levels of additional road traffic in a location that is already very busy at peak times is a concern that has been raised by a large number of parties. However, the planning authority, roads authority and Transport Scotland have raised no concerns in this regard.

340. These agencies conclude that, with the exception of adding to the existing queuing on the A811 western approach to the Ballochloan roundabout during PM peak flows during the holiday season (which the appellant proposes to address by funding the provision of a left slip lane), the proposal would not unacceptably affect existing levels of congestion, both on the A82, A811 and the minor roads within Balloch, during busy summer periods. I agree that this issue was investigated properly by the appellant and that the scale of additional traffic that the proposal would generate would generally be small in comparison with existing levels.

341. The appellant's offer to fund the Ballochloan roundabout upgrade, which would be to the benefit of all users, could be secured by a planning obligation.

342. NPF4 policy 30 b) iv requires proposals for tourism related development to take into account opportunities for sustainable travel and appropriate management of parking and traffic generation as well as the scope for sustaining public transport services.

343. Proposed car parking levels are shown indicatively in the parameters plan. It is suggested that a maximum of 372 spaces would be provided. That figure could change at the matters specified in conditions stage, depending on how detailed proposals for the site develop. Some objectors argue that this level of parking provision would be insufficient and could lead to inconsiderate on-street parking (as they advise already happens at busy times). At the same time, it is argued that local roads could not cope with additional traffic (which is a foreseeable consequence of increasing parking provision). This would suggest that a policy of parking restraint (which would accord with the qualified support that is given by NPF4 policy 13 e) to proposals which are ambitious in terms of low or no car parking) might be appropriate.

344. Ultimately, the level of parking that should be provided at the site will be a balance between encouraging visitors and staff to use alternatives to the private car, and ensuring that there is sufficient parking capacity to accommodate those who are resistant to such



attempts at modal shift. This is an issue for resolution at the matters specified in conditions stage.

345. Against that background, there are no grounds to find the proposals unacceptable in terms of traffic generation, levels of car parking, or the effect on the local or trunk road network.

346. The EIA report predicts that, following the implementation of the measures that are outlined in the draft Travel Plan, there would be a moderate (significant) beneficial effect at Balloch Road (south), Old Luss Road (north) and Pier Road, and a minor (not significant) beneficial effect at Ben Lomond Way. This conclusion is based on there being a move away from what is described as a “road focussed culture” towards one where pedestrians and cyclists are given greater priority. This prediction appears to place some weight on the delivery by West Dunbartonshire Council of its own proposals to improve the streetscape around the station. I have few details of these works, no knowledge of whether they remain active proposals, and no means of securing their delivery. As such, I can give them no weight. However, in the absence of any disagreement from the planning authority, roads authority or Transport Scotland, I am prepared to accept the appellant’s predictions of local moderate (significant) beneficial effects.

347. The planning authority describes Balloch as “the most sustainable and accessible location in the national park”. Bearing in mind the mainline railway station very close to Zone A and the good (by national park standards) bus services, I find no reason to disagree with that assessment. The appellant has committed to producing a travel plan that would encourage the use of alternatives to the private car. Once at the site, the proposed provision of enhanced pedestrian and cycling links and the proposed monorail can be expected to avoid the generation of any significant increase in car trips between different elements of the proposal. I do not agree with the planning authority that no weight should be given to the modal shift or other public benefits of the proposed monorail. Its observation that the journey from Balloch to Pierhead involves a short ten minute walk ignores the needs of those who are unable to make such a walk.

348. Final details of the proposals are not known at this planning permission in principle stage. However, I find no grounds to suspect that the appellant’s proposed traffic and transport measures are unacceptable. I note that the planning authority is content for the finalised Travel Plan and details of proposals for parking and for improved accessibility across the site to be appropriately considered at the matters specified in conditions stage and I agree with that assessment.

349. I do not agree with objectors that there is any conflict with the LDP Transport Policy 2 requirement that former railway lines be safeguarded to provide walking, cycling and bridleway opportunities. The planning authority has already decided that land where there was once a railway (Zones A and B) can be redeveloped rather than safeguarded for such purposes, and I am satisfied that the retention and enhancement of existing access opportunities could be incorporated within detailed development proposals.

350. I find the proposals to be in accordance with NPF4 policies 13 and 30 b), and LDP Transport Policies 2 and 3 and there are no material considerations that would justify a negative conclusion on sustainable travel or road network effects grounds.

### **Socio-economic, tourism, recreation and public access effects**

351. The appellant’s study of the proposal’s likely socio-economic, tourism, recreation and public access effects was summarised in Chapter 14 of the EIA report. This was not revised

in the EIA report addendum, as the revisions to the proposal that required an addendum to the original EIA report were not considered by the appellant to change the outcome of the original assessment.

352. In December 2024, subsequent to the refusal of the planning application that has led to this appeal, an additional study into the proposal's likely socio-economic effects (but not the remainder of EIA report chapter 14) was prepared. As this contained substantive information about a matter to be contained in the EIA report, it was publicised as additional environmental information. I have had regard to comments that were received in response to this additional information and to the appellant's response to those comments.

353. The EIA report looked not only at effects that would be directly attributable to the proposal's socio-economic outputs – employment levels, increased visitor numbers etc, but also at potential socio-economic effects arising from factors such as the likely landscape and visual effects of the proposal. The planning authority has raised no concerns over the methodology employed in the appellant's study, or suggested that it did not follow accepted best practice. I find no reason to disagree.

354. The EIA report confirms that the appellant engaged at the pre-application stage with a range of local businesses and business groups and organisations including the Dunbartonshire Chamber of Commerce.

355. The socio-economic and labour market study in the EIA report looked at three study areas – a 15 minute drive time, a 30 minute drive time and a 45 minute drive time from the site. Tourism and recreation effects were considered within a 5km radius.

356. The baseline conditions against which the EIA report's assessment of likely socio-economic effects was made, relied on pre Covid-19 data. That study concluded that, as there is no evidence to indicate the long-term implications of the pandemic, it remains appropriate to use the pre-pandemic baseline when assessing the likely effects of the proposal.

357. The effects of the pandemic on the tourism sector were significant, and a number of representations raise concern that its after-effects may have made the economy less resilient to adverse effects. However, the appellant's December 2024 Market Demand Assessment at appendix B to its updated socio-economic study, which relies upon independent data, confirms that, following the pandemic, spending on UK holidays increased rapidly, well above the rate of spending on overseas holidays, and has now broadly returned to pre-pandemic levels. Hotel occupancy rates have also recovered to pre-pandemic levels and spending on entertainment and other recreation has increased steadily since 2020 and is in line with the highest levels since 2008.

358. Therefore, I am satisfied that the appellant's assessment of the socio-economic baseline and its understanding of market demand can be relied upon.

359. I find the EIA report's assumption that, without the proposed development taking place, the socio-economic baseline was likely to increase in the future anyway (due to the majority of the site being allocated for visitor experience development) to be a conservative approach to calculating the likely net effect of the proposal in socio-economic terms.

360. The EIA report found local population levels to have increased over recent decades and are predicted to continue to increase (albeit at a slower rate) to 2035. The age profile, skills and qualifications of the study area population were found to be broadly consistent with Scotland as a whole. However, looking at a more local level, the updated socio-

economic study found a less affluent, healthy and educated population, and evidence of population decline, particularly of younger people. The study found the West Dunbartonshire area to have moderate levels of unemployment, and levels of economic inactivity that are above the national average, moderate levels of deprivation and crime, around average earnings and moderate scores on health measures. As such, it was assigned a medium socio-economic sensitivity rating. The Vale of Leven study area (which is the area between Balloch and Dumbarton including the settlements of Alexandria, Bonhill, Renton, and Dalreoch), was found to have high socio-economic sensitivity, due to performing more poorly against those indicators. Balloch and Alexandria are among the 10% most deprived areas in Scotland.

361. The importance of tourism to the Scottish and national park economy has not been questioned by those who are opposed to the proposal. There were 4.6 million visitors to the national park in 2017, of whom 2.1 million were day visitors. This generated £142 million for the park's economy and supported 6,800 full time equivalent (FTE) jobs.

362. The EIA report noted that the existing tourism offer in Balloch, as it includes a significant element of indoor tourist attractions – Loch Lomond Shores and the aquarium, is atypical of the national park as a whole, where outdoor attractions predominate. The updated socio-economic study considered the market demand for further indoor attractions and further tourist accommodation, of which there is also a concentration in the locality. This found that proposing development across a range of sectors should maximise demand and de-risk the development in the event of an economic downturn.

363. The updated socio-economic study also concluded that hotel and self-catering accommodation locally is generally either at the luxury or lower end of the market, whereas what the developer proposes would be a diverse range of accommodation options in between these extremes. The study found that retail demand remains strong at Loch Lomond Shores, although the quality of the retail offer has declined. It predicts benefits to that development from the increased footfall and diversity of visitors that would be attracted to the proposed development, noting that the co-location of leisure, accommodation, food and drink and retail uses is recognised as a requirement of a location that is seeking to attract visitors.

364. These conclusions all seem plausible and there is no evidence of comparable quality before me to refute them. As I discuss below, the appellant's approach in the EIA report to analysing the proposal's likely socio-economic effects took what I consider to be a highly conservative approach. The updated socio-economic report benefits from including sensitivity testing, which varied the costs and benefits of the proposal by around 20% either way. This adds to my confidence in its predictions.

365. Some objectors to the proposal fear that, rather than the proposal attracting new business to the town, existing business would lose customers to the proposed attractions and accommodation. The role of the planning system is to act in the public interest rather than to protect private interests from the effects of market competition. But, in any event, I am satisfied that the qualitative and quantitative analyses, which account for the displacement of trade away from existing businesses, suggest that this is not the likely outcome.

366. Construction costs for the proposed development, at March 2022 prices, are estimated at £40 million. The appeal-stage socio-economic study updated this to £43.5 million at 2024 prices. It is anticipated that the construction period would be six years. Over that period it is predicted that 182 jobs (net) would be supported within the EIA report's wider area and 55 elsewhere in Scotland. Those figures account for deadweight, leakage

and other factors that might reduce the significance of the employment effect. In the updated socio-economic study, estimates of construction and operational phase effects were broken down to a more local level. At the West Dunbartonshire level, net construction period jobs would rise from 41 in year 1 of the project to 102 in year 6. At the Vale of Leven level there would be 31 net additional jobs in year 1, rising to 106 in year 6.

367. I agree with the appellant that this level of additional employment during the six year construction period and the associated benefits to the local economy, would deliver a minor (not significant), beneficial short term effect at the wider (regional level), but when considered on a more local basis, such effects would be moderate (significant) for the West Dunbartonshire area and moderate to major (significant) for the vale of Leven.

368. Once the proposed development was fully operational, the EIA report predicts that 80 full time and 120 part time or seasonal staff would be required (equivalent to 159 FTE posts). However, on an assumption of a high degree of deadweight (hypothesising that 75% of these operational phase jobs would have been generated anyway through the development of other accommodation / food sector and hospitality businesses within the study areas) and reductions to account for other factors such as the displacement of employment from other existing businesses, the net gain in employment is predicted to be 31 additional jobs in the wider area and a further 24 in Scotland. This is an appropriately conservative approach, given the size of the study areas and consequent potential that development in other locations (for example Glasgow) would occur.

369. I agree with the EIA report that this level of additional employment and the associated benefits to the regional / national economy would be minor (not significant), beneficial long term effects of the proposal.

370. The updated socio-economic study (using deadweight assumptions of 20% for West Dunbartonshire and 10% for the Vale of Leven to reflect the reduced levels of development in those areas that would otherwise occur) predicts the creation of a net increase in employment of 61 FTE permanent jobs and a net additional annual increase in GVA of £3.4 million at the West Dunbartonshire level. This would represent a long-term minor benefit to the overall economy and a moderate (significant) long-term beneficial effect for the accommodation and food services sector.

371. At the Vale of Leven level, where indicators of deprivation are higher, the updated study predicts a net increase in employment of 75 FTE permanent jobs and a net additional annual increase in GVA of £3.9 million. This would represent a long-term minor benefit to the overall economy and a major (significant) long-term beneficial effect for the accommodation and food services sector.

372. The strategic priorities of West Dunbartonshire Council's Economic Development Strategy 2022-27 include stimulating economic investment and growing the business base, establishing an inclusive economy by improving the skills of local people and supporting them into work and creating a prosperous place where people choose to live, work, visit and invest. I find the appeal proposal to be consistent with these priorities and with the vision of that plan, which is *"By 2027, West Dunbartonshire will have an inclusive and vibrant economy through the creation of fairer jobs, a drive towards net Zero, and the development of prosperous places in partnership with our communities and businesses."* This adds a small amount of weight in support of the proposals.

373. A number of objectors to the proposal have raised the effects of Brexit on the supply of labour, citing the recruitment difficulties some existing hospitality providers already experience. I do not doubt those concerns, but this is an issue that is faced across the UK,

and it has not proved to be insurmountable elsewhere. The local demographic profile and the accessible location of the appeal site do not suggest that this issue would be so problematic for the developer of the appeal site or for other local employers who would draw from the same pool of employees that this issue should be given significant weight in the planning balance.

374. Concern has also been raised that the jobs that would be created would be low skilled and low paid. The staff forecast that is set out in Appendix D to the updated socio-economic report is clearly only an estimate of the range of posts that the proposal could create, but is the best evidence available of the types of position that might be available. This includes a wide range of opportunities from not skilled roles (22% of the total) such as kitchen porters to highly skilled management positions (6% of the total). The majority of positions are predicted to be skilled (32%) or semi-skilled (41%).

375. The appellant's Lomond Promise commits the developer to delivering (among other things) a range of community benefits including adopting the Scottish Government's Fair Work First approach. This would commit the site operator to: investment in training; no use of 'zero hour' contracts; creating a diverse and inclusive workplace; paying the real living wage; and prioritising people from local communities in job opportunities in the construction and operating phases.

376. Other commitments in the Lomond Promise include working with and promoting local businesses, ensuring local water sports clubs have access to appropriate facilities within the development and publishing performance against social and environmental indicators.

377. I discuss how the commitments that are set out in the Lomond Promise might be secured, later in this notice.

378. NPF4 policy 30 b) i requires proposals for tourism related development to take into account the contribution made to the local economy. The locally significant positive effect the proposal would have on the local economy means the proposal can draw support from this policy.

379. Overall, I am satisfied that the appellant's predictions of the proposal's likely socio-economic effects are reasonable. I conclude that the locally significant beneficial effects of the project in both the short and long term are important factors that weigh in favour of granting planning permission in principle.

380. Chapter 14 of the EIA report also considered how the proposals would affect public access across the appeal site and elsewhere. This chapter confirms that the then applicant involved the planning authority's access officer in the development of its proposals

381. Public access routes in the locality include the John Muir Way, the Three Lochs Way, National Cycle Route 7 and the West Loch Lomond cycle route. There are also numerous rights of way and locations that are used informally for access.

382. The EIA report predicts that, during the construction period, there would be moderate (significant at a local level) effects on all four nationally recognised routes. This would be due to the need for temporary localised diversions of the first two and due to visibility of construction activity from all four. Similarly significant effects are predicted during this period for locations that are used informally for access such as the beach at Drumkinnon Bay and on those enjoying outdoor recreation locally.

383. Once the project was operational, temporary construction stage diversions of paths would be removed, and the appellant proposes physical enhancements to those routes in

order to improve the user experience. The EIA report confirms the appellant's commitment to maintaining public access across the site (albeit in a formalised rather than unrestricted manner as it is now) including to the woodland east of Pier Road and the parkland within the Woodbank House site (Zone E). I noted at my site inspection that the latter was popular with dog walkers but was also subject to fly tipping. Locally significant effects (not necessarily adverse) are predicted due to the proposal introducing significant levels of new built development in locations that are popular with visitors. These include those enjoying outdoor tourist attractions such as sailing on the loch as well as those enjoying informal recreation on Drumkinnon Beach. The nature of such effects would depend, to quite a considerable extent, on the finalised design of buildings and other built development and the nature and extent of any landscaping. Such details would be resolved at the matters specified in conditions stage. At this planning permission in principle stage, I find no reasons to disagree with the EIA report's conclusions or to suspect that the proposal would have any unacceptable effect on access or recreation. In reaching that conclusion, I have had regard to what I saw on site and to the widely differing views on this question from those who have particular knowledge of, and responsibility for, access in the locality.

## Conclusions

384. This appeal seeks planning permission in principle on the basis of a series of maximum parameters. These were specified so that the environmental effects of the proposal could be assessed on a "worst-case" basis. That does not mean that what is ultimately built on the land will be to the full extent of those maximum parameters. It will be for the appellant to demonstrate, in subsequent applications for matters specified in conditions, the acceptability of its detailed proposals. These will not be able to exceed the quantum of development that has been described in the application for planning permission in principle.

385. I agree with the planning authority that flood risk and biodiversity effects go to the principle of development and cannot be "backloaded" to later stages in the consenting process. But that is not what the appellant has proposed. For the reasons I have explained in this notice, I find that sufficient detail has been provided to demonstrate the acceptability in principle of what is proposed in these and all other terms. Once detailed proposals are finalised, their acceptability in terms of all relevant planning considerations will remain within the planning authority's control at the matters specified in conditions stage.

386. An objector to the proposal contends that, contrary to section 47A of the Act, the appellant has raised new matters in this appeal, which were not raised at the application stage. These include details of how the appellant secured the option to develop the appeal site, its explanation of its ability under the terms of the agreement it has with the landowner to take a long-term lease of Drumkinnon Wood, which would enable it to deliver a number of benefits including biodiversity enhancement, its offer to reduce the scale of the proposed development should that be considered necessary, and its offer to incorporate the terms of the Lomond Promise within a planning obligation under section 75 of the Act or in a contract with the planning authority.

387. The first of the above-mentioned appeal-stage submissions is not a material planning consideration and I have had no regard to it in my assessment of the proposal. With regard to the others, "matter" is not defined in the Act, but it is used in a consistent manner throughout the Act and in the Town and Country Planning Appeals (Scotland) Regulations 2013 to denote an issue or topic rather than an item of evidence or a document.

388. The appellant's ability to acquire Drumkinnon Wood for long-term public benefit was confirmed in its inclusion of that land, both within the blue line on the site location plan and in the Lomond Promise document. Therefore, this matter was before the planning authority at application stage. The appellant's indication of its intention to take a long-term lease of this land and to provide a range of public benefits including a "woodland management plan" (which specified an objective for its "future betterment and management") was clearly spelled out at application stage. The appeal-stage explanation of the biodiversity enhancement benefits of this element of the Lomond Promise was simply a clarification that the proposed management of Drumkinnon Wood could deliver such benefits. This was in response to concerns (which were apparently not communicated to the then applicant until publication of the report to the authority's Board) that insufficient biodiversity enhancement had been proposed. In no sense can a response to an issue that was before the planning authority at application stage be interpreted as a new matter.

389. The possibility that the then applicant (now appellant) could reduce the scale of its proposal (subject to the change not creating a proposal that was, in substance, different to the original proposal) was always there. The appellant's reference, at the appeal stage, to that potential approach did not constitute the raising of a new issue or topic that was not previously before the planning authority (despite the authority's apparent unwillingness to consider that option). In any event, for the reasons I have set out above, I have concluded that no reduction in scale is required. Again therefore, this issue is not one that has informed my conclusions on this proposal.

390. Finally, the offer to incorporate the terms of the Lomond Promise within a planning obligation under section 75 of the Act, or in a contract with the planning authority, was new evidence in respect of an existing matter (the Lomond Promise) and a direct response to the planning authority's argument that the promise would be unenforceable. It was not a new matter.

### *The Lomond Promise*

391. To ensure that the Lomond Promise could be enforced by the planning authority, the appellant has offered to include, within a planning obligation under section 75 of the Act, all aspects that would, to the planning authority's satisfaction, meet the tests of Circular 3/2012. Any remaining matters could, if the authority desired, be covered in an agreement made under section 9 and paragraph 15 of Schedule 2 to the National Parks (Scotland) Act 2000 or section 69 of the Local Government etc (Scotland) Act 1973.

392. Circular 3/2012 confirms the planning obligations should only be sought where they meet five tests. I have considered below, for each element of the Lomond Promise, whether any of these tests would not be met.

393. The Lomond Promise sets out the appellant's commitment to the following matters:

- Community support issues – the appellant has promised to promote, in welcome packs for guests using the proposed holiday accommodation and on the development's website, details of local businesses which actively engage with the development. While this might be welcomed by those who would benefit from such promotion, as there is no evidence to suggest that the proposal would cause harm to such businesses, I am not convinced that this commitment is essential for the proposed development to be acceptable in planning terms. Therefore it would fail the necessity, planning purpose, relationship and reasonableness tests and should not be included within a planning obligation.

- Employment issues – the appellant confirms its commitment to the Scottish Government’s “Fair Work First” approach. This would, among other things, secure payment of the real living wage, preclude the use of zero hours contracts, and prioritise the employment of local people and local businesses wherever possible. The proposal’s ability to improve employment prospects and life opportunities in an area of relatively high deprivation is a material consideration to which I have attached positive weight. Such benefits would have less value in the absence of this commitment. I am satisfied that these commitments would meet the Circular tests and should be included within a planning obligation.
- Environment issues – the appellant commits to consulting with Zero Waste Scotland to influence how the site is developed and operated. It commits to preparing a plan that would aim to make the development “net zero” by no later than 2035. It would prepare and implement a Woodland Management Plan for Drumkinnon Wood and its informal path network. It also commits to keeping the core path network and informal path network open at all times. I am satisfied that these issues meet all of the Circular tests and should be included within a planning obligation.
- Social issues – the appellant commits to employing monitoring systems and suitably qualified staff to manage any anti-social behaviour within and around the proposed development. It has offered discounted membership rates to local people for all leisure facilities and commits to working with local water sports clubs to ensure they have access to appropriate facilities within the development. I am not convinced that these offers (while beneficial to local people) are essential for the proposed development to be acceptable in planning terms. Therefore they would fail the necessity, planning purpose, relationship and reasonableness tests and should not be included within a planning obligation.
- Transport issues – the appellant commits to developing and implementing a Green Travel Plan for the development. This would involve, among other matters aimed at encouraging more sustainable modes of travel, monitoring private car usage of the site and introducing measures to reduce it by a specified amount over a five year period, the introduction of an electric “hopper” bus service and the developer would investigate opportunities for integrated rail / attraction ticketing. I am satisfied that these are all matters that would serve a planning purpose. However, as they are capable of being secured by a planning condition (as I propose below), it is not necessary for them to be included within a planning obligation.
- Social value portal – the appellant commits to using this online resource to measure the value of the environmental, social and other actions that the developer carries out during the construction and operation of the proposal, to report these to the local authority, MSP and community councils and to respond to any feedback received. I am not convinced that this evaluation and reporting is essential for the proposed development to be acceptable in planning terms. Therefore its inclusion within an obligation would fail the necessity, planning purpose, relationship and reasonableness tests.

394. I conclude that the planning permission in principle I am minded to grant should be subject to a planning obligation that secures the employment issues and environment issues that are set out in the Lomond Promise.

395. As was confirmed in the Scottish Government Chief planner’s letter of 27 June 2024, it is necessary to read NPF4 as a whole and to expect there to be conflicts between



policies. I have found there to be some conflict with NPF4 policies that relate to woodland retention and (in respect of the proposed boathouse) an infringement of LDP Open Space Policy 2, but I have also found the proposal to be supported by many other policies including the exemption to the avoidance principle that was included in NPF4 in order to permit the development of land within a flood risk area where this would be in the public interest. For the reasons I have set out above, I conclude that the proposal is in accordance with, and is supported by, the development plan overall.

396. As I have set out above, I have had regard to all of the points that have been raised in objection and to all other relevant policy and guidance documents that have been put before me. These provide no grounds to depart from the presumption in favour of development that accords with the development plan.

397. The EIA report and additional information predict the following significant environmental effects:

- a moderate (significant at a local level) temporary adverse effect during the construction period on local access routes and on areas used informally for recreation;
- a range of moderate (significant at a local level) long-term effects (potentially beneficial and adverse) following the completion of construction works, on local access routes and on areas used informally for recreation.
- a major (significant) beneficial long-term cultural heritage effect from the restoration of Woodbank House and its stables;
- a significant adverse ecological effect at the site level on ancient woodland and on mixed broad-leaved woodland during the construction period;
- a significant adverse ecological effect at the site level on ancient woodland during the operational period;
- a moderate (significant) long-term beneficial traffic and travel effect at Balloch Road (south), Old Luss Road (north) and Pier Road;
- a moderate (significant) short-term beneficial construction-stage socio-economic effect at the West Dunbartonshire level;
- a moderate / major (significant) short-term beneficial construction-stage socio-economic effect at the Vale of Leven level;
- a moderate (significant) long-term beneficial effect on the accommodation and food services sector at the West Dunbartonshire level; and
- a major (significant) long-term beneficial effect on the accommodation and food services sector at the Vale of Leven level.

398. I agree with that assessment. Following my consideration of the environmental information, I have identified no additional significant effects. I conclude that, subject to mitigation controlled by means of the conditions attached to this notice, there would be no unacceptable residual impacts in regard to those matters.

399. I am satisfied that my reasoned conclusions on the significant effects of the proposed development are up to date. I am also satisfied that, to the extent that is expected by the EIA regulations, the appellant has given sufficient consideration to alternatives to the proposed development.

400. The attached conditions provide for mitigation of environmental effects. In condition 5 I require effects arising from the development of the site to be mitigated by a requirement for further details of a range of issues including its siting, design, external appearance, numbers, scale, massing of any buildings, landscaping and access. Condition 9 requires a Construction Environmental Management Plan, which will include measures to mitigate environmental effects during the construction period. Condition 11 requires a Tree Protection Plan, which will mitigate effects on trees. Condition 12 requires mitigation of landscape, visual and tree loss effects via a requirement for a Landscape, Planting and Management Plan. Condition 17 requires effects on bats to be mitigated in a Bat Protection Plan. Environmental effects from drainage would be mitigated by conditions 24 and 46. Traffic effects during the construction and operational phases of the development would be mitigated by conditions 26 and 27 respectively and mitigation for potential queuing at Ballochloan roundabout would be secured by condition 30. Mitigation of potential operational phase noise effects would be secured by condition 38 and of effects arising from building ventilation systems by condition 39. Impacts on human health during the construction period would be mitigated by conditions 40 to 44. Environmental effects from proposed site lighting would be mitigated by proposed condition 45 and effects on air quality by condition 47.

401. In condition 8 I require the appointment of an Environmental Clerk of Works, who would have responsibility for monitoring all environmental commitments provided in the EIA Report and in various mitigation plans that are required by other conditions.

402. I conclude that a planning obligation restricting or regulating the development or use of the land should be completed in order to secure the employment and environment issues that are set out in the Lomond Promise. I will accordingly defer determination of this appeal for a period of up to 26 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant) under section 75 of the Act, or some suitable alternative arrangement as may be agreed by the parties, to be completed and registered or recorded, as the case may be. If, by the end of the 26 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

403. The planning authority supplied a list of planning conditions that it believes should be attached to the planning permission in principle, in the event that this appeal is allowed. The appellant was given the opportunity to comment on these. The conditions that will apply to the planning permission that I am minded to grant, which are set out in Appendix 1 to this notice, are based upon the planning authority's suggestions, the appellant's response thereto and my own consideration of the issues.

404. Given the complexity of the proposals and the phased manner in which they would be developed, I agree with the appellant that seven rather than five years should be specified in the commencement of development condition.

405. The appellant has argued against the planning authority's request for a phasing condition to be attached to the planning permission in principle. The purpose of the requested phasing plan was to allow the authority to control the timetable for implementing each phase of the development. I agree with the appellant that phasing conditions are

typically only justified where future phases of development would require an item of strategic infrastructure to be in place, which is not the case here.

406. The appellant has confirmed that its contract with the land owner would allow it to construct the proposals in up to four phases. This is not an infrastructure-imposed constraint upon the delivery of later phases but simply an opportunity that the appellant might wish to take up, depending on market conditions or other considerations, to develop the site in a phased manner. Therefore, in principle, I find no justification for the planning authority having control over the phasing of the proposals via the proposed condition. As I confirmed earlier in this notice, I find it reasonable to control the timing of the early delivery of the listed building restoration works within the development timeline for Zone E, but not to seek to determine when, within the phasing of the overall scheme, Zone E was developed. I have modified condition 4 in order to secure that level of control.

407. I do not agree with the appellant that some of the matters that condition 5 specifies as requirements to accompany applications for matters specified in conditions, cover issues that have been resolved and should therefore be deleted. Depending on the schemes that are put forward for approval, it may be that further information is required, but if that is not the case, then the applicant at that time could, in order to satisfy this condition, simply resubmit material that was prepared in order to secure this planning permission in principle.

408. I agree with the appellant that a condition requiring details of how the listed building conversion works would be carried out is unnecessary, as such works would require listed building consent. Consequently, I have deleted proposed condition 8.

409. Although I agree with the planning authority that the listed building restoration works should be progressed before the remainder of development on Zone E, I agree with the appellant that the wording of proposed conditions 9 and 10, which seeks to demand a financial justification for the number of lodges that would be developed (as one would expect of an enabling development proposal, which this is not) is neither necessary or reasonable. Consequently I have deleted proposed conditions 9 and 10.

410. I have modified proposed condition 13 (now condition 10) to delete reference to a requirement to improve the condition of woodland, peatland and water, as this may not be possible to achieve on this site. However, I have retained the expectation for biodiversity enhancement to be “significant”, as this reflects NPF4 policy 3 b) iv.

411. I have adopted the appellant’s suggested revised wording for the flood risk assessment condition (proposed condition 26, now condition 23) as that would achieve the objectives of NPF4 policy 22. This wording also enables the deletion of proposed conditions 27 and 28.

412. I agree with the appellant that there is no justification to require a further Transport Assessment, as the proposal’s potential effects have already been modelled on a worst-case basis. Consequently I have deleted proposed condition 32.

413. At the request of the appellant, I have deleted from proposed condition 34 (now condition 28) the obligation to provide within the site’s parking areas, spaces for boat trailers. It may be that such provision is appropriate in certain locations, but that could be determined at the stage when parking proposals were submitted and assessed by the planning authority, without specifying that such provision must be incorporated in order to satisfy the condition.

414. I note that the appellant would wish to deal with proposed improvements it would fund to the Ballochloan roundabout, via an agreement under section 48 of the Roads Act. While that may be the most appropriate mechanism for these works to be funded, a condition securing the provision of these works remains appropriate and necessary. The fact that the appellant does not own the land on which the works would be carried out does not prevent this matter being dealt with in this way. The roads authority has control of the land needed to carry out these works.

415. I agree with the appellant that the scope of the contaminated land assessment condition (proposed condition 38, now condition 31) should be restricted to those areas of the site (Zones A and B) where ground contamination is thought to be an issue.

416. I also agree that the condition controlling noise levels (proposed condition 44, now condition 38) should refer to accepted noise level thresholds. I agree that the appellant's suggested condition is an appropriate replacement for proposed conditions 44, 46 and 47.

417. I have amended the proposed timing restriction on delivery vehicles to refer to the construction phases of the proposal, as I see no justification for this to apply to deliveries serving the development once it is operational, given the relationship between the site and any noise sensitive neighbours and the general characteristics of the locality.

*David Buylła*

Principal Reporter

**Schedule 1: List of conditions**Duration of Permission in Principle

1. The development to which this planning permission relates must be begun not later than the expiration of 7 years beginning with the date on which this planning permission in principle is granted. If development has not begun at the expiration of the period mentioned in this condition, the planning permission in principle lapses.

A formal application for the approval of matters specified in condition ("AMSC") must be made before whichever is latest of the following:

- i. the expiration of 3 years from the date of the grant of this permission,
- ii. the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, and
- iii. the expiration of 6 months from the date on which an appeal against such refusal was dismissed, the expiration of 6 months from the date of the notice of the decision to uphold the determination.

Reason: in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997.

Parameters Plan

2. The development must be carried out in accordance with, and not exceed any of, the parameters and limitations (including those set out in the legend or key) and in terms of the uses, operations, design, layout, configuration, height, scale, mass, siting and means of access all as set out in the Parameters Plan Ref. AL(0)005 Rev 0 received 13 February 2023 ("the Parameters Plan"). All application(s) for AMSC in this permission must be in accordance with this condition.

Reason: in order to tie the absolute maximum scale of development for Environmental Impact Assessment purposes to this grant of planning permission for the development.

Control of Development

3. None of the buildings (including the number of buildings) shown on the Parameters Plan in Zone A, B, C, D, or E are approved. These merely represent an absolute maximum scale of development for Environmental Impact Assessment purposes in terms of Condition 2. The development of all buildings (including the number of buildings) shall be subject to a formal application(s) for AMSC. Following approval, the development shall thereafter be implemented in accordance with the approved scheme.

Reason: in order to retain control over the scale and numbers of built development in the development.

Phasing Plan

4. Prior to the commencement of development a phasing plan for the delivery of the approved development shall be submitted to and approved in writing by the planning authority. This phasing plan shall contain a strategy for the submission of a series of AMSC

applications for each phase or zone of development. In respect of Zone E (Woodbank House) it shall specify how the proposed restoration of the listed buildings within that zone will be timetabled in relation to the remainder of the development within that phase, ensuring that the listed building restoration works are completed prior to first occupation of any part of the proposed development within that zone. Following approval, the development shall thereafter be implemented in accordance with the approved scheme. Any modifications or updates to the approved phasing plan shall be subject to the written approval of the planning authority and implemented thereafter as approved. A notice of completion shall be submitted to the planning authority as soon as practicable after each phase is finished by the person carrying out the development.

Reason: to ensure certain elements of the development are satisfactorily completed.

Siting, layout, design, external appearance, numbers, scale, massing of any buildings, landscaping and access

5. No development shall commence until full details of the siting, design, external appearance, numbers, scale, massing of any buildings, landscaping and access serving the relevant phase/part of the development through a formal application(s) for AMSC has been submitted to and approved in writing by the planning authority. The formal application(s) for AMSC shall accord with the Parameters Plan. Application(s) for AMSC shall include the following:

- i. Existing and proposed site levels informed by topographic survey;
- ii. Detailed cross sections showing proposed finished ground and floor levels of all buildings forming part of each development phase.
- iii. Full details of proposed floorplans, elevations and building height.
- iv. Siting, design, heights, and detailed specification (and samples if requested) of external materials of all buildings and structures.
- v. The siting and design and relationship with the setting of Woodbank House, as a Listed Building, in terms of any buildings in Zone E on the Parameters Plan, that may affect that setting.
- vi. Details of proposed sustainable design, energy conservation measures and low/ zero carbon generating technologies, as set out in full in Condition 7.
- vii. Full details of all access, parking (for vehicles and bicycles), public transport facilities, footpaths, Core Paths, cycleways, road layout, design, and specification (including the disposal of surface water) and related structures throughout the development, in accordance with West Dunbartonshire Council Transport and Roads Service standards, as set out in full in Conditions 18, 19, 20, 28, 29 and 30;
- viii. A Traffic Management and Sustainable Travel Plan, as set out in full in Condition 27;
- ix. Signage Strategy, as set out in full in Condition 29;
- x. Full details of areas of hard landscaping, street furniture, boundary treatments, retaining walls, fencing, structure planting and screening associated with the development;

- xi. Site Planting and Management Plan including details of areas of associated soft landscaping and planting proposals (numbers, species and planting density) and trees to be retained, as set out in full in Condition 12;
- xii. Biodiversity Enhancement Scheme, as set out in full in Condition 10;
- xiii. Details of any ancillary structures, plant, and/or machinery.
- xiv. Details of waste storage, collection areas, recycling provision and access, as set out in full in Condition 49.
- xv. Flood Risk Assessment including Flood Risk modelling, as set out in full in Condition 23.
- xvi. Surface Water Drainage Strategy, as set out in full in Condition 24.
- xvii. Landscape and Visual Impact Assessment.
- xviii. Lighting Strategy, as set out in full in Condition 45.
- xix. Noise and Odour Assessment, as set out in full in Conditions 38 and 39.
- xx. Construction Environmental Management Plan, as set out in full in Condition 9.
- xxi. A Woodland Management Plan, as set out in full in Condition 14.
- xxii. An Ecological Assessment, as set out in full in Condition 16.
- xxiii. A Visitor Management Plan, as set out in full in Condition 22.
- xxiv. Full details of provisions for Contaminated Land detailing assessment, remediation, monitoring and maintenance as set out in full in Conditions 32, 33, 34, 35 and 36.
- xxv. Subsequent matters as set out in the conditions of this permission.

The development shall be implemented in complete accordance with the details thereby approved by way of a formal application(s) for AMSC.

Reason: in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 and to ensure a satisfactory form of development in accordance with the Development Plan.

#### Occupation of Short-Term Holiday Accommodation

6. The holiday units hereby approved in Zones B and E shall be used solely for short-term holiday use and not for permanent residential use. The holiday units shall not be occupied by any one individual or group for a period exceeding 90 days in any one calendar year. An independently verified and credible report on the nature and duration of the occupation and use of the short-term holiday units shall be submitted to the planning authority on every anniversary of the date of this permission.

Reason: to prevent the holiday units being used as permanent accommodation which would be contrary to the Local Development Plan.

### Renewable Energy Measures

7. The buildings permitted under this permission shall all be serviced by renewable energy generating technology to provide a minimum of 20% of the buildings' energy needs. The details of the proposals for the renewable energy measures to supply each building (technology and location) shall be submitted to the planning authority for approval via a formal application for AMSC prior to incorporation on or within that building or within the grounds. Following approval, the development shall thereafter be implemented in accordance with the approved scheme.

Reason: Overarching Policy 2 requires all developments to be supplied by renewable energy technology to meet at least 20% of the building's overall energy requirements.

### Environmental Clerk of Works

8. No works in connection with any phase of the development hereby approved shall take place until full details of the appointment of an appropriately qualified ecologist as an independent Environmental Clerk of Works ("EnvCoW") for that phase of development shall be submitted to the planning authority by way of a formal application(s) for AMSC and shall be subject to formal approval by the planning authority. The terms of appointment shall:

- Impose a duty to regularly monitor (and no less than weekly) compliance with all environmental commitments provided in the EIA Report, the Construction and Environmental Management Plan approved under Condition 9 and Bat Protection Plan approved under condition 17 ("the EnvCoW works");
- Require the EnvCoW to report to the nominated construction project manager, developer and planning authority any incidences of noncompliance with the EnvCoW works at the earliest practical opportunity, except in an emergency; and
- Require the EnvCoW to submit a detailed monthly report to the construction project manager, developer and planning authority detailing works undertaken on the site.

Within 2 weeks of the appointment, a detailed planned work programme shall be submitted to and approved in writing by the planning authority.

Reason: to secure effective and transparent monitoring of and compliance with the environmental mitigation and management measures associated with the development during construction and avoid an adverse effect on the integrity of the Endrick Water SAC from the development.

### Construction Environmental Management Plan

9. No works in connection with the development hereby approved shall take place until full details of a Construction Environmental Management Plan (CEMP) have been submitted to, and approved in writing by, the planning authority through a formal application(s) for AMSC. In particular, the CEMP shall include the following:

- A Pollution Prevention Plan detailing the pollution prevention measures that will be implemented to protect the water quality of the River Leven and Loch Lomond during construction works. This plan shall accord with Guidance for Pollution Prevention 5: Works and maintenance in or near water (February 2018) and other relevant best practice guidance.



- Full details of any piling works that are to be undertaken including the methodology that is to be used, location and duration of piling activities as well as the mitigation measures that will be implemented to minimise the impacts of noise and vibration on the qualifying interests of the Endrick Water SAC. This shall include restricting any piling activities to the period outside the peak salmon migratory period (October to May inclusive), the use of "softstart" techniques to avoid sudden unexpected disturbance and consideration of day vs night timing to minimise impacts.
- Details of the methods referenced in paragraph 5.6.25 of the Environmental Impact Assessment Report (including invasive non-native species eradication from all areas of the site and seed bank storage for translocation).
- All construction phase mitigation detailed in Table 5-16 of the Environmental Impact Assessment Report and the measures for Ecology and Trees & Woodland detailed in Table 16-1 of the EIA Report.

Unless otherwise agreed in writing by the planning authority, all works shall be carried out in accordance with the approved CEMP.

Reason: to ensure that the construction works are appropriately managed to minimise ecological impacts and avoid an adverse effect on the integrity of the Endrick Water SAC.

#### Biodiversity Enhancement Scheme

10. Prior to the commencement of development an application(s) for AMSC for a scheme setting out the proposed measures to deliver biodiversity enhancement within the site shall be submitted to and approved in writing by the planning authority. This shall include an appraisal using best practice assessment methods to demonstrate how the proposal will conserve, restore and enhance biodiversity so that it is in a demonstrably better state than prior to the commencement of the development. More specifically, the appraisal shall demonstrate how criteria i to v detailed in National Planning Framework 4 Policy 3(b) will be met and include a scheme for the significant enhancement of biodiversity. The enhancement scheme shall contribute towards the objectives of the National Park. Thereafter the measures approved within the scheme shall be incorporated into the development.

Reason: National Planning Framework 4 Policy 3 and Local Development Plan Natural Environment Policy 6 require all development to deliver biodiversity enhancement.

#### Tree Survey and Protection Plan

11. As part of a formal application(s) for AMSC, an updated tree survey, tree constraints and impact plan, and tree protection methods during construction shall be submitted for the written agreement of the planning authority. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. The Tree Protection Plan as subsequently agreed shall be strictly adhered to during construction of the development.

Reason: to safeguard the amenity and biodiversity value of the area.

#### Landscaping, Planting and Management Plan

12. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of development, a Landscaping, Planting and Management Plan shall be submitted to and approved in writing by the planning authority. This Plan shall include:

- (a) Detailed landscaping drawings at a scale of 1:1250;
- (b) Schedule with full details of proposed plant and tree species, numbers and densities (including cultivation and other operations associated with plant establishment and maintenance);
- (c) The details of compensatory tree planting to replace trees felled to accommodate development and methods to ensure their protection and establishment;
- (d) Planting measures to deliver net biodiversity enhancement (if required by condition 10);
- (e) A timetable for the implementation of the above on site based on the phasing of the development.

The compensation tree planting under (c) above shall be informed by a clear plans showing the areas of woodland to be cleared and the areas where compensation planting is to be provided. Provision of compensation planting shall be to the satisfaction of the planning authority.

The Site Planting and Management Plan as approved by the planning authority shall thereafter be implemented in accordance with the agreed timetable or otherwise be implemented in full within 24 months of the first occupation at the site. The scheme as agreed and implemented shall thereafter be maintained to the satisfaction of the planning authority.

Reason: to comply with NPF4 Policy 3(b) and LDP Natural Environment Policy 6 which require all new developments to deliver biodiversity enhancement and to satisfy Natural Environment Policy 8 which requires compensatory tree planting where trees are lost to development.

#### Replacement Planting

13. Any trees or plants forming part of the woodland compensation pursuant to the Site Planting and Management Plan which die, are removed or become seriously damaged or diseased, within a period of 5 years from the date of their planting, shall be replaced in the next available planting season with others of similar sizes and species unless the planning authority gives written approval to any variation.

Reason: to ensure that the required planting is effective to deliver appropriate tree compensation and to deliver overall biodiversity enhancement in accordance with Natural Environment Policies 6 and 8 and NPF4 Policy 3.

#### Woodland Management Plan

14. A Woodland Management Plan shall be provided for the areas of 'managed woodland' and 'managed woodland with SuDS' (as shown on Parameters Plan) and shall be set out in a formal application(s) for AMSC, under Condition 5, and shall be subject to formal approval by the planning authority. This shall include long term design objectives, management responsibilities and maintenance schedules (and review period) and shall be submitted to, and approved in writing by, the planning authority prior to the first occupation of the development or any phase of the development, whichever is the sooner. Thereafter

the management plan and any subsequent revisions shall be implemented in the timescale agreed in writing with the planning authority.

Reason: to safeguard the amenity and biodiversity value of the area

#### Woodland Buffer

15. For the avoidance of doubt the relevant formal application(s) for AMSC shall include the woodland buffer to properties to the rear of the Drumkinnon Gate housing estate in Zone 11 (as shown in the Parameters Plan) which shall be a minimum of 12m wide.

Reason: in the interests of residential and visual amenity.

#### Ecological Assessment

16. Prior to the commencement of each phase of the development, a formal application(s) for AMSC containing a detailed Ecological Assessment shall be submitted to the planning authority, under Condition 5, and shall be subject to formal approval by the planning authority. This shall include an updated Ecological Assessment including breeding birds and protected species. Once approved, the conclusions and recommended action points shall be fully adhered to, respected, and undertaken at all times.

Reason: to ensure a satisfactory standard of local environmental quality; to safeguard the welfare of any protected wildlife.

#### Bat Protection Plan

17. Prior to the commencement of the development, a detailed bat protection plan shall be submitted to, and approved in writing by, the planning authority. Once approved, the bat protection plan must be complied with at all times. This plan shall incorporate the measures outlined in paragraph 5.6.33 of the Environmental Impact Assessment Report and include full details of the measures that will be implemented to minimise impacts on bats including annotated plans, maps and/or photographs showing the location of any measures proposed and how they relate to survey information and construction work. Details of any licensing requirements shall also be included in the plan. For the avoidance of doubt, preconstruction update surveys shall form part of the protection plan to ensure that any roosts that have become occupied since the completion of the original surveys are identified and the proposed mitigation measures remain appropriate. Any subsequent applications for the refurbishment of the existing Tourist Information Centre building opposite Balloch station shall be supported by bat survey work carried out in accordance with Bat Surveys for Professional Ecologists: Good Practice Guidelines, 4th edition, Bat Conservation Trust - <https://www.bats.org.uk/resources/guidance-for-professionals/> There shall be no direct or indirect lighting of the River Leven or Loch Lomond by construction lighting.

Reason: to safeguard protected species and nature conservation interests in accordance with adopted local development plan Natural Environment Policy 4: Legally Protected Species and to accord with the first statutory aim of the National Park to conserve and enhance the natural heritage of the area.

#### Details of improvement works to John Muir Way Core Path

18. Prior to the commencement of development in Zones A, B or C a scheme for the improvement of the John Muir Way Core Path as part of a formal application(s) for AMSC shall be submitted to the planning authority, under Condition 5. This shall retain the existing alignment of the John Muir Way Core Path and include details of the proposed width,

surfacing, grading, drainage and lighting all of which shall conform to Cycling By Design standards. The works shall thereafter be implemented prior to the occupation of any development in Zones A, B or C.

Reason: to enhance the environment and improve accessibility for pedestrians and cyclists in accordance with NPF4 policy 13.

#### Woodbank House and Upper Stonymollan Road Connection

19. Prior to the occupation of development in Zone E a pedestrian and cycle connection shall be provided within the Woodbank House site to Upper Stonymollan Road/John Muir Way. The details of this connection shall be submitted to the planning authority, under Condition 5 and thereafter be implemented as agreed.

Reason: to enhance the environment and improve accessibility for pedestrians and cyclists in accordance with NPF4 policy 13.

#### Pier Road Parking

20. Prior to the commencement of development, a scheme for the Pier Road parking (Area 11) as part of a formal application(s) for AMSC shall be submitted to the planning authority, under Condition 5. The scheme shall include details of a suitable pedestrian and cycle connection to Balloch Road and shall incorporate a minimum of 44 car parking spaces reserved for public use which shall be accessible and available to the public at all times. Thereafter the scheme shall be implemented as approved prior to any development commencing in Zone A.

Reason: to enhance the environment and improve accessibility for pedestrians and public transport users.

#### Permitted Development

21. Notwithstanding the provisions of Part 2, Class 7, of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking or re-enacting that Order with or without modification) no gate, fence, wall or other means of enclosure on the land to which this permission relates shall be erected or materially altered, without application to, and the grant of permission by, the planning authority, under Condition 5.

Reason: the planning authority considers that such development should be subject to formal control in order to safeguard the amenities of the area.

#### Visitor Management Plan

22. Prior to the commencement of development on each phase of the approved development, a formal application(s) for AMSC containing a detailed Visitor Management Plan for that phase shall be submitted to the planning authority under Condition 5 and shall be subject to formal approval by the planning authority. Once approved in writing by the planning authority the Visitor Management Plan for that phase must be complied with at all times, unless otherwise agreed in writing by the planning authority. The Visitor Management Plan shall include the following, as a minimum:

a) All existing paths, tracks and rights of way, and any areas currently outwith or excluded from statutory access rights;

- b) Management and mitigation measures (such as fencing and signage) to be put in place to minimise impacts on sensitive habitats and species in line with Scottish Outdoor Access Code;
- c) Mitigation measures relating to litter control within the site.

Reason: to minimise impacts on sensitive habitats and species during the operation of the development.

### Flood Risk Assessment

23. Prior to the submission of an application for AMSC under Condition 5 relating to Zones A and B as shown on the Parameters Plan, and following consultation with SEPA and the planning authority, a flood risk assessment (FRA) detailing the extent of the area(s) located within those Zones that is / are:

- (i) at risk of flooding on the occurrence of a flood event with an annual probability of return greater than 0.5% (1 in 200 year event) plus an appropriate allowance for future climate change (and with no account being taken in the modelling of the flood defence provided by the section of former railway embankment located between Zone B and the River Leven), and
- (ii) capable of being safely developed for the purposes authorised in terms of this permission in accordance with relevant SEPA guidance (including within such area(s) any acceptable land raising and/or compensatory flood storage), shall be submitted to the planning authority for approval.

The application(s) for AMSC under Condition 5 relating to Zones A and B shall:

- (a) fully accord with the requirements of the approved FRA so far as it identifies the area(s) of land within said Zones that are deemed to be capable of being safely developed, and
- (b) demonstrate that (i) the first occupied/utilised floor within each building, and the relevant underside of the development, if relevant, to be above the identified flood risk level and have an additional allowance for freeboard and (ii) the proposals do not create an island of development and that safe access and egress can be achieved. The application for AMSC under Condition 5 so far as it relates to the siting, design and heights of all buildings and structures that are proposed to be located with Zones A and B shall fully and properly reflect the terms of the approved FRA.

Reason: to ensure that proposals for areas of the site that are risk of flooding address the expectations of NPF4 policy 22.

### Surface Water Drainage

24. Prior to the commencement of each phase of the development and as part of a formal application(s) for AMSC, under Condition 5, details of a scheme for the treatment of surface water for that phase (including details of the timing of works) shall be submitted to, and approved in writing by, the planning authority. Such a scheme shall ensure compliance with The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) General Binding Rules and incorporate the principles of The SuDS Manual (<https://www.ciria.org/>), SEPA's Regulatory Method for SuDS (WAT-RM-08), Water Assessment and Drainage Assessment Guide (Sustainable Urban Drainage Scottish Working Party) and Guidance and Sewers for Scotland (v4.0), or any subsequent revisions/equivalent publications.

Reason: to ensure that adequate pollution control measures are implemented during the construction and operation of the development and to protect the water quality of the River Leven/Loch Lomond and the qualifying interests of the Endrick Water SAC.

#### Connection to the Public Drainage Network

25. For avoidance of doubt the foul flows from the development hereby permitted shall connect to the Scottish Water public drainage network, unless otherwise agreed in writing with the planning authority.

Reason: to ensure that adequate pollution control measures are implemented during the construction and operation of the development and to protect the water quality of the River Leven/Loch Lomond and the qualifying interests of the Endrick Water SAC.

#### Construction Traffic Management Plan

26. Prior to the commencement of development, a Construction Traffic Management Plan (including a routing plan for construction vehicles) shall be submitted for the written approval of the planning authority. The approved Construction Traffic Management Plan, or any future iterations approved by the planning authority, shall be implemented prior to development commencing and remain in place until the development is complete.

Reason: in the interests of road safety.

#### Traffic Management and Sustainable Travel Plan

27. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of the development of Zones A, B, C or E an updated Traffic Management Plan and detailed Travel Plan including specific actions, measures and details on how the travel initiatives will operate and be managed with each operational development within that phase shall be submitted to and approved in writing by the planning authority. The Travel Plan shall detail the modal share of transport to the development, to support sustainable travel targets. Following approval, the development shall thereafter be implemented in accordance with the approved plan.

Reason: in the interests of sustainable transport

#### Parking Plan

28. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of development an updated parking plan shall be submitted to the planning authority in accordance with the National Roads Development Guide (NRDG). This shall include the detailed design of parking areas, disabled parking, electric vehicle / bike charging points and cycle parking). Thereafter parking shall be implemented prior to the operation of the development in that phase in accordance with this plan, unless otherwise agreed in writing with the planning authority.

Reason: in the interests of road safety and accessibility to all users

#### Signage Strategy

29. Prior to commencement of development, a signage and wayfinding strategy shall be provided and agreed in writing with the planning authority by application for AMSC under Condition 5. Once agreed, the strategy shall be fully implemented prior to occupation and first use of any part of the development hereby approved.

Reason: in the interests of pedestrian movement and accessibility and in the interests of road safety.

### Roundabout Improvements

30. Prior to commencement of development, a plan showing the recommended works to the Ballochloan (A811/Luss Road/Old Luss Road) Roundabout required to enable the development shall be provided to the satisfaction of the planning authority.

The plan shall include the proposed widening of the A811 (W) approach between Stoneymollan Roundabout and Ballochloan Roundabout to allow for the creation of a 3.5m wide left-hand slip lane. Thereafter, these improvements shall be implemented in a timetable to be agreed in writing with the planning authority prior to operation of any part of the development.

Reason: mitigation measures are required at this location to offset the proposed increased traffic flow and in the interests of traffic flow and road safety.

### Archaeological Investigation

31. No development shall take place within any phase of the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works for that phase in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the planning authority. Thereafter the developer shall ensure that the programme of archaeological works for each phase is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the planning authority.

Reason: to safeguard the archaeological value of the site.

### Contaminated Land - Assessment

32. As part of the formal application(s) for AMSC under Condition 5 in relation to Zones A and B and prior to the commencement of development thereon, a Contaminated Land Assessment shall be submitted to the planning authority. No development (other than investigative works) shall commence on that area of the site until such time as a detailed report on the nature and extent of any contamination has been submitted to and approved in writing by the planning authority. The report shall be prepared by a suitably qualified person and shall include the following -

a) A detailed site investigation identifying the extent, scale and nature of contamination on the site (irrespective of whether this contamination originates on the site)

b) An assessment of the potential risks (where applicable) to:

- human health
- property (existing and proposed), including buildings, crops, livestock, pets, woodland and service lines and pipes
- groundwater and surface waters
- ecological systems

- archaeological sites and ancient monuments

c) An appraisal of remedial options, including a detailed remediation scheme based on the preferred option.

Reason: to protect public health and to ensure that the site is suitable for its intended use.

#### Contaminated Land - Remediation Scheme

33. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of development (notwithstanding investigative works) a detailed remediation scheme for the development shall be submitted to and approved in writing by the planning authority.

The scheme shall be prepared by a suitably qualified person and shall detail the measures necessary to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment. The scheme shall include details of all works to be undertaken, the remediation objectives and criteria, a timetable of works and/or details of the phasing of works relative to the rest of the development, and site management procedures. The scheme shall ensure that upon completion of the remediation works the site will not qualify as contaminated land under Environmental Protection Act 1990 Part I IA in relation to the intended use of the land after remediation.

Reason: to protect public health and to ensure that the site is suitable for its intended use.

#### Contaminated Land - Implementation of Remediation Works

34. The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the planning authority. The planning authority shall be notified in writing of the intended commencement of remediation works not less than 14 days before these works commence on site. Upon completion of the remediation works and prior to the site being occupied, a verification report which demonstrates the effectiveness of the completed remediation works shall be submitted to and approved in writing by the planning authority.

Reason: to protect public health and to ensure that the site is suitable for its intended use

#### Contaminated Land - Unencountered Contamination

35. The presence of any previously unencountered contamination that becomes evident during the development of the site shall be reported to the planning authority in writing within one week, and work on the affected area shall cease. At this stage, if requested by the planning authority, an investigation and risk assessment shall be undertaken and an amended remediation scheme shall be submitted to and approved by the planning authority prior to the recommencement of works in the affected area. The approved details shall be implemented as approved.

Reason: to protect public health and to ensure that the site is fit for its intended use.

#### Contaminated Land - Long Term Monitoring and Maintenance

36. Prior to the commencement of development a monitoring and maintenance scheme detailing the monitoring and long-term effectiveness of proposed remediation over the



period of years specified in such scheme shall be submitted to and approved by the planning authority for each phase as applicable. Any actions ongoing shall be implemented within the timescale agreed with the planning authority in consultation with environmental health measures. Following completion of the actions/measures identified in the approved remediation scheme a further report which demonstrates the effectiveness of the monitoring and maintenance measures shall be submitted to and approved by the planning authority.

Reason: to ensure that the remediation treatment is effective in order to protect public health in the long term

#### Importation /Reuse of Soils

37. If there is a requirement to either re-use site won material or to import material then the assessment criteria and sampling frequency that would adequately demonstrate its suitability for use shall be submitted to and approved by the planning authority prior to any material being used. In addition to this and in accordance with BS3882:2015 and BS8601 :2013, material to be used in the top 300mm shall also be free from metals, plastic, wood, glass, tarmac, paper and odours. On completion of the works and at a time and or phasing agreed by the planning authority, the developer shall submit a verification report containing details of the source of the material and appropriate test results to demonstrate its suitability for use.

Reason: to protect public health and to ensure that the site is suitable for its intended use.

#### Noise Impact Assessment

38. Prior to the commencement of construction works for each phase of the development, a noise survey (demonstrating the impact on existing dwellinghouses and noise sensitive premises of commercial vehicle delivery traffic noise for that phase of the development) using the principles set out in "Calculation of Road Traffic Noise" (DoE/Welsh Office, HMSO, 1988) shall be submitted to and approved in writing by the planning authority. Where mitigation measures are required to achieve internal noise levels, with windows closed, of 45 dB(A) daytime and 35 dB(A) night time when measured as LAeq T, these shall be specified in the survey report. The approved mitigation measures shall be completed before any of the buildings within the relevant phase of the development are occupied. Noise from or associated with the completed buildings and fixed plant in each phase of the development shall not give rise to a noise level, assessed with windows closed, within any existing dwelling or existing noise sensitive building in excess of that equivalent to Noise Rating Curve 35 between 0700 and 2200, and Noise Rating Curve 25 at all other times. Acoustic/amplified music from any premises within the development shall not give rise to a noise level, assessed with windows closed, within any existing residential dwelling or existing noise sensitive building in excess of that equivalent to Noise Rating Curve 35 between 0700 and 2200, and Noise Rating Curve 25 at all other times. All buildings shall be designed and constructed so that noise from road traffic does not give rise to internal noise levels, with windows closed, greater than 45 dB(A) daytime and 35 dB(A) night time when measured as LAeq T.

#### Ventilation System - Efficiency- Noise – Vibration

39. Prior to the commencement of development in Zones A and C, details of the flue system/ extraction system shall be submitted to and approved in writing by the planning authority. The submitted details shall include the noise output and filter system. The approved flue/extraction system shall be implemented prior to being brought into use and shall be maintained thereafter. All odours, fumes and vapours generated on the premises

shall be controlled by best practicable means to prevent them causing nuisance to occupants of nearby dwellings or premises. The ventilation system shall:

a) Incorporate systems to reduce the emission of odours and pollutants and shall thereafter be maintained as necessary.

b) Be constructed by employing best practical means to minimise noise and vibration transmission via plant and the building structure.

c) Noise associated with the business shall not give rise to a noise level, assessed with the windows open, within any dwelling or noise sensitive building, in excess of the equivalent to Noise Rating Curve 35, between 07:00 and 20:00 hours, and Noise Rating Curve 25 at all other times.

d) If applicable, the discharge stack shall:

1. Discharge the extracted air not less than 1 m above the roof ridge of any building within 20m of the building housing the commercial kitchen.

2. If 1 cannot be complied with for planning reasons, then the extracted air shall be discharged not less than 1 m above the roof eaves or dormer window of the building housing the commercial kitchen.

Reason: to ensure that the development does not adversely affect the amenity of neighbouring properties by creating excessive noise, vibration, or odour nuisance.

#### Construction Sites - Hours of Work

40. During the periods of construction, all works and ancillary operations which are audible at the site boundary (or at such other place(s) as may first be agreed in writing with the planning authority), shall be carried out between the following hours unless otherwise approved in writing by the planning authority: Mondays to Fridays:[0800-1800] Saturdays: [0800-1300] Sundays and public holidays: [No working]

Reason: to ensure that the development does not adversely affect the amenity of neighbouring properties by creating excessive noise and disturbance at unsocial hours.

#### Construction Sites - Noise Control Method Statement

41. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of development a noise control method statement for the construction period shall be submitted to and approved in writing by the planning authority. This statement shall identify likely sources of noise (including specific noisy operations and items of plant/machinery), the anticipated duration of any particularly noisy phases of the construction works, and details of the proposed means of limiting the impact of these noise sources upon nearby residential properties and other noise-sensitive properties. The construction works shall thereafter be carried out in accordance with the approved method statement unless otherwise approved in writing by the planning authority.

Reason: to minimise noise and disturbance to neighbouring residents/occupants during construction.

#### Construction Sites - Piling Method Statement

42. No piling works shall be carried out until a piling method statement has been submitted to and approved in writing by the planning authority. This statement shall include an assessment of the impact of the piling on surrounding properties, taking into account the guidance contained in BS 6472-1: 2008 'Evaluation of Human Response to Vibration in Buildings'. It shall detail any procedures which are proposed to minimise the impact of noise and vibration on the occupants of surrounding properties. This statement shall be prepared by a suitably qualified person, and the piling works shall thereafter be carried out in accordance with the approved method statement.

Reason: to minimise noise and disturbance to neighbouring residents/occupants during construction.

#### Construction works Delivery Vehicles - Time Restrictions

43. No commercial vehicle making deliveries to or collecting material from the construction phases of the approved development shall enter or leave the site before 08:00 or after 18:00, unless otherwise agreed in writing with the planning authority.

Reason: to minimise noise and disturbance to nearby residents at unsocial hours.

#### Dust Control

44. Unless otherwise approved in writing by the planning authority, no development shall commence on each phase until such time as a scheme for the control and mitigation of dust has been submitted to and approved in writing by the planning authority. The scheme shall identify likely sources of dust arising from the development or its construction, and shall identify measures to prevent or limit the occurrence and impact of such dust. The approved scheme shall thereafter be implemented fully prior to any of the identified dust generating activities commencing on site and shall be maintained thereafter, unless otherwise approved by the planning authority.

Reason: to minimise the occurrence of dust, in the interests of the amenity of the area.

#### Lighting - Details to be submitted

45. As part of the formal application(s) for AMSC under Condition 5 and prior to the commencement of development an external lighting scheme shall be submitted for the consideration and written approval of the planning authority. The scheme shall take into account all of the lighting needs associated with the development during operational hours and shall be the minimum required to perform the relevant lighting task. It shall be specifically designed to minimise the risk of light spillage beyond the development site boundary and into the sky and to avoid dazzle or distract drivers on nearby roads. Low level lighting shall limit light pollution. The scheme shall include:

- A statement setting out and justifying why the lighting scheme is required.
- Evidence that there shall be no direct lighting on the River Leven or Loch Lomond.
- A report, prepared by a lighting engineer, setting out the technical details of the luminaires and columns, including their location, type, shape, dimensions and, expected luminance output and specifically explaining what design attributes have been chosen to minimise light pollution.
- A plan illustrating illuminance levels across the development site and at the boundary of the site. The level of illuminance shall be appropriate to the character of the surrounding

area as a whole. Four environmental zones are internationally recognised, and the design will require to show that control of overspill light is limited to the level required by the particular environmental setting. Specifically, the plan shall ensure that there is no direct lighting on the River Leven or Loch Lomond and shall be designed in accordance with the Bat Conservation Trust Guidance Note 08/23: Bats and Artificial Lighting At Night and other relevant best practice guidance.

- A plan illustrating illuminance levels beyond the boundary of the site, together with the downward light output ratio of the lights.
- A statement which demonstrates how the lighting scheme will be viewed against the wider landscape and, where appropriate, the potential role of landscaping in minimizing the day and night-time visual impact of the installation.
- An operational statement, the purpose of which is to ensure that the developer and the lighting designer have considered operational regimes that can provide energy savings.
- Details of the proposed hours of operation. (Unless explicitly agreed in writing, all external lighting luminaires shall be turned off during daylight hours and when not actively required).
- Applicants should have regard to the guidance document "Controlling light pollution and energy consumption" produced by the Scottish Executive (March 2007).  
<http://www.gov.scot/Resource/Doc/170172/0047520.pdf> Once approved, the external lighting scheme must be complied with at all times.

Reason: to ensure that the development does not adversely affect the amenity of neighbouring properties by creating excessive illumination or cause nuisance to residents or have an adverse effect on the integrity of the Endrick Water SAC and minimise impacts on ecology.

#### Grease Traps / Interceptors

46. Prior to the commencement of development in Zones A and C details of an adequately sized grease trap shall be submitted to and approved by the planning authority. It shall be installed prior to the use being operational and shall be maintained thereafter.

Reason: to ensure that waste oil, grease and fat from food premises do not cause damage to the public sewer in the interests of public health and amenity

#### Air Quality

47. Prior to the commencement of development of any phase, an air quality impact assessment for that phase shall be submitted to and approved by the planning authority. The report shall use a method based on the principles set out in the Environmental Protection UK document Development Control: Planning for Air Quality (2010 Update), Scottish Government publication "Local Air Quality Management Technical Guidance LAQM.TG(09)", and "Delivering Cleaner Air for Scotland -Guidance from Environmental Protection Scotland and the Royal Town Planning Institute Scotland, January 2017". The recommendations of the assessment shall be implemented prior to the development commencing on site or within a timescale agreed by the planning authority.

Reason: to safeguard public health and the amenity of the surrounding area

#### Biomass Boiler

48. If the proposed development is to utilise a biomass heating systems - no development shall commence on site until a report providing full details of the boiler and flue has been submitted to and approved in writing by the planning authority. The report shall include details of the boiler capacity, emissions and efficiency and also the type, handling and consumption of fuel. Full details of the height of the flue and discharge in relation to nearby buildings shall be included in the report. Thereafter the boiler and flue shall be maintained in accordance with the manufacturer's instruction unless it is replaced by an alternative system with the prior written consent of the planning authority.

Reason: to safeguard public health and the amenity of the surrounding area

#### Waste Details

49. Details for the storage and the collection of waste and recycling arising from the proposed developments shall be submitted to and approved in writing by the planning authority. The agreed details shall be in place prior to the development being brought into use and thereafter be satisfactorily maintained.

Reason: to safeguard public health and to protect the amenity of the surrounding area.

**Schedule 2: Advisory notes**

1. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. Display of notice: A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).
4. Right to challenge this decision: This decision is final, subject to the right of any person aggrieved by this decision to question its validity by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.
5. Notification of this decision by the planning authority: The planning authority is required (a) to inform the public and bodies consulted in respect of the EIA report of this decision by publishing a notice on the application website or newspaper circulating the in locality of the proposed development or by other reasonable means and (b) to make a copy of the decision available for public inspection in an office of the planning authority where its planning register may be inspected and on the application website.

**Schedule 3: drawings to which this notice of intention relates**

<b>Drawing Title</b>	<b>Drawing Reference</b>
Site Location Plan	ABC-XX-XX-DR-A-0001 REV F
Parameters Plan	AL(0)005 Rev 0
Illustrative Masterplan	1363
Topographical Survey	35854/4507/001 Rev A

**Schedule 4: Opportunities for public participation in decision-making**

There is the following evidence before me of opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal and subsequently:

- the appellant has provided a report on pre-application consultation. This was affected by Covid-19 restrictions. The report indicates that one online event and one in-person event were held, in October and November 2021 respectively. The latter took place in Balloch on 25 November 2021. These events were advertised in the Dumbarton and Vale of Leven Reporter and the Lennox Herald. The public had an opportunity to comment to the appellant on the proposed development at these events;
- an advertisement of the application and accompanying EIA report in the Edinburgh Gazette and Dumbarton and Vale of Leven Reporter has been provided. It advertised the opportunity for the public to make representations upon the proposal for the development and the accompanying EIA report;
- an advertisement for the EIA report addendum in the Edinburgh Gazette and Dumbarton and Vale of Leven Reporter has also been provided. It advertised the opportunity for the public to make representations upon the proposal for the development and the accompanying EIA addendum report;
- the planning authority received approximately 200,000 public representations in respect of the application. The main points raised in those representations have been considered in this decision notice; and
- additional information was submitted to the planning authority and the public had an opportunity to comment on that information.
- Additional information was also submitted at the appeal stage which was advertised in the Edinburgh Gazette and the Lennox Herald. The public had an opportunity to comment on that information.

Those who made representations upon the application have been treated as interested parties in the appeal. They have had the opportunity to make representations on matters that they raised, by written response to the appeal.