



PLANNING AND ACCESS COMMITTEE

MEETING: Monday 31st August 2015

SUBMITTED BY:	Head of Planning & Rural Development
TOPIC:	Core Path Stopping Up & Diversion update – Land east of Ardvreck, Arrochar

NATIONAL PARK WARD:	Lomond North Ward
COMMUNITY COUNCIL AREA:	Arrochar & Tarbet Community Council
CASE OFFICER:	Name: Craig Jardine Tel: 01389 722020 E-mail: craig.jardine@lochlomond-trossachs.org

1 SUMMARY AND REASON FOR PRESENTATION

1.1 This report provides an update to Members on the progress and updated process for the proposed Core Path Stopping Up & Diversion that was previously presented to Members on the 30th June 2014.

2 RECOMMENDATION

That Members:

1. **Receive** this report; and
2. **Note** its content as an update on the legislative process, prior to the Head of Planning & Rural Development undertaking a public consultation under delegated authority, as previously agreed by Members.

3 BACKGROUND

Summary of previous Committee item:

3.1 The committee item previously presented to Members in June 2014 related to a proposed new dwelling on land situated to the east of the residential property of “Ardvreck”, Arrochar.

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- 3.2 The planning application for the house was dealt with under delegated powers and approved on 12th November 2014. The proposed house would be located on a core path, effectively removing it from public use. Assessment of the merits of the existing core path route and the proposed core path diversion were addressed in Section 6 of the June 2014 Committee Report (weblink to previous report provided below). This assessment that the diverted route offers an acceptable alternative remains valid. Furthermore, the proposed diversion was supported by the Community Council. As there was no precedent in the National Park Authority for this type of case, Member's approval was sought, and was given, at the June 2014 committee for commencing a consultation on a proposed core path diversion. Members were advised at this time that the instrument for consulting and confirming a core path diversion was under Section 20 of the Land Reform (Scotland) Act 2003.

Progress update:

- 3.3 Since June 2014 the planning officer, in consultation with the National Park's legal advisers, has carried out further investigations to establish the detailed process and steps towards commencing consultation and, further to this, confirming a core path stopping up and diversion.
- 3.4 As a result of these investigations, it has been discovered that the correct legal instrument is in fact Section 208 of the Town and Country Planning (Scotland) Act 1997. This change in approach is due to the intended nature of the proposed diversion, which is to enable a 'development'; rather than solely relating to the National Park Authority's duties under the Land Reform Act to maintain a system of core paths for public access. Consultation with our legal advisers confirmed this as the correct approach. As mentioned in section 3.2 above, this is the first occasion that the Park Authority has diverted a established core path. Therefore, it is considered prudent to continue to advise and update Members of this change identified since the agenda item was first presented in June 2014. Delays in getting to this point have been as a result of the particular complexity of the relevant legislation; establishment of the correct legislative process; and no previous Park Authority, or other applicable Access Authority's examples upon which to draw from. It is considered that the time taken over this case will save staff resources in any future cases of this nature.
- 3.5 The process under Section 208 does not differ greatly from the process under the Land Reform Act, with the exception that the Order is first made and then consulted upon, whereas under the Land Reform Act a 'notice of amendment of the core paths plan' would be published and consulted upon.
- 3.6 It is an essential requirement of the Section 208 provisions that the planning permission for the development, which would be facilitated by the core path diversion, is formally granted before the process for a diversion order under Section 208 is initiated. To this end, planning permission was approved on 12th November 2014, subject to condition that the permission for the dwellinghouse cannot be initiated until such time as the Core Path Stopping Up & Diversion Order has been approved and confirmed.
- 3.7 In summary, the process to now be followed under the Section 208 provisions is as follows:
1. The Park Authority make the Core Path Stopping Up & Diversion Order.
 2. Notice is given of the made Order as follows:
 - a) By publication in the Edinburgh Gazette and in at least 1 local newspaper circulating in the area in which the land to which the order relates;

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- b) To the local authority whose area includes the land to which the order relates;
 - c) Every owner, occupier and tenant of the land to which the order relates;
 - d) Any statutory undertakers who have equipment under, in, over, along or across the land to which the order relates;
 - e) By posting it in a prominent position at each end of the stopping up and diversion (points A/C, B and D as identified on the plan attached in Appendix 2).
3. If there are no objections within the specified period (being not less than 28 days) the Order can be confirmed by The Park Authority. If there are objections the Order is to be referred to the Scottish Ministers.
- 3.8 With respect to point 1 Members approval was previously given through their decision at June 2014 Committee and that this can be progressed under delegated powers. A copy of the draft Order is included for reference in Appendix 1. The plan to be annexed to the Order is included for reference in Appendix 2. With respect to points 2, the necessary adverts and notices have been drafted.
- 3.9 With respect to point 3 above, if objections are received to the Order following consultation, the intention is, and facility exists within the legislation, for the National Park Access Officer to enter negotiation with any objector to provide further information or clarity on the potential implications of the proposed stopping up and diversion, and where appropriate seek resolution and removal of these objections.
- 3.10 Any unresolved objections are considered by the Scottish Ministers. The Park Authority will have no further influence or involvement at this stage in the decision process.

4 NEXT STEPS

- 4.1 Following this update to Members the intention is to finalise the Order and related notices and conclude the making of the Core Path Stopping Up & Diversion Order for this location in Arrochar and then commence the consultation process for a period of 30 days.

5 CONCLUSION

- 5.1 In conclusion, it is considered that the change in legislation identified does not affect the merits or nature of the decision previously taken by Members on June 2014 and therefore this paper is for update purposes to advise Members of the correct legislative process prior to formally commencing the Core Path Stopping Up & Diversion Order.

Background Planning & Access Committee Meeting 30/06/2014

Documents: Land to the east of Ardvreck, Arrochar Core Path Diversion - NPA/PC/04/2014/03

<http://www.lochlomond-trossachs.org/looking-after/planning-access-committee-meeting-30/06/2014/menu-id-503.html>

List of Appendix 1 – Draft Core Path Stopping Up & Diversion Order

Appendices: Appendix 2 – Location Plan showing Core Path Stopping Up & Diversion

Appendix 1: Draft Order

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY
THE TOWN AND COUNTRY PLANNING (SCOTLAND) Act 1997
(CORE PATH TO EAST OF ARDVRECK, ARROCHAR)
CORE PATH STOPPING UP & DIVERSION ORDER, Ref: 2014/0059/s208

Loch Lomond and The Trossachs National Park Authority, constituted in terms of the National Park (Scotland) Act 2000 and the Loch Lomond and Trossachs National Park Authority Designation, Transitional and Consequential Provisions (Scotland) Order 2002, and as such the planning authority for the area of Loch Lomond and The Trossachs, and having its principal office at Carrochan, Carrochan Road, Balloch G83 8EG in exercise of the powers conferred upon them by Section 208 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them in that behalf, being satisfied that it is necessary to authorise the Stopping Up and Diversion of sections of the core path hereinafter specified in the order to enable the Development (as defined below) to be carried out in accordance with planning permission granted under Part III of that Act and having complied with the provisions of Section 209 and Schedule 16 to that Act hereby make the following Order:

- 1) This Order shall be cited as the Loch Lomond and The Trossachs National Park Authority (Core Path to east of Ardvreck, Arrochar) Core Path Stopping Up & Diversion Order, ref: 2014/0059/s208 and shall come into operation on the date of confirmation by Loch Lomond and The Trossachs National Park Authority or, if appropriate, on the date of confirmation by the Scottish Ministers, or such other date as may be appointed by Scottish Ministers.
- 2) In this Order:
“Development” means the proposed erection of a house with curtilage on land to east of Ardvreck, Arrochar, as detailed in planning permission ref: 2014/0059/DET granted on 12 November 2014;
“the Plan” means the plan annexed and executed as relative hereto;
- 3) The Stopping Up of that section of core path extending from point A shown on the Plan (E 229730 / N 703963) to point B shown on the Plan (E229620 / N 704131) and measuring 235 metres in length or thereby all as shown by a dashed line coloured red on the Plan is hereby authorised.
- 4) The diversion of the core path by the creation of an alternative section of core path extending from point C shown on the Plan (E 229730 / N 703963) to point D (E 229568 / N 703983) and measuring 204 metres in length or thereby all as shown by a line coloured blue on the Plan is hereby authorised.
- 5) Where, immediately before the date of this Order there are any rights of Statutory Undertakers in respect of any apparatus of theirs which is under, in, on, over, along or across the core path, such Undertakers shall thereafter have the same rights in respect of that apparatus as they had immediately before that date.

Made by the Loch Lomond and The Trossachs National Park Authority on the []day of []Two Thousand and Fifteen and subscribed for them and on their behalf by the undernoted Authorised Officer of Loch Lomond and The Trossachs National Park Authority before the undernoted witness.

Signature
Title

Appendix 2: Annexed Plan

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY
TOWN AND COUNTRY PLANNING (SCOTLAND) Act 1997 (as amended)
(CORE PATH TO EAST OF ARDVRECK, ARROCHAR)
CORE PATH STOPPING UP & DIVERSION ORDER, Ref: 2014/0059/s208

