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Loch Lomond and the Trossachs National Park  
Carrochan  
Carrochan Road  
Balloch  
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22 February 2021

Our ref: CDM161260  
Your ref: 2020/0260/DET

Dear Vivien

**Town and Country planning (Scotland) Act 1997  
Formation of new footpath and installation of lookout structures near to Trossachs  
Pier in Trossachs Woods Special Area of Conservation (SAC)/ Ben A'an and  
Brenachoile Site of Special Scientific Interest (SSSI).**

Thank you for your consultation on this planning application, received on 3rd December 2020 and the Habitats Regulations Appraisal (HRA), received on the 13<sup>th</sup> February 2021. We previously advised that a proposal of this nature within the Special Area of Conservation would be challenging. In particular, that loss of habitat and damage to the structure and function of the woodland and its supporting species would be difficult to fully mitigate.

**NatureScot Position**

We support the conclusions of the HRA undertaken by the National Park Planning Authority, that it cannot be shown that there will be no adverse effect on the integrity of the European site. **We therefore object to this proposal.**

**NatureScot comments**

The proposal lies within the Trossachs Woods Special Area of Conservation (SAC), designated for its western acidic oak woodland.

The site's status means that the requirements of the **Conservation (Natural Habitats, &c.) Regulations 1994 as amended, (the "Habitats Regulations")** apply.

We agree with the conclusion of the HRA, in particular we consider the key potential effects of the proposal on site integrity to be:

- a) Direct qualifying habitat loss under the path and watchtower. Case law has established that small losses of habitat can affect adversely site integrity (see Annex One for more detail on *Peter Sweetman v An Bord Pleanala (Case C-258/11)*). In addition, the ground flora around the path and watchtower is likely to suffer damage to its structure, species composition and vegetation cover from human trampling.

- b) The proposed route of the path and the foundations of the watchtower would cut through the RPAs (Root Protection Areas) of a large number of the trees. Therefore we can expect that there may be longer term impacts on tree health and stability.
- c) A significant and permanent increase in disturbance to deer and other woodland mammals and birds, in what is currently a relatively undisturbed area. The disturbance effects could extend for a few hundred metres around the area of the proposal, depending on the sensitivity of the receptor species. This disturbance effect may also affect the distribution of species.

## **Conclusion**

On the basis of current information, and for the reasons given above, it is unlikely that Loch Lomond and The Trossachs National Park will be able to conclude that there will be no adverse effect on the integrity of the site and therefore we object to this proposal.

If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers.

If you have any questions about this response, please contact Estelle Gill ([Estelle.Gill@nature.scot](mailto:Estelle.Gill@nature.scot)). This advice is provided by Scottish Natural Heritage, acting under its operating name NatureScot.

Yours sincerely,

[by email]

Ian Bray  
Area Manager Forth  
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## **Annex One - Peter Sweetman v An Bord Pleanala (Case C-258/11)**

A decision of the Court of Justice of the European Union in *Peter Sweetman v An Bord Pleanala* (Case C-258/11) discussed what is meant by an adverse affect on site integrity in relation to a priority habitat (although there was no firm ruling in relation to non-priority habitat). It states in paragraph 46 “**Consequently, if, after an appropriate assessment of a plan or project’s implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site**”. Paragraph 48 further states that a plan or project “*will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal*”.

In case C-258/11 the Court of Justice of the European Union (CJEU) addressed the issue of how small a percentage of loss of a priority qualifying habitat could constitute an adverse effect on site integrity (AESI). It ruled that a permanent loss of c.0.5% of a priority qualifying habitat (1.47ha out of 270ha of the total habitat, in a SAC of c.25,247ha) did constitute an AESI, and that the same logic would apply to any other long-lasting loss. This has more recently backed-up in EU guidance on the subject which extends the same interpretation to non-priority habitats.