



Planning and Access Committee

Meeting: Monday 30th August 2021

Agenda item: 4

SUBMITTED BY: Director of Place

APPLICATION NUMBER:	2020/0260/DET
APPLICANT:	The Steamship Sir Walter Scott Trust
LOCATION:	Trossachs Pier Up To The Roderick Dhu Watch Tower, Trossachs Pier, Loch Katrine
PROPOSAL:	Formation of new footpath and installation of viewing tower and platforms
NATIONAL PARK WARD:	Ward 2 - Breadalbane and the Trossachs
COMMUNITY COUNCIL AREA	Trossachs
CASE OFFICER:	Name: Vivien Emery Tel: 01389 722619 E-mail: vivien.emery@lochlomond-trossachs.org

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1. Summary and reason for presentation

1.1. The application site is located to the west of Trossachs Pier and car park and relates to the proposed formation of a new footpath and two lookout structures. The site is located within the Trossachs Woods Special Area of Conservation (SAC), Ben A'an and Brenachoile Site of Special Scientific Interest and within a National Scenic Area.

1.2. In consideration of the National Park Authority's Scheme of Delegation, and in the view of the Appointed Officer this application should be determined by the Planning and Access Committee given the significant level of support and by virtue of officer recommendation is to refuse permission. Section 6 of the Scheme of Delegation provides for such discretion depending on the circumstances of a case.

2. Recommendation

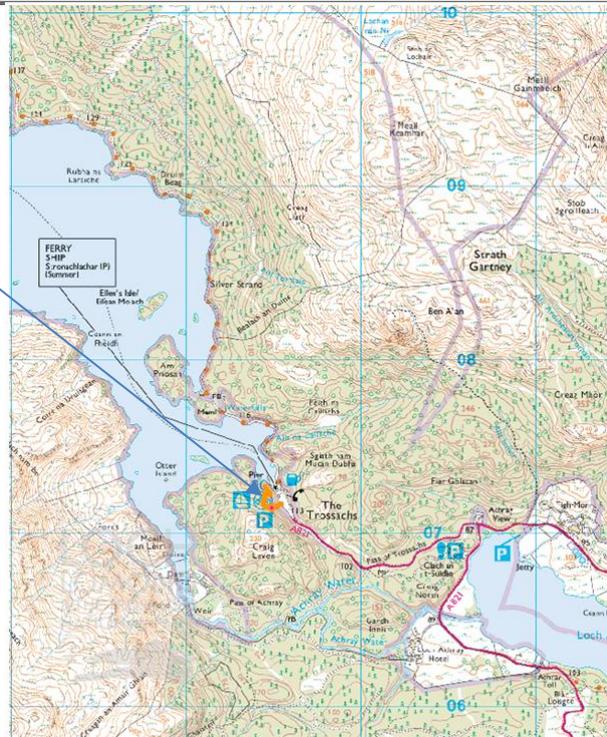
2.1. That Members: **Refuse the application for the reasons set out in Appendix 1 of the report.**

3. Background

Site Description	
3.1.	The application site is located to the west of Trossachs Pier and car park which is located to the south east of Loch Katrine. Loch Katrine and the surrounding area is popular with visitors to the National Park particularly in relation to recreational activity including walking and cycling. A location plan is contained within Figure 1.

Site Description

Application Site



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Figure 1. Location Plan – Trossachs Pier, Loch Katrine

- 3.2 The wider site at Trossachs Pier is operated by the Steamship Sir Walter Scott Trust which operates boat cruises, café, gift shop, cycle hire, self-catering pod accommodation and motor home parking at this location. The application site is located directly to the west of the existing car park and toilets and is located within the Trossachs Woods Special Area of Conservation (SAC), Ben A'an and Brenachoile Site of Special Scientific Interest and within a National Scenic Area. It principally comprises an area of woodland and upland habitat with the ground rising up steeply from the existing car park to a rocky outcrop above the loch. Although there is evidence of an occasionally trodden route running through the site, the site is relatively untouched. The type of woodland habitat varies throughout the site with the 3 main woodland types comprising wet birch woodland, oak woodland (including a small area of flush) and pine woodland. A site plan and aerial view are contained below.

Site Description

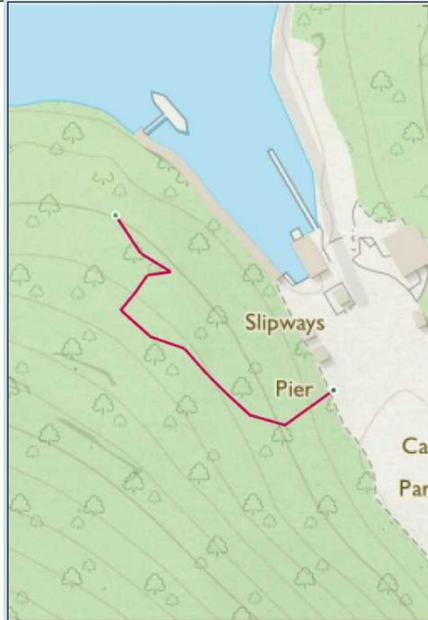


Figure 2: Site Plan



Figure 3: Aerial View

Description of Proposal

- 3.3. The development proposed relates to the construction of a 188 metre section of new footpath and the construction of a “watchtower” and two lookout platforms. The start of the path rises up steeply from the existing car park. It then traverses northwards before rising steeply again up to a rocky outcrop which affords spectacular views towards Loch Katrine and the surrounding hills.

Description of Proposal

3.4.	The proposal is part of a wider group of projects by the applicant and other stakeholders within the area which seek to address or improve visitor management issues (demands for car parking, disperse visitors, improve infrastructure, facilities and help littering issues). The other projects include extensions to the car parks at: Trossachs Pier, Ben A'an and Stronachlacher Pier all of which received planning permission earlier this year.
3.5.	It should be noted that the application submitted refers to the proposal as the "reinstatement" of an existing path. A lightly trodden route through the site is visible and whilst it is acknowledged that there appears to be a history of informal access, including some ground disturbance where rocky outcrops exist, there is no evidence of any surfaced path and no routes are shown on available historical maps. The proposal is therefore being assessed as a new path and not a path reinstatement.
3.6.	<p>Due to the sensitivities of the site it is proposed to construct the path by hand and use techniques to minimise direct impacts on the woodland. Importing materials to the upper parts of the site via helicopter is also identified as a potential option. A survey of the path has been undertaken and splits the path into 4 key sections. These are summarised in more detail below:</p> <p><u>Formation of Footpath: Section 1</u></p> <p>The initial section of path (see Photograph 1) extends westwards from the existing car park and would be approximately 35 metres in length. This section will be constructed in stone pitching of a width varying between 1.5 and 2 metres.</p>  <p>Photograph 1: View of Start of Path looking east towards existing car park</p> <p><u>Formation of Footpath: Section 2</u></p> <p>The next section is 72 metres long, is steep in parts and contains a number of large boulders and trees. A combination of stone pitching and aggregate (to address gradient fluctuations) is proposed here. A diagram of the type of path that would be constructed at this section is outlined in Figure 4 below. The aggregate surface would "float" on a geotextile material which would allow drainage and prevent slippage. The path would be approximately 1.5 metres wide, however drainage features will also be required to manage water run-off.</p>

Description of Proposal



Photograph 2 – Steep area and boulders within middle section of path

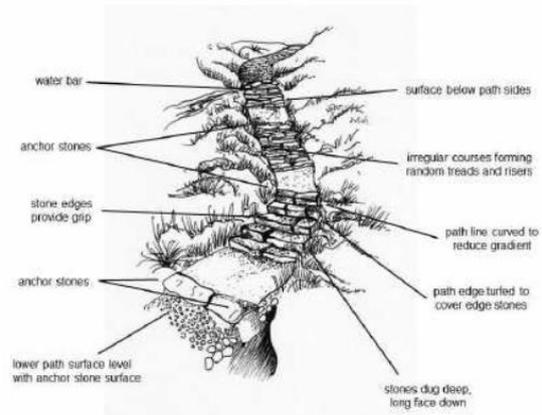


Figure 4: Typical example of stone pitched/aggregate path

Formation of Footpath: Section 3

The path is not as steep in this section (see Photograph 3) however the habitat here is birch oak woodland and wet birchwood (which includes flush - areas of water seepage) so a 20 metre section of boardwalk is proposed. This will raise the path above the natural flush to help prevent changes to hydrology.



Photograph 3: Woodland and flush habitat

Formation of Footpath: Section 4

The final section of path (see Photograph 4) is approximately 60 metres in length and would comprise aggregate and stone pitching. The path width would be on average 1.5 metre and wider where stone pitching required.

Description of Proposal



Photograph 4: Area dominated by scots pine and birch woodland where path terminates

Whilst the path itself would be restricted to an average width of 1.5 a number of other features are required to manage water run-off and construction on steep areas. These include water bars, drains and revetments. These will extend the path width up to a further 0.6 metres in places. Furthermore, passing places are also proposed which will further widen the path.

- 3.7. The path would terminate at the location of the proposed watchtower structure. The installation comprises a watchtower and two viewing platforms, all of which are linked by timber boardwalk. The tower and lookouts are of cylindrical form and the design inspired by a Victorian watchtower depicted in paintings and historical postcards. A timber bridge connects the tower out to two circular viewing decks. A detailed plan of the proposed structures is outlined below.

Description of Proposal

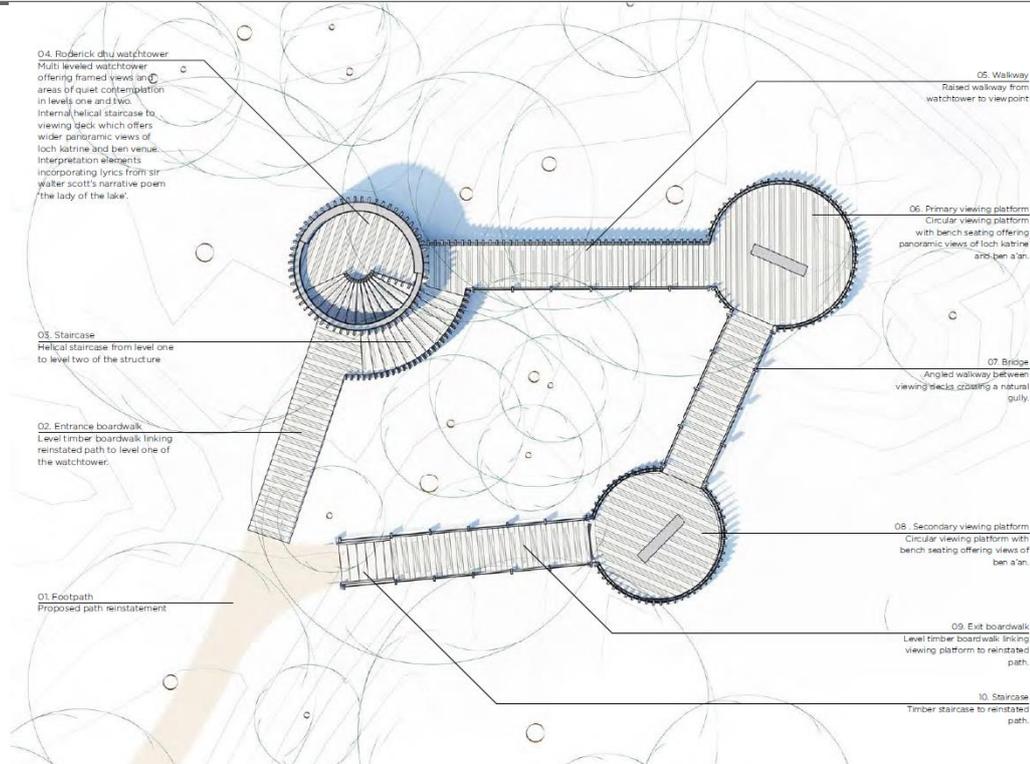


Figure 5: Plan of Watchtower and viewing platforms

3.8.

The substructure will be constructed in black powder coated steel with the tower, viewing platforms and bridges constructed in Larch. The watchtower will have a flat board cladding which is recessed between radial fins. The cladding, radial fins and balustrades will be blackened using a traditional wood preserving method. Visuals of the structure are outlined below.

Description of Proposal



Figure 6: Artists Impressions of Watchtower and Viewing Platforms

4. Environmental impact and habitat regulations assessment

Environmental Impact Assessment (EIA)

- 4.1. For the purposes of the Environmental Impact Assessment (Scotland) Regulations 2017 the National Park is identified as a 'Sensitive Area'. As a 'Competent Body' the National Park Authority has a statutory duty to consider

Environmental Impact Assessment (EIA)

whether proposals for development should be subject to the EIA process. In this particular instance it has been determined that an EIA is not required.

Habitat Regulations Appraisal

- 4.2. The site is located within the Trossachs Woods SAC. The qualifying interest of this SAC is western acidic oak woodland and the full extent of the SAC is outlined in Figure 7 below. The SAC is currently assessed by NatureScot in its Site Condition Monitoring Programme as being in unfavourable, declining condition.

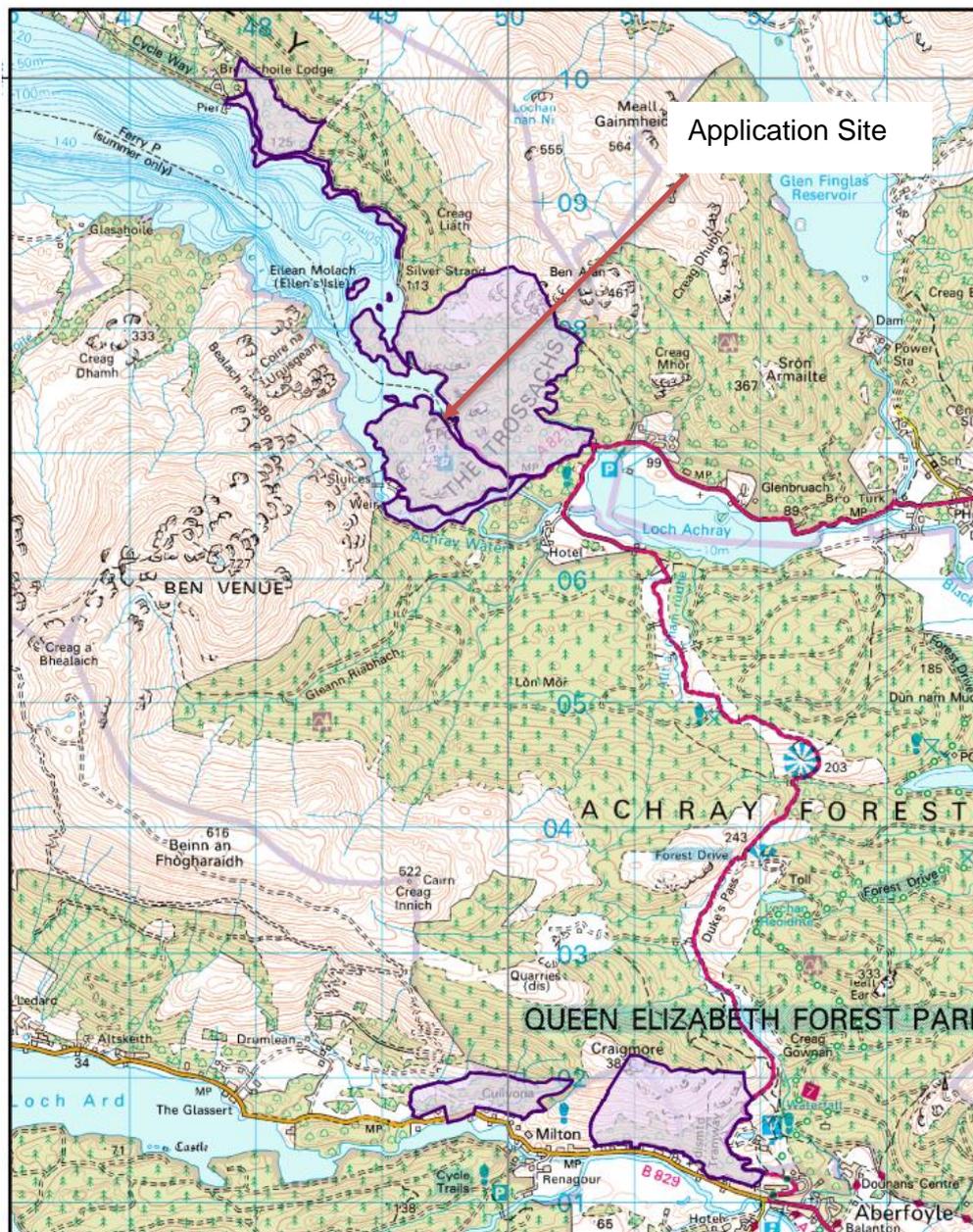


Figure 7:  Boundary of Trossachs Woods SAC

Habitat Regulations Appraisal

4.3.	An SAC is also known as a European site and is covered by the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 ("Habitats Regulations"). A Habitats Regulations Appraisal has two stages. There is an initial Likely Significant Effect stage (a precautionary judgement of the potential impacts of a proposal), followed where necessary by a more detailed "appropriate assessment". In this case it has been accepted by NatureScot and National Park Authority staff that there is a Likely Significant Effect. As a consequence, under the Habitat Regulations, the NPA is required to carry out an appropriate assessment and this must be undertaken by the Planning & Access Committee as part of its determination of the planning application.
4.4.	The appropriate assessment is contained within Appendix 2 of this report. It concludes that there will be an adverse effect on the integrity of the Trossachs Woods SAC. This is considered in more detail in the assessment section of the report. An appropriate assessment is to be distinguished from Environmental Impact Assessment and is undertaken under the Habitats Regulations. Its purpose is not to consider the likely significant effects on the environment but to avoid adverse effects on European sites.

5. Consultations and representations

Responses to Consultations

5.1.	<p><u>NatureScot</u></p> <p><u>Initial Response Dated 22 February 2021</u></p> <p>NatureScot support the conclusions of the HRA (appropriate assessment) undertaken by the National Park Authority, that it cannot be shown that there will be no adverse effect on the integrity of the European Site and therefore object to this proposal.</p> <p>NatureScot agree with the conclusion of the HRA (appropriate assessment), in particular they consider the key potential effects of the proposal on site integrity to be:</p> <ul style="list-style-type: none">a) Direct qualifying habitat loss under the path and watchtower. Case law has established that small losses of habitat can affect adversely site integrity. 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 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.
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Responses to Consultations

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.

Further Response Dated 22 July 2021

It is the view of NatureScot that a HRA (appropriate assessment) could conclude that there will be no adverse effect on the integrity of the European site. NatureScot therefore do not object to this proposal. The advice is based on their view that the path and/or its construction will not result in any loss of extent of qualifying habitat (the key conservation objective). No functioning woodland habitat will be lost. NatureScot have also concluded that disturbance to woodland mammals and birds is unlikely to be significant enough to undermine this conservation objective - a substantial part of the path route is close to the existing car park and the species already are disturbed. This car park, pre-dates the designation of the SAC and therefore part of the baseline condition. The remaining area which may be disturbed is very small and therefore any additional disturbance will be of very limited extent in relation to the overall site.

The proposal will result in changes in the qualities of the habitat; some loss of structure and ground flora, in a very limited area within the protected area, but in their view these changes are *de minimis* in relation to the functioning of the woodland ecosystem within the overall site. Furthermore, NatureScot consider that a hand-built footpath could be constructed in such a way as to minimise the loss of ground flora and woodland function, by minimising impacts on both tree roots and the hydrology of the site. For example by incorporating a raised boardwalk for some sections of the path. NatureScot also note that no trees will be lost and believe that further impacts from people trampling the ground flora are unlikely to undermine conservation objectives due to the proposed design of the watchtower and the wet and boggy nature of the ground adjacent to the path.

5.2. **Forestry and Land Scotland (FLS)**

The proposal is partially within land currently managed by FLS through a long term lease from Scottish Water. As the land manager responsible for improving and maintaining the designated sites under their ownership/management FLS have significant concerns about the proposal and feel it would be contrary to their position managing both national and European designated sites and priority habitat. Their concerns are centred on:

- Construction phase impacts: both direct and indirect, which they expect to be larger than indicated in the planning application. There is also risk of indirect damage to features such as the wet woodland on the lower reaches of the slope which could have its hydrology negatively impacted. The habitats present (upland oakwood and upland birchwood, as well as wet woodland) are also considered to be priority habitats in their own right, beyond features for designation. FLS, as a government agency, have a biodiversity duty in relation to the Scottish Biodiversity List, which indicates that all three habitats are listed as requiring “conservation action” and upland oakwood and wet woodland require ‘avoidance of negative impacts’.

Responses to Consultations

	<ul style="list-style-type: none"> Operational Phase - FLS have concerns over the long term viability and expected liability of managing both a new visitor attraction here and the associated requirements for public use. Once constructed there would be a burden to ensure the health and safety of the users. FLS have seen elsewhere that when an area is opened up to visitors, there is also a corresponding desire to explore further and wild camp. The gradual trampling of woodland flora by visitors who are likely to wander in an area currently very isolated would extend this impact on local ecology. Strategic Visitor Management: FLS is working hard to address the visitor pressures already experienced in the Katrine/Achray area. They are working around constraints posed by designations, public roads, and private land holdings to help resolve parking issues at the nearby Ben A'an and Ben Venue car parks. Another visitor attraction is likely to add to this existing pressure in the immediate area at a time when their options are already significantly limited.
5.3.	<p><u>West of Scotland Archaeology Service (WOSAS)</u></p> <p>WOSAS do not have any information recorded in the HER (Historic Environment Records) database regarding the pre-existence of a watchtower or the path, and neither appears to have been depicted on any of the historic map coverages available in their system (though there only seems to be a limited number of maps available for this area). Given that the original tower doesn't appear in the HER database and is not shown on any of the maps available to them, the extent of any archaeological issue associated with the proposal is difficult to judge. The impact of the proposal on the historic environment could encompass the full spectrum, from minimal to significant, depending on whether it would directly affect any physical remains associated with an earlier tower, and whether this tower was constructed as a Victorian folly or was in place before this. There would be some scope to ask for a survey of the area to look for these, as this would allow a more accurate assessment of the impact of the proposal. In the event that this survey did identify the foundations of an earlier tower within the area that would be disturbed by construction of either the path or the new watch tower, the applicant could either be asked to consider an alternative position, to preserve these remains <i>in situ</i>, or if this was not possible, to undertake a programme of fieldwork designed to mitigate the impact of their proposal on the remnants of the earlier structure.</p>
5.4.	<p><u>Trossachs Community Council</u></p> <p>The Trossachs Pier and associated works help to support visitor infrastructure and spread-the-load of intense "honeyspot" locations and create broader destination experiences in the Trossachs. Trossachs Community Council have expressed widespread support for the project.</p>

Representations Received

5.5.	<p>A total of one hundred and thirty seven representations have been received all of which are in support of the proposal. The letters of support include a number received from organisations including Trossachs Community Development Trust, Callander Community Council, Callander Community Development Trust, Love Loch Lomond and the Scottish Campaign for National Parks.</p>
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Representations Received

- 5.6. The grounds of support are summarised below:
- The proposal will improve the visitor experience of Loch Katrine;
 - There will be no negative impacts on the natural environment with minimal disturbance to habitats and wildlife;
 - This will be very popular with visitors of all ages and ability who currently have difficulty with access. The watchtower will provide a great viewpoint without having to walk too far;
 - The proposal would benefit the local economy and the operations of the Steamship Trust;
 - Visitors will be able to enjoy the magnificent view from a different perspective.
 - The proposals will increase capacity at an existing sustainable location and take pressure off other hot spots within the local area.
 - The proposal is a welcome reinstatement of an established path of historic significance. (*Officer comment – see paragraph 3.5 of the report*).

The full content of the consultation responses and representations are available to view on the National Park Authority's Public Access website (<http://www.lochlomond-trossachs.org/planning/> click on view applications, accept the terms and conditions then enter the search criteria as '2020/0260/DET').

6. Policy context

The Development Plan

- 6.1. National Park Local Development Plan (2017 - 2021):
OP1 – Overarching Policy 1: Strategic Principles
OP2 – Overarching Policy 2: Development Requirements
VE1 - Visitor Experience Policy 1: Location and Scale of new development
VE2 – Delivering a World Class Visitor Experience
TP2 - Transport Policy 2: Promoting Sustainable Travel and Improved Active Travel Options
NEP1 - Natural Environment Policy 1: National Park Landscapes, seascape and visual impact
NPE2 – Natural Environment policy 2: European Sites
NPE3 – Sites of Special Scientific Interest, National Nature Reserves and RAMSAR Sites
NEP4 - Natural Environment Policy 4: Legally Protected Species
NEP5 - Natural Environment Policy 5: Species and Habitats
NEP8 - Natural Environment Policy 8: Development Impacts on Trees and Woodlands
NEP 9 - Natural Environment Policy 9: Woodlands on or adjacent to development sites

The Development Plan

NEP12 - Natural Environment Policy 12: Surface Water and Waste Water Management

Full details of the policies can be viewed at:

<http://www.lochlomond-trossachs.org/planning/planning-guidance/local-development-plan/>

Other Material Considerations

6.2. National Park Aims

The four statutory aims of the National Park are a material planning consideration. These are set out in Section 1 of the National Parks (Scotland) Act 2000 and are:

- to conserve and enhance the natural and cultural heritage of the area;
- to promote sustainable use of the natural resources of the area;
- to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- to promote sustainable economic and social development of the area's communities.

Section 9 of the Act states that these aims should be achieved collectively. However, if in relation to any matter it appears to the National Park Authority that there is a conflict between the first aim, and the other National Park aims, greater weight must be given to the conservation and enhancement of the natural and cultural heritage of the area.

6.3. All planning decisions within the National Park require to be guided by the policies of the Partnership Plan, where they are considered to be material, in order to ensure that they are consistent with the Park's statutory aims. In this respect the following policies are relevant:

Con Policy 2: Natural Heritage

Con Policy 3: Landscapes

RD Policy 2: Spatial Development Strategy

VE Policy 3: Recreation and Access

6.4. Scottish Planning Policy states that any development plan or proposal likely to have a significant effect on an Natura sites which is not directly connected with or necessary to their conservation management must be subject to an "appropriate assessment" of the implications for the conservation objectives. Such plans or proposals may only be approved if the competent authority has ascertained by means of an "appropriate assessment" that there will be no adverse effect on the integrity of the site. It states that planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally natural heritage resources are uncertain but there is sound evidence indicating that significant irreversible damage could occur. The precautionary principle should not be used to impede development without justification. If there is any likelihood that significant irreversible damage could occur, modifications to the proposal to eliminate the risk of such damage should be considered. If there is uncertainty, the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.

7. Summary of supporting information

Supporting Information	
7.1.	<p>The application was accompanied by the following supporting papers as summarised:</p> <p>Phase 1 Habitat Survey and Protected Species Assessment: The survey has established that there is a low potential that any otter, bat, red squirrel, pine marten, badger, beaver or other protected species in the area will be detrimentally impacted by the proposed development.</p> <p>Trossachs Visitor Management Project: Gives a summary of the proposals along with two other projects, one at Trossachs Pier and one at Stronachlachar Pier. Includes supporting letters from a number of organisations.</p> <p>National Vegetation Survey: Current damage and trampling is impacting small areas of the woodland. At present the path is not heavily used but further activity could place pressure on this habitat and impact on surrounding habitats. Ideally public pressure should be directed away from sensitive and wet woodland areas and into drier areas with limited scope for spread of the path into sensitive woodland areas and high intensity use. Wet woodland habitats can be Ground Water Dependent Terrestrial Ecosystems (GWDTE) and are particularly sensitive to damage by construction activities and trampling. Any new footpath scheme in this location on this habitat should address drainage issue and mitigate any affects. The footpath design recognises some of these issues and the method of design will address some of this potential impact over the small area of wetter woodland. Boardwalks over the wettest areas which do not interfere with the hydrology of the underlying vegetation will help but a path wide enough to accommodate passing groups so as to prevent access to wet sensitive vegetation would be beneficial.</p> <p>Preliminary Ground Level Bat Roost Assessment: It is not foreseen that the proposed work at the site will have any detrimental short, medium, or long- term impact to the bat population in the surroundings of site as no bat roosts were identified.</p> <p>Tree Survey and Arboricultural Constraints: The footpath construction has been designed to avoid the need for removal of any trees, and to minimise the impact on root systems through minimising invasive construction operations. Impact on existing trees will be minimal.</p> <p>Path Reinstatement Proposal: Outlines the different proposed construction methods along different section of the path.</p> <p>Additional Information received during consideration of the proposal:</p> <ul style="list-style-type: none">• Additional mitigation could be implemented including the erecting of a post and rail fence on either side of the path to contain visitors;• There would be clear signage at the bottom of the path to advise visitors to keep dogs on a lead and to observe other site management rules.

Supporting Information

- In terms of the habitat loss it is appreciated that it is impossible for the proposed reinstatement of the footpath and erection of the watchtower to have zero impact on the vegetation but this is largely on the existing 188m route of the path to the viewpoint. There is clearly some existing damage to existing ground cover and this is likely to continue over a wide area and is unlikely to be managed effectively if the path reinstatement proposals and related mitigation measures are not implemented;
- No trees requiring removal due to our proposals, no Tree Protection Areas being cut through;
- There is an overall gain to be achieved offering improved protection to the existing overall area of qualifying habitat.

8. Planning assessment

Key Issues

- 8.1. The main determining issues with this application are as follows and will be considered in turn.
- Principle of Development
 - Ecology
 - Landscape
 - Archaeology

Principle of Development

- 8.2. The principle of the proposal is assessed against Visitor Experience Policy 1(b and d) (VEP1b and VEP1d) and Visitor Experience Policy 2 (VEP2) of the Adopted Local Development Plan (2017-2021). Small scale development is supported by policy VEP1b within areas identified on the Development Strategy Map. Furthermore Policy VEP1d supports small scale development where it involves the improvement or expansion of an existing tourism business, visitor infrastructure or facility. Policy VEP2 supports new tourism development that will enhance the visitor experience of the National Park and offer a bespoke and high quality product. The proposal would provide a new access route and installation of a high standard of design from where visitors would have an opportunity to enjoy spectacular views. The proposal would therefore enhance the recreational experience of visitors and in this regard it would be supported in principle by Policy VEP1(b and d) and Policy VEP2.
- 8.3. Notwithstanding this, there are concerns that the proposal could contribute to issues relating to visitor pressures in this locality. The watchtower would be a popular attraction for visitors to Loch Katrine and given its accessibility from the existing car park, and the spectacular views from the lookout structure, it has the potential to be a visitor attraction in itself, drawing more visitors rather than dispersing from other locations. Loch Katrine is a visitor hot spot and it is recognised within the supporting documents that the car park is regularly full. Permission has recently been granted for a further 31 spaces, however there are

Principle of Development

limited opportunities to increase this further. There are therefore concerns that the proposal could exacerbate issues relating to visitor pressure. FLS, who manage land at this location (including part of the site) has raised similar concerns.

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8.4. The site is located within the Trossachs Woods Special Area of Conservation (SAC) and Ben A'an and Brenachoile Site of Special Scientific Interest. Assessment of the proposal against relevant natural environment policies of the Local Development Plan including those relating to European Sites, Sites of Special Scientific Interest and Trees and Woodlands is outlined below.

8.5. As summarised within Section 4 of the report, given the location of the site within the SAC, and the likely significant effects on the qualifying interests of the site, an appropriate assessment of the implications of the proposal on the site's conservation objectives has been undertaken. The full appropriate assessment can be found within Appendix 2 to this report but summarised as follows:

- There would be a permanent loss of woodland ground flora, which is an integral part of the overall woodland habitat, as a result of the new permanent path structure, viewing towers and associated boardwalks.
- In addition to the direct and permanent loss as a result of the proposal, the ground flora around the path and watchtower area is likely to suffer damage to its structure, species composition and vegetation cover during the construction process and in subsequent maintenance operations for the path, board walk tower and viewing platforms.
- The habitat is already confirmed to be in an unfavourable declining condition, due to high herbivore impacts (the main negative pressure) and invasive rhododendron. In particular the site requires the restoration of the shrub layer and age structure of the woodland, through reduction on herbivore impacts and increased regeneration of woody species. Overall, the proposals will result in further decline in site condition in this area.
- The path and tower development, with associated visitor footfall and disturbance will prevent natural succession and tree regeneration in the immediate area.
- As well as impacts on tree regeneration there may be localised impacts on the hydrology of the site, due to the installation of water bars and drains.
- Damage to tree root systems can be caused by ground level changes; soil compaction and changes in soil moisture content. This could result in indirect tree loss.

In conclusion, although the existing tree canopy seems likely to be retained and losses of existing trees are likely to be minimal, there will be permanent loss of woodland ground flora which is an integral component of the woodland habitat and one of the primary reason for selection of this site as an SAC. There will be changes to water flow from the new track, passing places, stone path edging,

Ecology

	<p>stone pitching on slopes and the board walks, steps, tower and platforms at the upper viewing area, as well as impacts from visitor footfall and ongoing physical disturbance on at least an annual basis for maintenance and inspection. It is therefore considered that the proposal will adversely affect the integrity of the SAC and will lead to lasting and irreparable loss.</p>
8.6.	<p>It should be noted that there have been two previous proposals at Trossachs Pier. These related to two car park extensions and a holiday pod development that involved development close to, partly or wholly within the SAC. For the holiday pods the area contained poor qualifying habitat which although within the SAC boundary was the site of an old quarry. It was considered that it would not recover due to the number of people visiting and using the site for camping and recreation over many years. For the car park extensions one car park is within the SAC but is actually an area of hard standing and rush pasture, which is not qualifying habitat. The other car park extension is 20 metres from the SAC boundary and it was concluded that there would be no net loss of woodland and woodland flora and that landscaping would increase habitat connectivity and create a buffer to the SAC. It should also be noted that these sites are generally contained and of a nature where visitors are unlikely to explore beyond the site boundaries. It should also be noted that if the current proposals had related to the upgrade of an existing path then the conclusion of the appropriate assessment may have been different.</p>
8.7.	<p>NatureScot has an important role as statutory consultee and advisor on nature conservation matters in relation to appropriate assessment for SACs and must be consulted under the Habitat Regulations. The NPA must have regard to any representations made by them but is not bound to follow NatureScot's advice. NatureScot initially objected to the application (see paragraph 5.1) however, following a further site visit and reconsideration of the proposal they provided an amended response which concludes that in their view there will be no adverse effect on the integrity of the SAC and they therefore do not now object to the proposal. Their advice is based on their view that the path and/or its construction will "not result in any loss of extent of qualifying habitat" (the key conservation objective) and that "no functioning woodland habitat will be lost". They state the proposal will result in changes in the qualities of the habitat; some loss of structure and ground flora, in a very limited area within the protected area, but in their view these changes are <i>de minimis</i> in relation to the functioning of the woodland ecosystem within the overall site.</p>
8.8.	<p>The National Park ecology advisor has engaged with NatureScot and the applicant and also reviewed additional information and revisited the site. Their advice remains unchanged. The full reasons for this are outlined within the Appropriate Assessment contained within Appendix 2 and are summarised as follows:</p> <ul style="list-style-type: none"> it is considered that the proposal will result in the permanent loss of part of the habitat type for which the site was designated. There would be a permanent loss of woodland ground flora, which is an integral part of the overall woodland habitat, as a result of the new permanent path structure, viewing towers and associated boardwalks. There are also passing places proposed which will result in further habitat loss and various works including side drains, culverts and water bars to manage drainage around the new path that will directly affect the habitat through further removal and local changes in the hydrology of the groundwater.

Ecology

	<ul style="list-style-type: none"> • it is not considered that the changes due to development will be “de minimis.” <i>i.e.</i> so small or inconsequential as to not be worthy of attention. Relevant case law (Case C-258/11 Sweetman) has determined that a proposal will adversely affect the integrity of a site if it can lead to lasting and irreparable loss <u>of even a part</u> of a priority natural habitat type for which the site was designated. • Replacing some of the stone-build path with additional sections of board walk has been suggested by NatureScot. There are no details of this mitigation or its construction methods. Mitigation may be relevant (including additional fencing) however boardwalks close to or on the ground would still lead to loss of ground flora.
8.9.	<p>In undertaking the appropriate assessment, the Habitats Regulations require the National Park Authority as competent authority to have regard to the advice received from NatureScot. The Park Authority can also have regard where relevant to the opinions of other bodies where these are material. This case is unusual in that the advice of NatureScot, informed by their ecologists differs from that of (1) Forestry and Land Scotland – who manage the site and have the primary role in securing the designations conservation outcomes - and (2) the NPA’s specialist advisors. However, the responsibility for undertaking the appropriate assessment rests with the Park Authority as competent authority and it is not bound to follow the advice of NatureScot. Relevant case law has been considered and it is concluded that the proposal if consented (even with mitigation applied) would result in lasting and irreparable loss of woodland flora within the SAC, even although the effects may be localised. Regard has been given to the advice received from NatureScot but for the reasons outlined above it is considered that there will be an adverse effect on the integrity of the Trossachs Woods SAC.</p> <p>If the National Park Authority (following the advice of its own ecologists) is of the opinion as competent authority that the proposal will have an adverse effect on the integrity of the SAC then it has, subject only to Regulation 49 (below), no discretion to reach any other conclusion than refuse permission.</p> <p>The derogation to proceed under Regulation 49 of the Habitat Regulations, where the proposal will have an adverse effect on the integrity of the SAC is very limited and only applies where the following statutory criteria are fully met:</p> <ul style="list-style-type: none"> • there are no alternatives; and • the proposal must be carried out for imperative reasons of overriding public interest (which may be of a social or economic nature). • compensatory measures are provided to ensure that the overall coherence of the Natura network is protected. <p>Where Regulation 49 is engaged the opinion of the Scottish Ministers must be sought in advance).</p> <p>The proposal relates to a new path and viewing platforms which is considered will be a small scale visitor attraction and is not considered to be of overriding public interest. Therefore, in accordance with the Regulations consent should not be granted. Furthermore, given the conclusions of the appropriate assessment the proposal is considered to be contrary to Natural Environment Policy 2 (European Sites). It is also considered to be contrary to Natural Environment Policy 3 (Sites of Special Scientific Interest) of the Local Development Plan.</p>

Ecology

8.10.	<p><u>Development Impacts on Trees and Woodlands</u></p> <p>The qualifying interest of the Trossachs Woods SAC is western acidic oak woodland which is ancient woodland. The Natural Environment Policy 8 of the LDP does not support development that would result in the loss or deterioration of the woodland unless there are overriding public benefits that would outweigh the habitat loss. When assessing impacts on trees, consideration must be given to direct impacts but also impacts on ground flora and soils which are important components of a woodland ecosystem.</p>
8.11.	<p>With regards to direct impacts: 3 trees - one dead rowan and two ash trees (heavily infected with Ash Dieback Disease), are to be removed. Given the condition of these trees their removal is acceptable. With regards to indirect impacts, while the use of geotextile would remove the need for excavation in some places, the proposal to install pitching, water bar and cross drains would require excavation which has the potential to impact on tree roots and indirect tree loss. It is therefore considered that the indirect impacts on existing trees could be underestimated. Furthermore, the proposals would result in a loss of woodland ground flora. On the basis of the information provided the proposal would not comply with Natural Environment Policy 8 as the proposal would result in the deterioration of ancient woodland and there are no overriding public benefits from the development that would outweigh the loss of woodland habitat.</p>
8.12.	<p><u>Protected Species</u></p> <p>Protected species surveys were carried out for otter, bats, pine martens, red squirrels and beavers. There was no evidence found of activity. If Members were minded to approve the application, a condition should apply that no works take place until surrounding trees have been checked for squirrel dreys. A condition should also apply that a walkover survey check for breeding birds is undertaken if works are to take place March – August inclusive. Subject to these conditions the proposal would comply with Natural Environment Policy 4.</p>

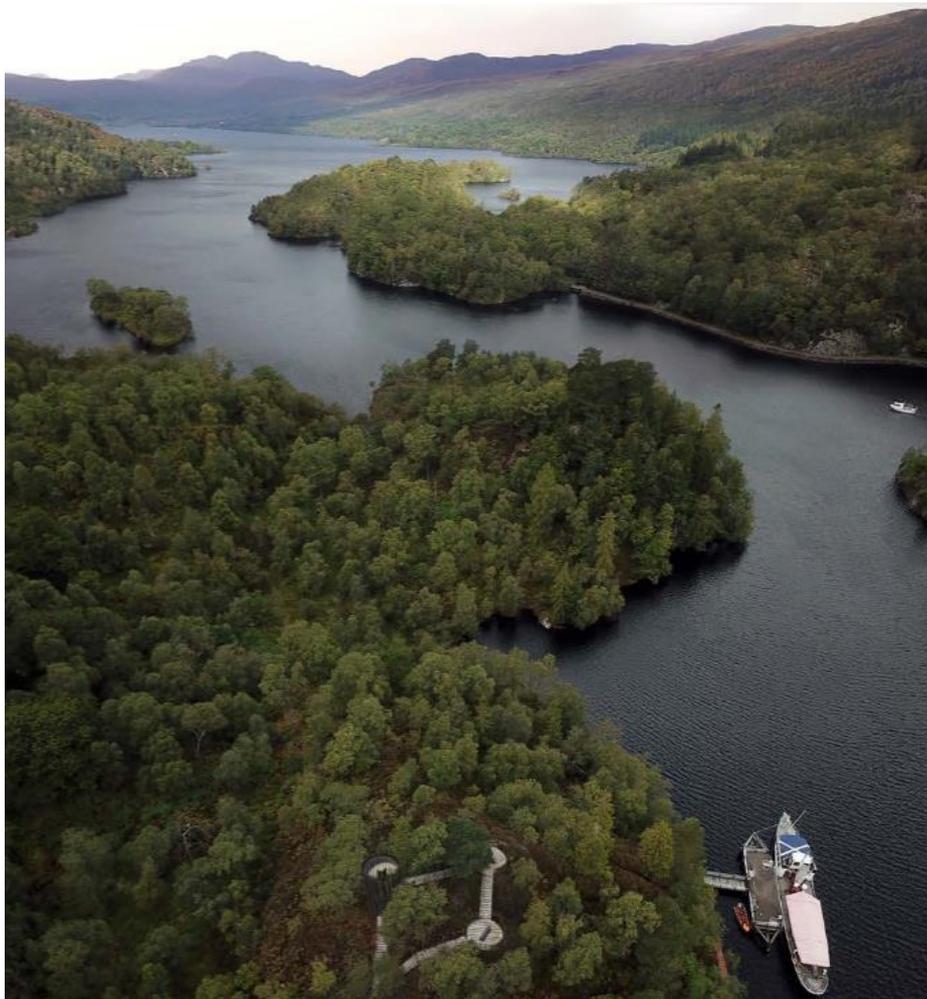
Landscape

8.13.	<p>The application site is located within a highly scenic landscape to the south eastern end of Loch Katrine. It is located within the Trossachs National Scenic Area. The proposed path would be constructed within an area of existing woodland. It is a relatively narrow path (generally up to 2 metres wide but could be wider if mitigation measures relating to site topography and water flow are required) which would be constructed by hand. The most visible part of the path will be the first section that runs from the edge of the existing car park to the edge of the woodland (see Photograph 1). This section will be constructed in stone pitching and will be in keeping with the rural character of the area. The remainder of the path will be constructed through an area of woodland, views of which will be short range and very localised. It is not considered that the construction of the path will raise any adverse landscape impacts.</p>
8.14.	<p>The watchtower and lookouts are proposed to be sited on a small hill above Trossachs Pier. Existing trees in the locality will partially screen the structure. An elevation of the proposed tower and a photomontage of an aerial view are outlined below.</p>

Landscape



Figure 8 : Elevation Plan of Watchtower/lookouts



Photograph 5: Aerial View of Proposed Watchtower/Lookout

Landscape

	The watchtower will sit below the surrounding treeline and its form, design and proposed materials (blackened Larch) will ensure that it would be sympathetic to its surrounding natural environment. Although sections of the tower may be visible from the loch and surrounding hills, it will not be unduly prominent and has been designed to respect its sensitive landscape setting.
8.15.	In conclusion given the width of the path and construction techniques proposed it would not raise any unacceptable landscape impact. Furthermore the watchtower installation is of an innovative design that would provide dramatic views of Loch Katrine whilst protecting the landscape character. It is therefore considered to comply with Natural Environment Policy 1.

Archaeology

8.16.	Information submitted in support of the application states that the proposal relates to the reinstatement of an existing path and that there was a historic Victorian tower at this location in the past. No path or watchtower is however identified on historic maps and the tower does not appear in the Historic Environment Records database. A tower is shown on an old painting but this does not confirm its existence or otherwise. Based on these facts, West of Scotland Archaeology Service has advised that any archaeological issue associated with the proposal is difficult to judge. Given the uncertainties regarding the existence of a tower at this location, if Members were minded to approve the application, a condition requiring an archaeological survey to be undertaken would be recommended. If the survey did then identify the foundations of an earlier tower then the position of the tower may need to be altered or a programme of fieldwork designed to mitigate the impact of the proposal on the remnants of the earlier structure.
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Other matters raised by contributors

8.17.	A significant number of letters of support have been received in relation to the proposal. The majority of these refer to the principle of the development and natural heritage matters, all of which are addressed above. Other matters raised relate to improved access and benefits to the local economy.
8.18.	The proposed new path terminates at the proposed tower. The tower would be a short walk from the public car park and allow visitors to experience magnificent views over Loch Katrine with minimal effort. Topographical constraints (with steep path gradients), and steps up to the watchtower and lookouts would mean that the proposal would not be accessible by those with limited mobility.
8.19.	It is acknowledged that the watchtower structure could be a draw for visitors and increase visitor numbers in the locality. This in turn could have a positive economic impact on the Steamship Sir Walter Scott Trust and other local businesses.

National Park Aims

8.20.	It is considered that the proposal does not collectively meet the National Park's four statutory aims (as set out in paragraph 6.2 of this report). The path and watchtower would be easily accessible from an existing visitor hotspot and allow visitors to enjoy a spectacular view of Loch Katrine. The proposal would therefore generally be supported by the third aim however there are concerns that the watchtower may exacerbate visitor pressures in the locality. With regard to the fourth aim, it is recognised that the proposed development would promote the economic development of the Steamship Sir Walter Scott Trust and could provide some economic benefit to other local businesses. Notwithstanding this the proposal does not meet the first aim as the development would neither conserve nor enhance the natural heritage of the area (for the reasons outlined within the ecology section above). Section 9 of the National Park Act states that the aims should be achieved collectively. However, if in relation to any matter it appears to the National Park Authority that there is a conflict between the first aim, and the other National Park aims, greater weight must be given to the conservation and enhancement of the natural and cultural heritage of the area.
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Conclusion

8.21.	The principle of the proposal is considered to comply with policy VEP1(b and d) of the National Park Local Development Plan as the proposal relates to small scale development related to an existing tourism business. With regards to Policy VEP2, whilst the new path and viewing tower would in themselves enhance the visitor experience at this location, there are concerns that an additional attraction here could exacerbate issues relating to high levels of visitor numbers, particularly in relation to car parking capacity and traffic management.
8.22.	The installation has been designed to respect the landscape character of the locality and would accord with relevant design and landscape policies. Archaeological interests could be appropriately covered by conditions. A significant number of representations have been received, all of which are in support of the proposals. It acknowledged that the proposed watchtower is of innovative design and given the spectacular views afforded over Loch Katrine it is likely to be a popular visitor attraction. Within a less sensitive location, high quality design that would improve visitor experience would normally be supported. However in this case it has not been possible to conclude that there will be no adverse effect on the integrity of the Trossachs Woods SAC. While the applicant states this project reinstates an historic path, there is limited evidence of this and no formal path exists. It must be assessed as a new development.
8.23.	With regards to the Trossachs Woods SAC, likely significant effects as a result of the proposal could not be excluded and hence an appropriate assessment was required. The assessment has given due regard to the applicants supporting information (including proposed mitigation measures) and the advice received from NatureScot and other parties (including representations received from the public and FLS). The appropriate assessment concludes that that there will be an adverse effect on the integrity of the Trossachs Woods SAC. The proposal will lead to lasting and irreparable loss to a part of the SAC. While relatively small scale in terms of the physical footprint of development, relatively small scale losses of habitat can adversely affect the sites integrity. It is also clear that the impact will likely be greater than the applicant expects as is seen in these types

Conclusion

	of scenic attractions across Scotland. This is a highly sensitive designated area that needs to be safeguarded from such adverse impacts and managed in line with its conservation's objectives to improve the overall condition of the protected habitat.
8.24.	Given the conclusion of the appropriate assessment the proposal may only be approved if there are (1) no alternative solutions (2) there are imperative reasons of overriding public interest and (3) compensatory measures. The proposal relates to a new path and viewing platforms which would be a small scale visitor attraction and it is not considered that there are reasons of overriding public interest in this instance.
8.25.	In light of the conclusions of the Appropriate Assessment report, it is considered that the proposal would be contrary to relevant natural environment policies of the Local Development Plan relating to designated sites (Natural Environment Policies 2 and 3) and Trees and Woodlands (Natural Environment Policy 8). In accordance with the Habitats Regulations, and given the proposal would be contrary to the aforementioned policies, it is recommended that the application be refused for the reasons detailed in Appendix 1.

9. Background documents

<http://www.lochlomond-trossachs.org/planning/>

Click on view applications, accept the terms and conditions then enter the search criteria as '2020/0260/DET'

10. Appendix 1 Reasons for Refusal

Reasons for Refusal	
	<p>The proposal would be contrary to Overarching Policy 1, Overarching Policy 2, Natural Environment Policy 1 and Natural Environment Policy 2 and 3 and Natural Environment Policy 8 of the Local Development Plan – together with the associated Supplementary and Planning Guidance. The proposal also fails to have due regard to Scottish Planning Policy (2014) Sections 203, 204, 207 and 208. Furthermore the proposal fails to achieve the National Park Aims and would not accord with the National Park Partnership Plan, specifically Outcome 1, Conservation Priority 1.1, all for the following reasons:</p> <ol style="list-style-type: none">1. The proposal (following an appropriate assessment under the Habitat Regulations) would have an adverse effect on the integrity of the Trossachs Woods SAC and Ben A'an and Brenachoile Site of Special Scientific Interest all as set out in the Habitats Regulations Appraisal Report in Appendix 2 due to:<ul style="list-style-type: none">• a permanent loss of woodland ground flora;• changes to water flow from the construction of the new path;• impacts from visitor footfall and ongoing physical disturbance from visitor trampling and maintenance.It does not therefore accord with Overarching Policy 1 (A successful, sustainable place), Overarching Policy 2 (Natural Environment) and Natural Environment Policy 2 and due to a negative assessment under Regulation 48 of the Habitats Regulations, the NPA cannot agree to the proposal and it is also not considered that a Regulation 49 derogation is available. It is also contrary to Natural Environment Policy 3 because it will have an adverse effect on the integrity of the SSSI.2. Overarching Policy 1 of the Local Development Plan requires that all development should contribute to the National Park being a successful, sustainable place by contributing to the collective achievement of the 4 aims of the National Parks (Scotland) Act. The proposal would neither conserve nor enhance the natural heritage of the National Park and would be contrary to the first aim to which the NPA must give priority.3. The proposal would result in the deterioration of ancient woodland and be contrary to Natural Environment Policy 8 as the physical works, along with visitor trampling associated with a significant increase in footfall within the designated site, will cause a permanent loss and ongoing impact on woodland ground flora and prevent the natural succession and tree regeneration in the immediate area.

11. Appendix 2 Habitats Regulations Appraisal

Habitats Regulation Appraisal

HABITATS REGULATION APPRAISAL



Report to inform an Appropriate Assessment to be undertaken by the National Park Authority in respect of the effects of Planning Application 2020/0260/DET:

Formation of new footpath and installation of viewing tower and platforms at Trossachs Pier up to the area known as Roderick Dhu Watch Tower (no longer in existence) at Loch Katrine.

On the Trossachs Woods SAC Special Area of Conservation (SAC)

Requirements of the Habitats Regulations

European Sites are **Special Areas of Conservation (SACs)** designated under the EC Habitats Directive to protect particular habitats and non-bird species and **Special Protection Areas (SPAs)** designated under the EC Birds Directive to protect wild birds.

Environmental protection to SACs and SPAs is addressed in Scotland through the *Conservation (Natural Habitats &c) Regulations 1994 (as amended, including amendments to address Brexit)* which is known as the “Habitats Regulations”.

SPAs and SACs provide a network of core breeding and resting sites for rare and threatened species and some rare natural habitats which are protected in their own right.

The Trossachs Woods SAC is a rare natural habitat forming part of this network that receives a high level of protection from development under the Habitat Regulations.

There have been some amendments to the Habitat Regulations to address the UK’s withdrawal from the EU but these have not reduced the high level of protection given by them.

The Habitats Regulations require that:

Where an authority concludes that a development proposal is likely to have a significant effect on a European site (SPA or SAC), it must undertake an appropriate assessment of its implications for the European site in view of the site’s conservation objectives.

The need for appropriate assessment extends to projects outwith the boundary of the SAC or SPA, in order to determine their implications for the interest protected within the site.

Significance Test

Regulation 48(1) of the Habitats Regulations requires the “competent authority” (in this case the National Park Authority) to first carry out a ‘significance test’. The test for significant effects acts simply as a precautionary filter to exclude any projects which have no possible connection to the conservation interests of the SAC or SPA. This will result in the exclusion of cases where there is clearly no risk of an adverse effect.

Under Regulation 48 of the Habitats Regulations, the LLTNPA, as a competent authority, has a duty to:

- Determine whether or not the proposal is directly connected with or necessary to SAC/SPA management for conservation; and, if not;
- determine whether the proposal is likely to have a **significant effect** on the SAC/SPA either individually or in combination with any other plans or projects;
- If required, seek information from the applicant to enable the appropriate assessment to be undertaken;
- Consult with NatureScot and have regard to any representations they may make.

- If they consider it appropriate take the opinion of the general public.
- Make an **appropriate assessment** of the implications (of the proposal) for the SAC/SPA in view of that site's conservation objectives.
- In the light of the above and subject to regulation 49 the competent authority shall agree to the development only after having ascertained that it will not adversely affect the integrity of the SPA or SAC.
- In undertaking an appropriate assessment have regard to the manner in which a development is to be undertaken and any mitigation that can be imposed.

The first bullet should only be accepted where it is part of a fully assessed, and agreed, conservation management programme. This does not apply in the present case.

If the proposed development is not directly connected with or necessary to site conservation management, the competent authority must determine whether the proposal is likely to have a significant effect on a SPA or SAC. The decision on whether an appropriate assessment is necessary should be made on a precautionary basis.

An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which stated:-

“any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects”

In Sweetman and others v An Bord Pleanála (Case C-258/11) it was stated:-

“In order to establish whether a plan or project to which article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora applies has an adverse effect on the integrity of a site, it is necessary to determine whether that plan or project will have a negative effect on the constitutive elements of the site concerned, having regard to the reasons for which the site was designated and their associated conservation objectives. An effect which is permanent or long lasting must be regarded as an adverse one. In reaching such a determination, the precautionary principle will apply.”

We have adopted the reasoning in these cases for our assessment.

Appropriate Assessment

Habitats Regulation 48 (5) requires that *“in the light of the conclusions of the assessment, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site”*, in relation to its conservation objectives.

It is important to note that arriving at this conclusion requires being certain beyond reasonable scientific doubt.

CJEU Waddenzee case (C-127/02):

“Therefore, pursuant to Article 6(3) of the Habitats Directive, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned, in the light of the site's conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects (see, by analogy, Case C-236/01 Monsanto Agricoltura Italia and Others [2003] ECR I-8105, paragraphs 106 and 113).

Agency Role

In undertaking the Appropriate Assessment, the Habitats Regulations require the National Park Authority as competent authority to have regard to the advice received from NatureScot. The National Park Authority can also have regard where relevant to the opinions of other bodies where these are material. However, the responsibility for undertaking the Appropriate Assessment rests with the National Park Authority as competent authority and it is not bound to follow the advice of NatureScot. The National Park Authority must act fairly and rationally and for proper lawful purposes and if it does not follow NatureScot's advice, provide reasons for not following NatureScot's advice.

Background Information on the Trossachs Woods Special Area of Conservation

- Name of European site: **Trossachs Woods Special Area of Conservation.**

Annex I habitats that are a primary reason for selection of this site

- 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles**

This complex of ancient, semi-natural woodland sites is one of the largest and most diverse in central Scotland, and represents **old sessile oak woods** within the South-west Highlands Atlantic bryophyte zone. The woodland is largely dominated by sessile oak *Quercus petraea* with downy birch *Betula pubescens* on acid soils. Within localised pockets, nutrient enrichment occurs, giving rise to ash *Fraxinus excelsior*, and where groundwater flushing occurs alder *Alnus glutinosa* dominates with ash and hazel *Corylus avellana*. The islands within Loch Katrine support ungrazed tree and shrub communities including juniper *Juniperus communis*. The ground flora of both sites in the complex is rich and the complex is notable for the presence of *Bazzania trilobata*, a liverwort typical of more western oceanic oakwoods.

Site Type: Special Area of Conservation (SAC) Annex 1 habitat

Qualifying features

Qualifying feature	SCM assessed condition	SCM visit date	UK overall Conservation Status
Western acidic oak woodland [H91A0]	Unfavourable Declining	7 August 2012	Unfavourable-bad

Notes: Assessed condition refers to the condition of the SAC feature assessed at a site level as part of NatureScot's [Site Condition Monitoring \(SCM\)](#) programme.

Conservation status is the overall condition of the feature throughout its range within the UK as reported to the European Commission under Article 17 of the Habitats Directive in 2019

NatureScot has recently produced documents to help protect and manage European sites. Conservation Advice Packages have been produced for all terrestrial SAC's and these revise and updates the conservation objectives. Below are the specific Conservation objectives for the Trossachs Woodland SAC from the NatureScot conservation advice package.

The overall aim for each European site is to make an appropriate contribution to achieving favourable conservation status (FCS) across the UK for each of the relevant features.

Conservation Objectives for western acidic oak woodland (also known as old sessile oak woods with Ilex and Blechnum in the British Isles)

1. To ensure that the qualifying features of the SAC are in favourable condition and make an appropriate contribution to achieving favourable conservation status

Favourable Conservation Status (FCS) is considered at a European biogeographic level. When determining whether management measures may be required to ensure that the conservation objectives for this site are achieved, the focus should be on maintaining or restoring the contribution that this site makes to FCS. When carrying out appraisals of plans and projects against these conservation objectives, it is not necessary to understand the status of the feature in other SACs in this biogeographic region. The purpose of the appraisal should be to understand whether the integrity of the site (see objective 2) would be maintained. If this is the case then its contribution to FCS across the Atlantic Biogeographic Region will continue to be met. Further details on how these appraisals should be carried out in relation to maintaining site integrity is provided by objective 2 (including parts a, b and c). If broader information on the feature is available then it should be used to provide context to the site-based appraisal. Note that “appropriate” within this part of the conservation objectives is included to indicate that the contribution to FCS varies from site to site and feature to feature.

2. To ensure that the integrity of the SAC is restored by meeting objectives 2a, 2b and 2c

The aim at this SAC is to restore the western acidic oak woods habitat to favourable condition, as a contribution to wider conservation status of the habitat. Therefore any impacts to the objectives shown in 2a, 2b, or 2c below must not persist where they prevent the achievement of this overall aim. When carrying out appraisals of plans or projects, the focus should be on restoring site integrity, specifically by meeting the objectives outlined in 2a, 2b and 2c. If these are met then site integrity will be restored. Note that not all of these will be relevant for every activity being considered. Any impacts on the objectives shown in 2a, 2b or 2c below must not persist so that they prevent the restoration of site integrity. Temporary impacts on these objectives resulting from plans or projects can only be permitted where they do not prevent the ability of a feature to recover and there is certainty that the features will be able to quickly recover. This objective recognises that the qualifying habitat is exposed to a wide range of drivers of change. Some of these are natural and are not a direct result of human influences. Such changes in the habitat’s extent, distribution or condition within the site which are brought about by natural processes, directly or indirectly, are normally considered compatible with the site’s conservation objectives. An assessment of whether a change is natural or anthropogenic, or a combination of both, will need to be looked at on a case by case basis.

2a. Maintain the extent and distribution of the habitat within the site

The extent of the western acidic oak woodland feature, taken from the Standard Data Form, has been estimated at 232.5 ha. This should be maintained or allowed to increase through natural regeneration into adjacent open areas; there should be no measurable net reduction in the extent of the habitat and its distribution throughout the site. The woodland is made up of a mosaic of woodland habitat types including wet woodland, possible wood pasture, upland ash woodland, scrub and open spaces. These habitats are closely associated with the oak woodland and are considered in interdependent part of the qualifying habitat. Opportunities should be taken to enhance these habitats where possible. There are large open areas within the site boundary, these can be part of the qualifying feature and support glade/clearing specific species. If open spaces are expanding, or are the result of high herbivore densities, it may be appropriate to expand woodland into some of the open spaces. There are opportunities for an increase in the extent of qualifying habitat through clearance of non-native conifer plantation surrounding the SAC. Bracken

and rhododendron suppress tree regeneration and out-compete other shrubs and ground flora. The extent of oak woodland habitat can be increased by reducing bracken cover and removing rhododendron. There should be no loss or fragmentation of qualifying habitat. Herbivore impacts and rhododendron are the main long-term threats to the extent and distribution of the habitat.

2b. Restore the structure, function and supporting processes of the habitat

Woodlands are extremely complex ecosystems, and in order to restore and enhance the structure, function and processes supporting the habitat the key elements that should be in place include:

- Mixed age classes of trees, maintenance of canopy cover (or expansion into areas where trees would be expected to be present, deadwood/fallen trees, understorey, ground flora & epiphytic plants. Younger age class trees are rare on the site, due to long term grazing pressure.
- Large, long-lived trees of the species characteristic for this site, e.g. oak, birch, hazel ash, rowan. The next generation of these are not regenerating on the site and this needs to be addressed before the current cohort of mature trees die.
- The presence of appropriate ground flora and shrub communities for soil conditions and altitude over the whole site, including palatable species. Palatable shrubs and palatable ground flora species are not found in the abundance that would be expected for this habitat type. This is due to long term grazing pressure.
- Herbivore impacts that are low on average, to allow regeneration of trees and understory/ground layer species. Within the overall low impacts, there needs to be some variation across the site, to provide a variety of niches for dependant species, especially the nationally important assemblages of lichens and bryophytes. Low levels of herbivory, rather than exclusion of herbivores provide ecologically important clearings, ground disturbance and structural variation
- Levels of humidity, provided by canopy cover, watercourses and areas of wet ground, that are capable of supporting the characteristic lichens and bryophytes which require these conditions. It is not known whether bryophytes and lichens are present in their typical diversity and abundance for this type of site. Reduced shrub layer and increasingly sparse canopy cover caused by overgrazing could compromise the conditions required by some moss and lichen species.
- Open-grown mature trees that support the lichen species requiring more light and lower humidity. It is not known how these lichen species are faring on the site, as they are not surveyed.
- Absence of non-native, invasive species e.g. Rhododendron and reduction in the cover of bracken, where it is thought to be preventing tree regeneration.

2c. Restore the distribution and viability of typical species of the habitat

The habitat corresponds broadly to the western oakwoods, described in previous accounts of UK woodlands, the following NVC types correspond to 'western acidic oak woodland' and are present at Trossachs Woods:

- W11 *Quercus petraea* – *Betula pubescens* – *Oxalis acetosella* woodland
- W17 *Quercus petraea* – *Betula pubescens* – *Dicranum majus* woodland

The following woodland communities are also present and are considered a closely associated and interdependent part of the overall ecosystem (and therefore qualifying habitat):

- W7 *Alnus glutinosa* – *Fraxinus excelsior* - *Lysimachia nemorum* flush woodland
- W9 *Fraxinus excelsior* – *Sorbus aucuparia* - *Mercurialis perennis* woodland
- W4 *Betula pubescens* – *Molinia caerulea* flush woodland

The key tree species found in this habitat are oak (*Quercus robur* and/or *Q. petraea*) and birch (*Betula pendula* and/or *B. pubescens*). There is significant variation between individual stands whether they are dominated by oak or birch. Holly and hazel are also important components of the habitat.

The ground flora is mostly blaeberry and heather, with bracken and grasses, where the soils are deeper and less acidic. Parts of the Craigmore parcel contain unstable scree slopes. More fertile areas have ash trees, with a rich understorey, including dog's mercury, broad buckler fern, wild garlic and wood sedge. Where ground water flushing occurs, alder dominates with sharp-flowered rush, marsh violet and yellow pimpernel. Western acidic oak woodland supports an important component of Britain's oceanic bryophyte flora and lichen mycota.

The local climate and central Scotland location, means that these woodlands host an interesting mixture of western and eastern (more continental) bryophyte and lichen species. The distribution and viability of these assemblages should be maintained, with particular focus on nationally rare, scarce and/or threatened species and on assemblages that indicate a long period of ecological continuity. The conditions required to maintain characteristic bryophytes and lichens are: sheltered, but open old-growth conditions, where the impact of shade is balanced against the need for continued woodland regeneration.

The flush and wet woodland habitats are particularly vulnerable to tramping impacts, so reducing herbivore impacts would benefit these areas. The health and diversity of the understory and ground vegetation would benefit from low, but varied grazing pressure across the site. As indicated in the previous section, palatable shrubs and ground flora species are not found in the abundance that would be expected for this habitat type, due to long-term grazing pressure. The sparse shrub layer also reduces habitats available for birds and invertebrates, so reducing herbivore impacts would help to restore the populations of typical oak woodland flora and fauna.

The fauna includes notable beetles, moths and hoverflies and birds, such as pied flycatcher, tree pipit and redstart. Jays are an important vector of acorns within the SAC as are squirrels. Red and roe deer graze the site, although are not protected interests of the SAC. A full list of species as provided within the Conservation Advice Package is in appendix 1.

The SAC is currently assessed by NatureScot in its Site Condition Monitoring Programme as being in unfavourable, declining condition. It is therefore more vulnerable and sensitive to impacts.

Description of proposal

The application 2020/0260/DET is for the formation of a new path, two viewing platforms and a tower. The new path will lead to the anecdotal location of a previous viewing tower, where it is proposed to have a new tower and two viewing platforms with associated boardwalks. It is said to be on the location of an old path and previous viewing tower that was frequented by tourists in the early 19th Century. This may be partly the case as there is some evidence of old benching into a bedrock outcrop on the upper sections near the proposed tower. However the lower section of the proposal is some metres to the east of where the old path may once have been. Other than the bedrock benching, there is no visible evidence of an old existing path or foundations of any buildings evident.

All of the site including the bedrock outcrop at the top of the crag is covered in a well-developed woodland ground flora with typical species such as heather, blaeberry, bluebells etc. present in abundance.

The applicant's "Path Reinstatement Proposal" document produced by A.C.T. Heritage Ltd shows clearly in its path survey sheets that there is no existing built path in place as no existing path features are shown, beyond a faint desire line of trampled vegetation. The photographs from the A.C.T. report appended as Annex 2 to this report show the conditions of the ground and vegetation prior to the submission of the planning application, again confirming the absence of any existing built path.

Additional detail is provided in the bill of quantities in the appendices of the A.C.T. document.

The path to be constructed will run for approximately 188m and consist of four sections:

- circa. 35 m of stone pitching
- circa 72m using a mix of aggregate surfaced path to 'float' on a geotextile membrane, and stone pitching
- circa 20 m of board walk over a large natural flush
- circa 61 m of aggregate and stone pitching to reach the tower location.

In total there will be 93 m of aggregate path, 75 m of pitching, 45m of open side drain up to 500m wide by 300mm deep, 15 anchor bars, 15 water bars, 41 square metres of revetment wall, 2 pipe culverts,. It will utilise and estimated 60 tonnes of aggregates and 75 tonnes of block building stone.

Significance Test for Planning Application 2020/0260/DET Qualifying Features of the SAC

The Qualifying Interest of the Trossachs Woods Special Area of Conservation is Western acidic oak woodland.

The Conservation Objectives for the Trossachs Woods SAC are detailed in the background information above.

Significance Test

The proposal states it is for reinstatement of an old historic path which will involve re-routing the old path which originally led to the Rhoderick Dhu viewpoint situated around a rock outcrop to the west of the pier facility. However with the exception of some benching in bedrock outcrops on the upper section, we found no physical evidence of an old path along the proposed route or any foundations of an old watch tower. The scheme includes the design and installation of a new timber lookout tower, two additional viewing areas and associated board walks. A stone pitching and aggregate or similar material path will be constructed to lead board walks and to the viewing tower and platforms.

The scheme involves Modern Hand Build Upland Path Construction Techniques. The path will be split into four sections. Sections one and two will involve stone pitching with section 2 also having aggregate surface on a geotextile surface to allow drainage. Additional drainage features including water bars and possibly culverts will be installed to manage water runoff. Section 3 will be boardwalk to raise the path above the natural flush with section four rising to the Rhoderick Dhu viewpoint with a geotextile track with aggregate. There will be passing places to allow Covid 19 two metre distancing and bank

and slope stabilisation and material will be brought into site for the path, boardwalk, watch tower and viewing platforms.

The path will go through the SAC within qualifying habitat of western acidic oak woodland. The tower, viewing platform and associated boardwalks will be within a more open area where the tree canopy is not closed and which is part of the larger woodland mosaic, and which, as noted in the conservation objectives above, forms an interdependent part of the qualifying habitat.

As a consequence, the proposal is likely to have a significant effect on the qualifying interests of the SAC and probable adverse effects on its integrity. An appropriate assessment is therefore required.

Appropriate Assessment for Planning Application 2020/0260/DET
 Qualifying Features of the SAC

<p>Elements of project likely to give rise to significant effects on the site.</p>	<ul style="list-style-type: none"> • Impact on the Western acidic oak woodland flora from the construction works and permanent loss of habitat from the footpath, passing areas and drainage works such as stone water bars and culverts. • Impact on the mosaic of woodland types that are important components of the structure and function of the habitat type from the viewing towers and watch tower development footprint. • The proposal is at the edge of the existing Loch Katrine car park and is intended to be a popular visitor attraction adjacent to an area that is already subject to relatively high visitor pressure. Damage to ground flora and tree roots caused by trampling from visitors accessing the new path is likely to occur, resulting in disturbance to woodland vegetation. • Ongoing maintenance activities including vegetation management in and around the tower, platforms, path and surrounding areas will be required, resulting in further disturbance to woodland vegetation. • Damage to tree root systems caused by ground level changes, soil compaction and changes in soil moisture content. • Alteration of flush and wet woodland habitat by drainage works for path and entrance to watch tower and viewing platforms. • Permanent shading under the tower, platforms and connecting board walks will result in permanent loss of woodland vegetation beneath them.
	<p>Extent of habitat on site</p> <p>The development lies within the SAC. There would be a permanent loss of woodland ground flora, which is an integral part of the overall woodland habitat, as a result of the new permanent path structure, viewing towers and associated boardwalks. There are also passing places proposed which will result in further habitat loss and various works including side drains, culverts and water bars to manage drainage around the new path that will directly affect the habitat through further removal and local changes in the hydrology of the groundwater.</p> <p>The applicants propose to remove 3 trees- one rowan and two ash trees both suffering from ash die back- but some damage to roots and root plates and resultant losses of other individual trees cannot be ruled out, even using a hand built construction technique as there are mature trees close to the proposed path. Additional works would be required for stone revetments, side ditches and slope stabilisation which could also affect roots and hydrology for ground flora.</p>

There may be accidental damage with some visitors straying from the constructed path and which could cause localised trampling of ground flora and impacts on trees and roots or result in additional management requirements such as further safety fencing. The extent of this area of disturbance can't be quantified from the details currently available but could amount to an additional area along the length of the development itself.

As noted in the conservation objectives for the site, the flush and wet woodland habitats are particularly vulnerable to trampling impacts.

Good health and safety management of the site will require ongoing inspection of adjacent trees and require preventative tree surgery or felling to remove any overhanging limbs or adjacent trees that in future become dangerous to users of the path.

Practical experience of path management shows that vegetation clearance of the path will be required seasonally and the integrity of the path itself, being so steep, will be expected to require at least annual maintenance.

Watch tower and viewing platforms footprint

The watch tower, viewing platforms and interconnecting board walk and steps would not affect hydrology but would lead to the loss of woodland ground flora under them due to permanent shading preventing photosynthesis.

These structures although in some places suspended above the ground, are for a large part of their extent, positioned on or close to ground level and will create deep permanent shade beneath them, resulting in permanent loss of woodland ground flora, which is an integral part of the qualifying habitat. However the lower level viewing platform will result in loss of habitat and there would be a loss of approximately 85 m square of habitat from the development footprint at this area (i.e. the watch tower, viewing platforms, connecting board walk and steps). The construction process and maintenance are likely to cause impacts over an additional surrounding area.

Path footprint

282 m square of the qualifying woodland ground flora which forms a part of the woodland habitat will be permanently destroyed by the footprint of the main path line. This figure has been calculated on a very conservative basis only taking into account a width of 1.5m for the walking surface of the path along its 188m length. It does not take account of additional passing places to provide breakout areas for passing users or foundations to either side. Drainage ditches and revetment walls necessary for the path works to stabilise slopes and manage rainfall and ground water would further increase the footprint and the impacts on areas of flush woodland (W7 NVC).

Although some sections are intended to be a 'floating' path design (i.e. not keyed into the harder substrata), the heavy mass of stone

pressing down on the soils below would affect the hydrology of the soil beneath the path. Construction of the stone pitching, revetment walls, anchor bars, water bars, culverts and side drains detailed in the path specification and bill of quantities would all necessitate digging down into the underlying soils to key the boulders in place and to form drainage channels. An estimated 60 tonnes of aggregates and 75 tonnes of block building stone would be used in forming the path.

In total the built footprint of the access path, the tower, board walks, steps and viewing platforms amounts to at least 367 square metres and this extent of ground flora as a part of the qualifying habitat will be lost.

Construction impacts and long term maintenance

Physical disturbance and damage during the construction phase would result in an unknown element of change to the habitat. Regular maintenance activities will impact a larger but unquantified area round the new infrastructure of the tower and platforms at Rhoderick Dhu and at the edges of the new track and boardwalks. The boardwalks proposed will retain hydrology if located sensitively but would result on loss of habitat underneath due to permanent shading. There will also be laying down areas for construction purposes and the introduction of aggregate and whindust within the SAC.

Distribution of the habitat within the site

In addition to the direct and permanent loss as a result of the path itself, the ground flora around the path and watchtower area is likely to suffer damage to its structure, species composition and vegetation cover during the construction process and in subsequent maintenance operations for the path, board walk, tower and viewing platforms.

There are also likely to be some ongoing impacts from visitor trampling. To prevent this, there are as yet undetailed proposals to fence off areas of woodland as a possible addition to prevent access into the larger wooded area so account has been taken off development footprint and immediately surrounding habitat only.

The construction of fences for health and safety requirements due to steep drops and to prevent visitors straying are expected to be required as a consequence of the new path. If needed, these will lead to further disturbance and minor losses to woodland ground flora.

Structure and function of the habitat

The habitat is already in unfavourable declining condition, due to high herbivore impacts (the main negative pressure) and invasive rhododendron. In particular the site requires the restoration of the shrub layer and age structure of the woodland, through reduction on herbivore impacts and increased regeneration of woody species.

Access from Loch Katrine car park has now been created as the habitat at the edge of the woodland has been strimmed and is now

encouraging visitors into the woodland. (August 2021). This strimmed area is within poorer quality qualifying habitat but which nonetheless contributes to the overall structure of the woodland.

Overall, the proposals will result in further decline in site condition in this area. The path and towers development, along with visitor trampling associated with a significant increase in footfall within the designated site, will cause a permanent loss and ongoing impact on woodland ground flora and prevent the natural succession and tree regeneration in the immediate area

The watch tower area and part of the new track is within an area classified in the NVC as pine woodland. However this forms a part of the mosaic that comprises the qualifying habitat so is therefore part of the structure and function of the woodland as a whole.

Processes supporting the habitat

As well as impacts on tree regeneration there may be localised impacts on the hydrology of the site, due to the installation of water bars and drains. Boardwalk is proposed over a flush and sections of path with aggregate will have geotextile underneath to allow water flow. However, water bars and side drains will inevitably cause some impacts to the soil and to flush communities. The boulders they are constructed from need to be bedded into the underlying soil to remain in place and the weight of the aggregate will compress the soil below.

Distribution of typical species and viability of typical species as components of the habitat

The disturbance effects from visitors and ongoing maintenance activities are expected to extend around the area of the proposal. The terrain is rugged, wet in some places and with dense vegetation, so this is likely to be largely confined to the immediate proximity of the development

The line of the path and location of the viewing platforms and watch tower will lead to localised losses and changes to the distribution of typical species on site. There is current damage and trampling in small areas of W4 and W11 at the start of the new path but little evidence of visitor presence at the tower & viewing platforms area.

All existing, healthy native trees will be retained at the construction phase, provided that life-threatening root damage can be avoided and that access for construction can be accomplished without tree removal

No Significant disturbance of typical species of the habitat

A significant permanent increase in disturbance in a currently undisturbed area will result from this development.

	<p>Damage to tree root systems can be caused by ground level changes; soil compaction and changes in soil moisture content. This could result in some indirect tree loss.</p>
<p>In combination effects</p>	<p>2016/0378/DET which was for a change of land for a camp site, 8 holiday pods, erection of shower building and formation of associated car parking and access paths. Additionally, 2019/0327/DET added an additional two holiday pods. The area contained poor qualifying habitat which although within the SAC boundary was the site of an old quarry. It was considered that it would not recover due to the number of people visiting and using the site for camping and recreation over many years. Mitigation as part of development included protection of the existing good quality habitat of the SAC. Adverse Effects on the integrity of the Trossachs Woods were therefore ruled out.</p> <p>2020/0251/DET. There is currently an application for extension to existing carpark at two locations and erection of extension to toilet blocks. One car park is within the SAC but is actually an area of hard standing and rush pasture, which is not qualifying habitat. The other car park is beside the existing Scottish Water offices and is 20m from the SAC boundary. It was concluded that there would be no net loss of woodland and woodland flora and that landscaping would increase habitat connectivity and create a buffer to the SAC.</p>
<p>Describe what mitigation measures are to be introduced to avoid any adverse effects on the integrity of the site.</p>	<p>The new track will be restricted to an average of 1.5 metres as the width of the path surface, though this will entail a wider footprint to accommodate foundations and drainage, as well as construction and ongoing maintenance operations. Turf management will be undertaken to retain habitat where possible.</p> <p>The scheme involves Modern Hand Build Upland Path Construction Techniques to minimise impacts. This includes hand digging of the path and root protection.</p> <p>Where the track is aggregate, this will be underlain with geotextile to allow water flow (floating track) underneath aggregate material and whin dust surfacing;</p> <p>There will be approximately 20m of board walk over a large natural flush to protect water flow (hydrology).</p> <p>The steel substructure for the tower, adjoining decks and bridges will be pre-fabricated. It is also anticipated the materials will be airlifted to the site by helicopter.</p> <p>Some of the connecting board walk between the tower and platforms will be bridges raised to varying extents above the uneven ground level.</p> <p>Fencing off areas of woodland outwith the proposed path has been proposed as a possible addition to the works described in the application, in order to concentrate the footfall onto the new path and immediately surrounding areas. Replacing some of the stone-build path with additional sections of board walk has been suggested by</p>

	<p>NatureScot. There are no details of this mitigation or its construction methods. If it was close to or on the ground it would still lead to loss of ground flora.</p> <p>In summary, It is therefore not considered that these mitigation measures will prevent adverse effects on the integrity of the SAC as explained below. There will be a permanent loss of habitat despite these measures.</p>
<p>Conservation objectives for SAC</p>	<ol style="list-style-type: none"> 1. To ensure that the qualifying features of the SAC are in favourable condition and make an appropriate contribution to achieving favourable conservation status. 2. To ensure that the integrity of the SAC is restored by meeting objectives 2a,2b and 2c <p>2a. Maintain the extent and distribution of the habitat within the site</p> <p>2b Restore the structure, function and supporting processes of the habitat and</p> <p>2c Restore the distribution and viability of typical species of the habitat.</p> <p>To explain the purpose of these objectives NatureScot has produced guidance on Habitat Regulations and this deals with the issue of <i>maintain</i> or <i>restore</i> which is related to site integrity. To quote their guidance (which can be found here):</p> <p><i>“In addition to the feature -specific objectives (2a, b and c), there are overarching objectives for the whole SAC. Objective 2 is related to site integrity. In the CAP documents, if any feature of the SAC is in unfavourable condition, the integrity of the site is deemed to be compromised and the overarching objective is therefore to restore site integrity “</i></p>
<p>NatureScot advice</p>	<p>Under Reg 48(3) of the Habitat Regulations the National Park Authority must consult with Nature Scot and have regard to any representations made.</p> <p>Following a site visit in October 2020 by NatureScot staff, on 22 February 2021 NatureScot responded to the LLTNPA consultation on this development. This response is below.</p> <p><i>“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.</i></p> <p><i>NatureScot Position</i></p> <p><i>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.</i></p> <p><i>NatureScot Comments</i></p>

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 Pleanála (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."

The same NatureScot letter includes annex 1 which refers to the *Peter Sweetman v An Bord Pleanála (case C-258/11)* where it was discussed what is meant by an adverse effect on site integrity in relation to a priority habitat. This is below.

"Annex One - Peter Sweetman v An Bord Pleanála (Case C-258/11)

A decision of the Court of Justice of the European Union in *Peter Sweetman v An Bord Pleanála (Case C-258/11)* discussed what is meant by an adverse effect 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.”

The above is consistent with this assessment by NPA ecological officers.

Following a further site visit in April 2021, NatureScot updated their original advice dated 22 July 2021 and have removed their objection. NatureScot has provided the following explanation:-

“In summary, it is our view a Habitats Regulations Appraisal could conclude that there will be no adverse effect on the integrity of the European site. We therefore do not object to this proposal.

We have re-visited the site with both the applicant, their agents and the Park’s planners and ecologists. This has given us the opportunity to better understand the proposal and the nature of the potential impacts. On the basis of these on-site discussions and additional advice we have concluded that the proposal will not undermine the conservation objectives of the Trossachs Woods Special Area of Conservation (SAC).

Our advice is based on our view that the path and/or its construction will not result in any loss of extent of qualifying habitat (the key conservation objective). No functioning woodland habitat will be lost. The proposal will result in changes in the qualities of the habitat; some loss of structure and ground flora, in a very limited area within the protected area, but in our view these changes are de minimis in relation to the functioning of the woodland ecosystem within the overall site. Furthermore, we consider that a hand-built footpath could be constructed in such a way as to minimise the loss of ground flora and woodland function, by minimising impacts on both tree roots and the hydrology of the site. For example by incorporating a raised boardwalk for some sections of the path. We also note that no trees will be lost. We also believe that further impacts from people trampling the ground flora are unlikely to undermine conservation objectives due

to the proposed design of the watchtower and the wet and boggy nature of the ground adjacent to the path.

We have also concluded that disturbance to woodland mammals and birds is unlikely to be significant enough to undermine this conservation objective, a substantial part of the path route is close to the existing car park and the species already are disturbed. This car park, pre-dates the designation of the SAC and therefore part of the baseline condition. The remaining area which may be disturbed is very small and therefore any addition disturbance will be of very limited extent in relation to the overall site.

Response to NatureScot's latest position

We do not agree with Nature Scot's latest position.

In particular

NatureScot state that

"Our advice is based on our view that the path and/or its construction will not result in any loss of extent of qualifying habitat (the key conservation objective). No functioning woodland habitat will be lost."

Our Response- This is considered incorrect as the proposal will result in the permanent loss of a component part of the habitat type for which the site was designation.

NatureScot state that

"The proposal will result in changes in the qualities of the habitat; some loss of structure and ground flora, in a very limited area within the protected area, but in our view these changes are de minimis in relation to the functioning of the woodland ecosystem within the overall site."

Our Response- The basis for this is unclear considering NatureScot's statement that there will be no loss of the habitat type for which the site was designated.

We also disagree with the view above that the changes due to development will be "de minimis".

De minimis means so small or inconsequential as to not be worthy of attention. We do not consider that the changes or impacts can reasonably be categorised as de minimis. It is relevant in interpreting the scale of the potential impacts that Nature Scot adopted the Peter Sweetman v An Bord Pleanála (Case C-258/11) in their first advice letter. In this case the CJEU ruled that a proposal will adversely affect the integrity of a site if it can lead to lasting and irreparable loss of even a part of a priority natural habitat type for which the site was designated. We stand by this Court ruling and the proposal will result in permanent habitat loss of qualifying habitat and will thus have an adverse effect on its integrity.

NatureScot state that:

“Furthermore, we consider that a hand-built footpath could be constructed in such a way as to minimise the loss of ground flora and woodland function, by minimising impacts on both tree roots and the hydrology of the site. For example by incorporating a raised boardwalk for some sections of the path. We also note that no trees will be lost. We also believe that further impacts from people trampling the ground flora are unlikely to undermine conservation objectives due to the proposed design of the watchtower and the wet and boggy nature of the ground adjacent to the path.”

Our Response- NatureScot base their assessment on possible mitigation that could be applied through construction techniques and the use of further board walks. Whilst mitigation may be relevant there is no information to establish that such mitigation will materially reduce or remove the adverse impacts. There are no details of this mitigation or its construction methods. If additional board walk was close to or on the ground it would still lead to loss of ground flora.

Following CJEU in Waddenzee it has been held that in deciding whether a site will not be adversely affected requires that there be no reasonable scientific doubt that such effects would occur. It is very difficult to see on what evidence NatureScot’s position is now based. Reference is also made to “people trampling” but it must be understood that the proposal is being promoted as a popular visitor attraction in close proximity to a public car park. It is stated that “no trees will be lost” but it is the woodland (including the trees) that forms the protected habitat of which the trees are a part.

NatureScot state that :

We have also concluded that disturbance to woodland mammals and birds is unlikely to be significant enough to undermine this conservation objective, a substantial part of the path route is close to the existing car park and the species already are disturbed. This car park, pre-dates the designation of the SAC and therefore part of the baseline condition. The remaining area which may be disturbed is very small and therefore any addition disturbance will be of very limited extent in relation to the overall site.”

Our Response- woodland mammals and birds although important are not the primary reason for the selection of this site as a SAC, though they are species typical of the habitat. It was designated for its western acidic oak woodland and that includes specifically the ground flora which will be subjected to ongoing physical disturbance in addition to the direct losses. Given NatureScot’s earlier reference to *Sweetman* that establishes that even small losses can affect site integrity, it is difficult to see on what basis they are (in the last sentence) making a “relative site area” conclusion.

<p>Forest and Land Scotland Advice</p>	<p>Forest and Land Scotland</p> <p>We consider that the response of Forest and Land Scotland on the proposal provides further relevant information to inform an appropriate assessment. They have a high degree of expertise in woodland ecology and management of woodlands and recreation. Their advice aligns closely with our own that there will be an adverse effect on the integrity of the Trossachs Woods SAC.</p> <p>Forestry and Land Scotland (FLS) has written to the National Park Authority concerning the planning application in a letter dated 2 August 2021 and some key points from their response are below.</p> <p>“Based on current information provided, proposed development of a new path and watchtower at Craig Leven (also referred to as Roderick Dhu), we have significant concerns about the proposals and feel it would be contrary to our position managing both national and European designated sites and priority habitat. The proposal is within the Ben A’an and Brenachoile SSSI and the Trossachs Woods SAC, both currently listed as being ‘unfavourable declining’ condition. From the maps provided, the proposal is also partially within land currently managed by FLS through a long term lease from Scottish Water. This is a remote area, difficult to access, that is not currently visited by tourists or anyone generally beyond FLS staff. Our database shows that the woodland here is also considered to be Ancient Semi-natural (ASNW) and is listed in the native woodland survey for Scotland (NWSS), both indicating upland woodland, which is also priority habitat.</p> <p>Our concerns around this development are centred on:</p> <ul style="list-style-type: none"> • Construction phase impacts, both direct and indirect, which we expect to be larger than indicated in the planning application. • Operational phase impacts, both direct and indirect, that could increase adverse effects on habitats, as well as interfere with our own management of the site and neighbouring areas, which is subject to specific objectives and KPIs, and aims to return the site to favourable condition. <p>The SAC is currently in unfavourable condition due to browsing pressure from wild deer and feral goats. FLS also express concerns that that the presence of the path will make the management of these animals harder to accomplish on this area, thereby making it harder to bring the SAC back into favourable condition.</p>
<p>Conclusion</p>	<p>Although the existing tree canopy seems likely to be retained and losses of existing trees are likely to be minimal, there will be permanent loss of woodland ground flora which is an integral component of the woodland habitat which is the primary reason for selection of this site as an SAC.</p> <p>There will losses and ongoing disturbance of woodland ground flora and changes to water flow from the new track, passing places, stone path edging, drainage ditches, cross drains, culverts, stone pitching on slope and the board walks, steps, tower and platforms at the upper viewing area, as well as impacts from visitor footfall and ongoing</p>

	<p>physical disturbance on at least an annual basis for maintenance and inspection.</p> <p>We conclude that there will be an adverse effect on the integrity of the Trossachs Woods SAC. The integrity of the site can be defined as the site's ecological structure and functions.</p> <p>Following <i>Sweetman</i> above it is considered that the proposal if consented (even with mitigation applied) would result in lasting and irreparable loss even although the effects may be localised.</p> <p>Under Reg 48(5) of the Habitat Regulations</p> <p>“the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [SPA or SAC]”</p> <p>We therefore advise in our opinion that should the proposal be consented then there will be an adverse effect on the integrity of the Trossachs Woods SAC and that the National Park Authority are prohibited from giving that consent unless they are of the opinion under Reg 49 that</p> <ul style="list-style-type: none"> • there are no alternatives and • the proposal must be carried out for imperative reasons of overriding public interest. <p>Where Reg 49 is engaged the opinion of the Scottish Ministers must be sought in advance.</p>
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Appendix 1 of Appropriate Assessment

Typical species are:-

Q. petraea sessile oak
Betula pubescens downy birch
B. pendula silver birch (Ben A'an parcel)
Sorbus aucuparia rowan
Lonicera periclymenum common honeysuckle
Pteridium aquilinum bracken
Rubus fruticosus aggr. blackberry species
Galium saxatile heath bedstraw
Vaccinium myrtillus blaeberry
Ilex aquifolium holly
Hyacinthoides non-scripta bluebell
Oxalis acetosella wood-sorrel
Potentilla erecta common tormentil
Viola riviniana dog-violet
Carex remota remote sedge
Holcus mollis creeping soft-grass
Agrostis capillaris common bent
Anthoxanthum odoratum sweet vernal grass
Deschampsia flexuosa wavy hair-grass

Hylocomium splendens glittering wood-moss
Pseudoscleropodium purum neat feather-moss
Rhytidiadelphus squarrosus springy turf-moss
R. loreus little shaggy-moss
Thuidium tamariscinum common tamarisk-moss
Dicranum majus greater fork-moss
Plagiothecium undulatum waved silk-moss
Pleurozium schreberi red-stemmed feather-moss
Polytrichum formosum bank haircap
Menegazzia terebrata lichen
Biatora chrysantha lichen
Pseudevernia furfuracea lichen

Rare/notable species are:-

Adelanthus decipiens deceptive featherwort
Sematophyllum micans sparkling signal-moss
Boloria Euphrosyne pearl bordered fritillary
Juniper communis juniper (on islands)
Ficedula hypoleuca pied flycatcher
Lyrurus tetrix black grouse
Anthus trivialis tree pipit
Phoenicurus phoenicurus redstart