

SUMMARY OF THE CASE FOR THE HIGHLAND COUNCIL

CHAPTER 11

The Planning Process and Scheduled Monument Consent

11.1 **On behalf of The Highland Council, Mr Hepburn stated** that, given the clear overlap in the consideration of both the planning and SMC processes, it was the council's contention that the planning decision is directly pertinent to the consideration of SMC; that the linkage in the decisions corresponds with established government guidance; that the decision was taken in an open and transparent manner through well-established public procedures; and that the Scottish Ministers should give these matters due weight in their judgement as to whether to grant or refuse SMC.

11.2 Mr Hepburn rehearsed the process which attached to the council's consideration of the application for planning permission and its resolution to grant planning permission subject to conditions and legal agreement. It was stated that the draft S.75 Agreement (CT70) provides for money to be irrevocably mandated to a third party and drawn down in respect of each phase rather than for the more usual bond. If the council had to call upon that mandated money it would only be intended to cover the completion of the phase of work which has not been completed. Agreement had also been reached on arrangements for visitor access, subject to the formal completion of the S.75 Agreement. While it makes provision relating to a Local Liaison Group the council cannot guarantee its continued existence.

11.3 It was stated that both the guidance available and the position in practice of HS during the processing of the planning application clearly implied that linkages exist between the planning process and SMC. *NPPG 5*, in paragraphs 7, 11 and 12 clearly links the planning functions of the Secretary of State (now Scottish Ministers) with scheduled monument matters.

11.4 Mr Hepburn was of the view that the Category A status would afford considerable protection to an descheduled monument. Any future application for Listed Building Consent (LBC) would inevitably require to take the archaeology into account in any assessment on the effects of the works. The council clearly disagrees that the use as a house and the access are inappropriate.

11.5 Archaeological factors are clearly a material consideration. Albeit that the planning process involves other material considerations, the formal determination of archaeological issues by the planning authority cannot be discounted by the findings of this inquiry and the reporting of proceedings to the Scottish Ministers.

11.6 Paragraph 28 of *NPPG 5* notes that it is not usually necessary to duplicate controls through the use of planning conditions, however it is a matter of common sense and good practice to co-ordinate the details of controls in respective provisions. It is clear from the conditions proposed by HS, that there will in practice be a requirement to liaise as the planning details may require alteration in the face of any details approved through SMC. *NPPG 18* also supports the council's position. Notwithstanding the SMC designation, Castle Tioram is a Grade A Listed Building. There appears to be little point in sustaining

such a joint designation if the listing is not taken into account in the policy framework of *NPPG 18*.

11.7 Mr Hepburn stated that neither the council's archaeologist nor its conservation architect supported the conservation proposals by applicant, principally on the basis that the effect of the works on cultural significance outweighed any advantages that the scheme would derive. Clearly this is also a key issue for the current inquiry. He concluded, on balance, that the case for archaeological caution and minimum intervention was neither so clearly defined nor so convincing as to justify a refusal of planning permission. He drew attention to current developments to build a visitor centre at Urquhart Castle and took the view that a comparison sits uneasily alongside the present debate.

11.8 The witness drew attention to an exchange of letters which took place between the council's local plan staff and HS concerning the definition of 'restoration' as used in local plan policy and the definition in the *Burra Charter*. While local plan staff accepted the Burra definition, the witness, in reporting on the application for planning permission, was concerned that any plain reading of the local plan text would place the meaning of 'restoration' on a much wider basis.

11.9 It was stated that the Planning Committee took the view that it was valuable to establish, at no public expense, the long term conservation of an important monument which in itself would have an ongoing cultural significance of continuing historical, social and economic benefit to the area; and that it was unconvinced of the credibility of maintaining the structure as a 'ruin', and of the volition and ability of others, either individuals, public or conservation bodies to take realistic and effective action.

11.10 **Councillor Foxley stated** that Castle Tioram is extremely important from a regional, national and European perspective as a major stronghold of Clan Ranald for 700 years; as an important component of the Lordship of the Isles; and as one of the important epicentres of the Gaelic language and culture. It is an exceptionally important castle which should be conserved and maintained for the nation. Tioram was a major seat of the lordship and Edinburgh represents the seat of the other half of Scottish power. In today's Scotland they should have equal status.

11.11 It was stated that, in 1988, Councillor Foxley worked with Acharacle Community Council to expand and extend the car park because of random, and at times intense parking along the road frontage opposite the castle. The low profile car park was created for up to 25 cars and the public road to the north was unadopted and closed off.

11.12 In 1987 the council made a request to the Clan Donald Lands Trust which was planning to expanding its activities. A response in 1988 stated that it was "fully committed" and was unable to help with funding for improvements with Castle Tioram and Mingarry Castle.

11.13 In 1990 the council wrote to Wiseman MacDonald in California asking if he would permit conservation work to be carried out to the castle. It was also suggested, together with District Councillor Ian Thornber, that some form of management agreement be entered into with the Scottish Development Department whereby it would maintain the castle

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and provide safer access. A response in December 1990 indicated an interest in reviewing background reports and any proposal.

11.14 In 1991 Councillor Foxley had written to the Historic Buildings and Monuments Division of the Scottish Development Department asking it to carry out a survey report on Castle Tioram to allow the council to identify the work that was required. This was received in 1993.

11.15 In 1996 the council applied to the World Monuments Fund to put Tioram on the International Reserve List. In 1997 a World Monuments Fund application was made to secure the existing structure on the principle of minimum intervention. This included:

- Preparing an overall conservation management plan;
- Re-pointing and securing the wall heads from water penetration;
- Removing trees and vegetation causing damage to the fabric of the building;
- Providing an unobtrusive information/interpretative panel; and
- Providing public safety measures such as a defined footpath with bearing handrails etc.

11.16 In April 1997 a bid was made by HC to Europe for a Lochaber Castles Project to secure funding for Castle Tioram and Mingarry, Ardtornish, Kinlochaline.

11.17 It was stated that the castle was put on the market in 1997. Following a meeting called by the councillor the Clan Ranald Castle Tioram Trust was formed, the intention being to apply for a grant from HS, to make a Lottery bid and to appeal to overseas Clan Donald Associations. An invitation was extended to Wiseman MacDonald to visit Castle Tioram. This was initially agreed, but a closing date was set for 28 August 1997. A web-site had been set up and a public appeal launched in August 1997. The CCTT was established with Clan Ranald, overseas and UK Clan Ranald Associations, local landowners and the community council, historians and archaeologists, and a wider membership. The total sum raised by 25 August 1997 was £163,000 in donations, pledges and a bid was offered of £107,777. The Trust's view at the time was to conserve 'as is' (ie the consolidation option). It was confirmed that the castle had been bought by the applicant in September 1997.

11.18 In May 1998 the report by Arup Scotland raising the safety issues with HC was submitted and a Dangerous Building Notice issued.

11.19 Councillor Foxley stated that he was dismayed and disappointed that HS did not attend the Planning Committee site visit and hearing in June 2000 to state its case. The site visit also revealed a significant collapse of the outer northwest curtain wall. These two factors convinced him to support the planning application with additional conditions viz:

- Full access to the island throughout the building works apart from areas restricted for health and safety reasons.
- Improved access to the castle.
- The creation of a local liaison committee comprising of HC, Acharacle Community Council, Glenuig Community Association, ATA, historians, community representatives, Dorlin Estate and Anta Estates.

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11.20 In answer to questions, Councillor Foxley agreed that occupation of the castle was not a necessity. It was stated that access to the castle had been agreed as twenty-four open days with an additional twenty-five local days. The councillor stated that he still wished to see access to the castle further increased and the definition of 'local' extended to cover West Lochaber. He would prefer to see access spread beyond the shoulder months. His was a minority view in the liaison committee.

11.21 Councillor Foxley agreed that no formal proposals had been submitted by the council to HS so that it could consider grant.

11.22 It was stated in conclusion that the castle should be fully repaired with the walls rebuilt to wall head height and the roofs reinstated; that majority local opinion supports rebuilding the castle; and that the applicant has a credible proposal which the witness supported, subject to conditions, at the Planning Committee site visit. If consent is not to be granted, HS must fully detail its proposals to conserve and maintain the castle including the sources of funding.