

# HISTORIC SCOTLAND



*Graeme N Munro: Director and Chief Executive*

## RECORDED DELIVERY

Anderson Legal  
Messrs Dundas & Wilson CS  
191 West George Street  
Glasgow  
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12 February 2002

*Dear Sirs,*

### **ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979 APPLICATION FOR SCHEDULED MONUMENT CONSENT: CASTLE TIORAM AND EILEAN TIRIM, MOIDART, LOCHABER**

1. This letter contains the decision of Scottish Ministers on the application made to them, on behalf of Anta Estates Limited, for scheduled monument consent to conserve Castle Tioram and Eilean Tirim, Moidart, Lochaber ("the site"), including the consolidation of the curtain wall, the consolidation and reroofing of standing buildings, the formation of footpaths, the control of vegetation, the reinstatement of the pier and an integrated programme of archaeological excavation and research. It has been decided to refuse scheduled monument consent.
2. Under the Ancient Monuments and Archaeological Areas Act 1979, Scottish Ministers caused a public local inquiry ("the Inquiry") to be held into the matter before determining whether or not to grant scheduled monument consent (SMC). Mr D Graham B Duncan RIBA, ARIAS, MRTPI, FRSA ("the Reporter") was appointed to conduct the Inquiry which was held at Acharacle, Moidart on 5 to 8 June, 11 to 14 June and 18 to 20 June 2001; 10 and 11 July 2001; 13 to 17 August, 20 to 24 August and 28 to 31 August 2001; and on 29 and 31 October 2001. A copy of his Report ("the Report") into the matter is enclosed.
3. A description of the site and surroundings is contained at paragraphs 1.1 to 1.3 of the Report. Evidence was led at the Inquiry on behalf of your client, on behalf of Historic Scotland, on behalf of The Highland Council, on behalf of the Society for the Protection of Ancient Buildings in Scotland, and by three individuals, namely Professor D Mollison, Mr I Macmaster and Mr H Donaldson. In addition to those appearing or represented at the Inquiry fifteen written representations were submitted in support of the application, seven of those in the course of the Inquiry. A petition containing 102 signatures protested about the cost of the Inquiry process and urged a quick approval of the application.
4. In Chapters 2 to 21 of the Report the Reporter summarises the evidence led and the arguments advanced (paragraphs 2.1 to 21.19). His Findings of Fact are in Chapter 23 (paragraphs 23.1 to 23.122) under that heading and take account of the factual background contained in paragraphs 1.1 to 1.30.
5. The Reporter's conclusions and recommendations are given in Chapter 24 of the Report (paragraphs 24.1 to 24.18).

CJM09244



## CONSIDERATION BY REPORTER

6. Having regard to his Findings of Fact the Reporter was of the view that consideration of the application should primarily have regard to the preservation of the scheduled monument and that that purpose should only be set aside in circumstances where wider considerations were deemed, on balance, to be of greater import to the national interest. The Reporter stated that the principles to be applied in the determination of an application should not depart from the general tenor and thrust of those espoused in relation to the safeguarding of scheduled monuments in National Planning Policy Guidelines (NPPG). The Reporter was also of the opinion that significant weight should be attached to the guidance contained in the Stirling Charter and international charters when considering how the control of intervention at a scheduled monument was to be exercised. The Reporter stated that the deployment of large resources did not, of itself, have implications for what he would consider to be of national interest. It did not in his view, represent an "exceptional circumstance" such as should override what might otherwise be considered to represent the best interests of a monument of national significance.

7. The Reporter stated that major elements of the standing buildings were in a substantially complete state but that the structure's defences against water ingress were either missing or in disrepair. He accepted that re-roofing would eliminate direct exposure of the interior walls of the standing buildings to rainfall and that, other things being equal, would represent a benefit. He stated that the structure was inherently strong and that the reintroduction of floors and roofs was not essential to secure its future stability. However he concluded that without major consolidation work the risk of further collapse in the relative short term (5-10 years) was significant. He also stated that it was by no means clear from the evidence why the same rigours should not apply to all of the exposed walls which it is not proposed to harl, whether the standing buildings are consolidated or reconstructed or re-occupied. Under either approach, external walls would require to be maintained, whether pointed or harled.

8. He stated that, whether the restoration or consolidation approach was adopted, work to the building had the potential to adversely affect the archaeology of the monument. Consolidation, which is common to both approaches, will necessarily adversely affect the castle's archaeology. Insofar as it is essential to preserve the fabric, he concluded that this was acceptable. He stated that the adoption of the applicant's conservation strategy for the Castle would not require a comprehensive approach to archaeological investigation embracing the whole island. He stated that, so far as the interests of the present generation was concerned, there would be real and valuable benefits to the heritage to be gained from the more comprehensive, research led archaeological strategy. However, such a course would leave little archaeology on the island for future generations.

9. He stated that that further investigation would almost certainly vary the estimated costs of consolidation which had been placed before the Inquiry. He stated that the promise of funding in relation to the proposal should not, of itself, render the proposed works meritorious. Various bodies were in a position to bring forward alternative proposals in the event of refusal. He stated that the 1979 Act was concerned with the granting of consent to the particular works proposed.

10. The Reporter stated that Eilean Tirim lies adjacent to a Marine Conservation Area and a Site of Special Scientific Interest but that neither Scottish Natural Heritage nor the Scottish Environment Protection Agency had raised any objections to the proposals. He added that he found no documented evidence that Eilean Tirim is located within a 'designed landscape'. He stated that Castle Tioram and Eilean Tirim are not the focus of the National Scenic Area as a whole and that the



application would only adversely affect the visual amenity of the setting or surroundings of the scheduled monument to a limited extent.

11. He stated that the Statement of Cultural Significance, although backed by a significant volume of research material, was not structured and presented in a manner which allowed easy comparison with the expectations of such a statement as set out in The Guidelines to the Burra Charter: Cultural Significance. He stated that, taken as a whole, the monument's rich and varied history, documented, illustrated and oral, could be seen to extend from at least as early as the 14<sup>th</sup> century to the present day and that all of its parts contribute to its cultural significance. He stated that the element of conjecture in the applicant's proposals was likely to be material. He added that by adopting a primacy date of 1650 the applicant had placed considerable emphasis on that date at the expense of the rest of the building's history. He stated that the Castle could not be perceived as a highly evocative structure within the romantic theme of 'ruins in a landscape' were it to be restored and occupied. He stated that the concealment of original fabric would measurably constrain appreciation of the Castle's cultural significance for many visiting members of the public, particularly those of a scholarly interest. He stated that, overall, the proposals for reconstructing the Castle would, if implemented, produce a building which would not reflect any known historic form.

12. The Reporter stated that the application was widely supported by the present day Clanranald and, on balance, had a measure of support in the local community and written representations. He stated that the provisions of the development plan should have no bearing on consideration of the application but that understanding of the monument had been enhanced by the research background to the applications for planning permission and SMC. He stated that as matters stood, the Castle was in a dangerous state, and that action would be required before any resumption of access to the Castle whether as a ruin or otherwise, could be permitted.

13. He stated that the realisation of the project would not make the Castle a national tourist attraction and the economic impact of the development would not be of national import. However, given its fragility, he stated that the application would benefit the local economy. He also observed that similar benefits could accrue in terms of specialist trades and tourism under the consolidation approach.

#### **OVERALL CONCLUSION AND RECOMMENDATION**

14. Having had regard to all of the matters contained in evidence to the Inquiry, in written submissions and observed at inspections of the site, the Reporter's overall conclusion was that the application would not secure the preservation of the ancient monument as required by the 1979 Act, nor would it, on balance, comply with the terms of government policy as set out in NPPG 5, or the advice and guidance contained in government publications and international charters. He added that he had not identified any matters of national importance, such as would lead him to conclude that the preservation of the scheduled monument should be set aside in favour of reconstruction.

15. The Reporter **recommended** that scheduled monument consent to conserve Castle Tioram and Eilean Tirim should be refused.

16. However, he added that if Scottish Ministers were minded to grant consent, he recommended that an intentions letter be issued with a view to allowing Scottish Ministers and the applicant to conclude an agreement under section 17 of the Ancient Monuments and Archaeological Areas Act 1979, in order to ensure that any works commenced by the applicant were completed and that funding was available so to do.



17. Further, he added that if Scottish Ministers were minded to grant consent, he recommended that the list of conditions set out at Appendix 3C of the Report should be imposed.

#### CONSIDERATION BY SCOTTISH MINISTERS

18. Scottish Ministers have carefully considered all the evidence presented at the Inquiry, the written representations, the petition and Reporter's Findings of Fact, conclusions and recommendations. They accept the Reporter's Findings of Fact and agree with the Reporter's conclusions and reasons therefor and adopt them for the purposes of their own decision. They also accept the Reporter's recommendation. Accordingly, Scottish Ministers hereby refuse to grant scheduled monument consent, as referred to in paragraph 1 above.

19. The foregoing decision of Scottish Ministers in relation to the application for scheduled monument consent is final subject to the right of any person aggrieved by the decision of Scottish Ministers to apply to the Court of Session within 6 weeks of the date hereof in accordance with section 55 of the Ancient Monuments and Archaeological Areas Act 1979. On any such application the Court may quash the decision if it is satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1971 or any orders, regulations or rules made under either Act which are applicable.

20. Copies of this letter and of the Report have been sent to the other parties who appeared or who were represented at the Inquiry. A copy of the letter only has been sent to those who made representations on the proposal.

*Yours faithfully*  
*Graeme N. Munro*  
GRAEME N MUNRO