



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Dan Jackman and Karen Black, reporters appointed by the Scottish Ministers

- Case reference: CIN-EAY-001
- Site Address: Loudoun Castle, Loudoun, Galston, Ayrshire, KA4 8PD
- Application for planning permission in principle, ref. 15/0676/PPP dated 17 September 2015, called-in by notice dated 17 December 2015
- The development proposed: Leisure and tourism development including: 450 holiday lodges; 12 glamping pitches; restoration of castle to shell conversion to hotel; new leisure facilities including lake, indoor water park with retail plaza and restaurants (6,500 square metres), water sports building (600 square metres), indoor sports (5,000 square metres), spa (2,000 square metres) and cycle store. Erection of distillery (1,552 square metres) and community heat plant (476 square metres). Erection of phased enabling development, with a first phase of 300 residential dwellings and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel; community facilities and infrastructure.
- Dates of site visits: Accompanied 18 April 2016, Unaccompanied 18 October 2017
- Dates of hearing sessions: 23 – 25 October 2017 and 22 January 2018
- Dates of inquiry sessions: 6 – 10 November 2017 and 23 January 2018

Date of this report and recommendation: 6 November 2018



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Leisure and tourism development including: 450 holiday lodges; 12 glamping pitches; restoration of castle to shell conversion to hotel; new leisure facilities including lake, indoor water park with retail plaza and restaurants (6,500 square metres), water sports building (600 square metres), indoor sports (5,000 square metres), spa (2,000 square metres) and cycle store. Erection of distillery (1,552 square metres) and community heat plant (476 square metres). Erection of phased enabling development, with a first phase of 300 residential dwellings, and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel; community facilities and infrastructure at Loudoun Castle, Loudoun, Galston, Ayrshire, KA4 8PD

• Case reference	CIN-EAY-001
• Case type	Call-in
• Reporters	Dan Jackman and Karen Black
• Applicant	Loudoun Woods Homes Limited
• Planning authority	East Ayrshire Council
• Other parties	Historic Environment Scotland, Transport Scotland and Strathclyde Partnership for Transport
• Date of application	17 September 2015
• Date case received by DPEA	10 February 2016
• Methods of consideration and dates	Written submissions; Accompanied site inspection on 18 April 2016; Unaccompanied site inspection on 18 October 2017; Inquiry sessions 6 - 10 November 2017 and 23 January 2018; Hearing sessions 23 - 25 October 2017 and 22 January 2018
• Date of report	6 November 2018
• Reporters' recommendation	Refuse planning permission in principle

Site description

Loudoun Castle Estate is located to the north of Galston on the northern slope of the Irvine Valley, approximately 6.5 kilometres to the east of Kilmarnock. The A listed Loudoun Castle, which is a ruin, is located broadly in the centre of the estate and is generally surrounded by woodland. There is a cottage to the north east of the castle and various buildings, including former stables, coach house and walled garden to the east of the castle. The area of the overall estate is approximately 246 hectares and the application site area is approximately 183 hectares.

Proposal

The planning application is for planning permission in principle and is described in the planning application form as:

“Leisure and tourism development including: 450 holiday lodges; 12 glamping pitches; restoration of castle to shell conversion to hotel; new leisure facilities including lake, indoor water park with retail plaza and restaurants (6,500 square metres), water sports building (600 square metres), indoor sports (5,000 square metres), spa (2,000 square metres) and cycle store. Erection of distillery (1,552 square metres) and community heat plant (476 square metres). Erection of phased enabling development, with a first phase of 300 residential dwellings, and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel; community facilities and infrastructure”

Although the description in the application form, the environmental statement addendum and conservation plan states that an option is for the restoration of the castle to a hotel it is not our understanding from the overall evidence that the applicant is currently proposing to restore and convert the castle into a hotel. Our understanding is that the proposed enabling development is sufficient to consolidate the existing castle ruins and our assessment of the proposal is undertaken on that basis.

In addition to the application form and site plan the applicant has also submitted a large number of supporting documents. Together these indicate how the applicant considers the proposal could be developed in broad spatial and design terms. However, they are not detailed proposals that form part of the application. Therefore, notwithstanding the submitted supporting information, the proposal before Scottish Ministers remains as described above unless otherwise specified by a planning condition attached to any planning permission in principle.

Consultations and representations

Detailed comments from consultees and representations are set out in more detail in the respective topic chapters of this report.

The council’s environmental health service, access officer, West of Scotland Archaeology Service, Ayrshire Roads Alliance, Transport Scotland, Coal Authority, Scottish Environment Protection Agency, Scottish Water, Scottish Natural Heritage and Health and Safety Executive have no objections subject to conditions.

Historic Environment Scotland considers that the proposal does not raise national issues of such significance as to justify an objection, however it also advises that should not be taken as support for the proposals.

Scotland’s Garden and Landscape Heritage outline concerns about the impact of the proposal on the character and integrity of the designed landscape, but support the principle of restoration of the castle and designed landscape.

NHS Ayrshire and Arran, and the council’s education service express concerns about the impact of the proposal on local health facilities and schools.

Strathclyde Partnership for Transport express concerns about the provision of a viable bus service and that the proposals are likely to result in reliance on private car use.

The council's economic development team, Galston Community Council and some local residents support the proposal. Comments relate to the potential significant employment, improvements to visual amenity from new tree planting, and provision of tourist accommodation which could bring economic benefits to the area.

The Architectural Heritage Society of Scotland, Scottish Wildlife Trust, Woodland Trust, Moscow and Waterside Community Council and some local residents object to the proposal. Comments relate to the impacts on the designed landscape and local infrastructure and facilities, excessive scale and remoteness of the development, detrimental impact on natural heritage, financial viability, previous mining, and the impact on nearby houses.

Case for the applicant

Interpretation of policy Rural Area 4 and policy Res 13

Policy Rural Area 4 is a site specific policy which applies to the whole site. It means that the council accepts that some impacts are inevitable but these are outweighed by the benefits of development. The policy also refers to sympathetic enabling development. The policy assessment of whether the enabling development is sympathetic has to be considered in the round, taking into account many factors. This includes weighing the benefits against any impacts and bearing in mind that the site is subject to a land use allocation and where any enabling development would have to be of a sizeable scale.

Policy Res 13 refers to enabling development being the minimum necessary and that the character and setting of the historic asset is preserved and enhanced. The council have been aware of the likely scale of enabling development for a long time. The currently deteriorating castle and grounds would be enhanced and restored and the enabling residential development located in the northern fields, the least sensitive areas for further development.

The proposal includes significant new planting and restoration of the designed landscape as well as long term management. It is accepted that there would be impacts on the garden and designed landscape but these are not considered to be of such significance that they would be unacceptable, particularly considering the benefits.

The proposal would bring significant social, environmental and economic benefits to the area and is the only realistic way of achieving conservation benefits. Historic Environment Scotland raise no objection and would be involved in future design details. There are no other objections from consultees and there is local support for the proposal.

The proposal complies with policies Rural Area 4 and Res 13 and the council's concerns are based on a misunderstanding of their own policies.

Masterplanning

There is no absolute requirement for the production of a single document called a masterplan. The documents submitted and the proposed planning conditions and obligations equate to a masterplanning approach. There is no reason why a masterplan has to be contained in a single document to achieve the relevant planning objectives. The policies do not prohibit the submission of a masterplan at the next stage of the development process. The information provided is appropriate for this stage of the design process and detailed design work cannot be funded until the development partners have the security of a planning permission in principle.

Financial information

As policy Res 13 only refers to housing as the enabling development, only the housing development requires financial justification. There is no policy requirement for a business plan to justify the development of a site which is allocated for tourism and recreation development. The proposed enabling development is not therefore seeking an exception to normal policies.

The council is wrong to suggest that any of the wider tourism and recreation development can be considered as part of the enabling development. There is no policy or legal basis for including tourism and recreation development as part of enabling development. Tourism and recreation development cannot enable itself and is commercially unrealistic. In policy terms enabling development can only be residential, and the scale of residential development is determined by the sum necessary to get the castle and its grounds to a secure condition so that the tourism and recreation can be realistically implemented.

The budget estimate for the castle works has been tested within the team of experienced conservation professionals and is a robust and sufficiently detailed estimate of the cost of the proposed works to the castle.

The development appraisal was prepared with significant input from an experienced multi-disciplinary team. It demonstrates the scale of enabling development required to meet the conservation deficit and minimum necessary. The assumptions used are reasonable and based on direct market evidence.

The budget estimate and development appraisal confirm that that the proposed scale of enabling development is the minimum necessary to achieve the development plan policy objectives.

Community facilities

The new community would look to Galston for the balance of any services and facilities, including those relating to healthcare and education. The existing surgeries and schools within Galston have the capacity to absorb the projected increase in population. The council's education and social services team have no objection to the application and no additional mitigation measures in relation to education, social services or health provision have been sought by the council.

Maintenance

The consolidation of the castle and the planting to restore the garden and designed landscape is proposed to be secured by the use of financial bonds. Implementation would be safeguarded by proposed bonds in an amount reflecting the budget estimate for the consolidation of the castle ruin and to meet the costs of undertaking the landscape masterplan. The long term maintenance of the restored garden and designed landscape would be secured through the proposed deed of conditions in the draft section 75 agreement and undertaken by an appropriately qualified management company.

Obligations and conditions

It is accepted that there is a need for planning obligations and conditions and proposed obligations and conditions have been submitted which seek to address comments from consultees and discussions at the hearing. Some of council's suggested obligations, such as contributions to Galston regeneration do not meet the tests in circular 3/2012.

Overall conclusions

The proposal complies with policies Rural Area 4 and Res 13 and further information can be provided at the next stage of the process. Overall, the proposals would make a significant positive economic impact locally, regionally and nationally, and align with key public sector policies by creating a new, high quality tourist destination for East Ayrshire. Subject to appropriate assessment of the detailed designs, planning conditions and a planning obligation, the proposal complies with the provisions of the development plan and there are no material considerations that indicate otherwise. Planning permission in principle should therefore be granted.

Case for the council

Interpretation of policy Rural Area 4 and policy Res 13

The clear objective of policy Rural Area 4 is to support the castle and estate for further tourism and recreation development. Appropriate enabling development may help fund the restoration of the castle and gardens. The policy cannot properly be read as allowing residential enabling development to restore the castle alone and the tourism and recreation development cannot be separated from the enabling development. The council does not accept that policy Res 13 means that only residential development can be the enabling development. A key policy principle is that the scale of enabling development must be the minimum necessary. The proposal as it stands does not comply with policies Rural Area 4 and Res 13.

It is accepted that the identification of the site under policy Rural Area 4 would mean that some impacts are inevitable but the scale of enabling residential development would result in unacceptable landscape impacts and detrimental impacts on the character of the garden and designed landscape. The impacts on both have been understated by the applicant.

The council also considers that no objection from Historic Environment Scotland is formed from taking a limited view and does not mean support for the proposals.

The council is supportive of development in principle and acknowledges the potential economic and social benefits, however the lack of a business plan linked to an overall masterplan for the development is a significant failing. There is considerable uncertainty over what is actually proposed and insufficient justification to demonstrate that the scale of the enabling development is the minimum necessary. Overall, the proposal does not comply with the provisions of the development plan.

Masterplanning

The preparation of a masterplan is a requirement of the local development plan and specifically policy Rural Area 4. The council is supportive of development at Loudoun Castle and Estate in principle, but any development must be presented in a masterplan format supported by a sufficiently detailed development and funding appraisal so as to meet the policy requirements of the local development plan.

The submitted information does not amount to a masterplan approach. Key policy requirements have not been met. The submitted information is illustrative and of limited use. It is therefore not possible to carry out a meaningful assessment. The proposal cannot therefore be said to comply with policy Rural Area 4.

Financial information

The cost estimates are not considered to be realistic and only partial, relating to stabilising the castle as a ruin, not the conversion to a hotel as specified in the planning application.

The applicant's development appraisal is not considered to be based on prudent assumptions. If realistic assumptions were used the appraisal would conclude that significantly more houses than 1000 would be required to fund even the partial stabilisation of the castle.

The applicant has ignored any contribution from the tourism and recreation development and has not demonstrated that other sources of funding or delivery mechanisms are impossible. An overall conservation deficit has not been demonstrated and this is a fundamental flaw.

The applicant has underestimated the cost of works to the castle and the minimum necessary level of enabling development tests cannot therefore be met. The proposal does not meet the principles or guidance for enabling development in a number of important respects and these difficulties cannot be rectified by planning conditions or the terms of a planning obligation.

Maintenance

The potential benefits of the leisure and tourism development are recognised but the benefits must be secured, including the consolidation of the castle and restoration of the garden and designed landscape and their future maintenance.

Obligations and conditions

A financial bond or guarantee is required, subject to a mechanism for review, to ensure that the works to the castle, garden and designed landscape, Bellfield Interchange and the lake are completed and maintained.

The ownership of the common areas and the gardens and designed landscape should not be transferred to a maintenance company. They should remain within the ownership of individual residential units and the tourism and leisure development, managed by a factor.

A regeneration contribution of £500,000 is a reasonable estimate of the contribution that the development could make to the regeneration of Galston. The development could also deliver added value through the appointment of a woodlands officer and planning monitoring officer.

The council questions the legality and appropriateness of a provision for resolution of dispute by arbitration. Approval of a scheme is a matter for the planning judgment of the council.

Overall

The proposal would harm the heritage value of the castle and designed landscape, there is insufficient financial information, liabilities have been separated from assets, there is a lack of transparency and the enabling development has not been demonstrated as the minimum necessary.

Consequently, the proposal does not comply with policies Rural Area 4 and Res 13 and the development plan overall. There are no material considerations that indicate otherwise. Planning permission in principle should therefore be refused.

Case for Historic Environment Scotland

Does not object to the proposal, however it also advises that should not be taken as support for the proposal. Robust conditions and obligations are required to secure the conservation benefits to the castle and the restoration of the gardens and designed landscape.

Conditions and obligations must also ensure appropriate long term maintenance of the historic assets.

Case for Strathclyde Partnership for Transport

In terms of financial contributions for a bus service, it cannot agree to the applicant's fixed 4 year period from the 60th house to 300th house because it is not known at this stage whether the necessary infrastructure would be available. It is also unlikely that the period would be sufficient and impossible to know with the information currently available when a bus service may become commercially viable. A longer time period may be necessary and the cost of supporting a bus service at a future date may be more.

Reporters' conclusions

Policies Rural Area 4 (the site specific policy) and Res 13 (enabling development) are the key relevant local development plan policies.

The key policy tests to be met are that:

- The development in general, and the enabling residential development in particular, have to be sympathetic overall, taking into account all elements, balancing any adverse impacts against benefits and in the context of a site specific allocation;
- The submitted information should demonstrate that an adequate masterplan approach has been followed; and
- There should be sufficient financial information to demonstrate that the minimum level of residential enabling development is proposed.

Bearing in mind the policies of the development plan as whole, we consider the residential enabling development also has to function as an acceptable new community in its own right, irrespective of considerations of the scale of enabling development.

A number of other technical and environmental protection policies, which we address in individual topic chapters are also relevant to our consideration of the proposal.

Whether the proposal is sympathetic

The proposal would result in a new major tourism and recreation facility that would be consistent with a range of economic strategies and implement a long standing development opportunity. If built, the proposal would have significant economic and social benefits not only for East Ayrshire but the wider region.

The consolidation of the existing castle ruins and the restoration of the gardens and designed landscape through extensive new woodland planting has the potential to represent important conservation benefits, assuming that the repairs and planting can be secured and thereafter maintained.

However, there is no detailed scheme available for the consolidation of the castle. It is accepted that further surveys and studies would be necessary and subject to a future application for listed building consent. There is only an illustrative landscape restoration plan, which has been prepared without knowing the final road layout, drainage plan, extent of developable areas or the overall phasing of the development.

We agree with the council and Historic Environment Scotland that the proposed long term maintenance arrangements proposed by the applicant for the castle ruins and the restored gardens and designed landscape would not be acceptable. There is a risk that the significant impacts from the enabling residential development and the rest of the proposal would not be offset. Without long term maintenance there may not be adequate screening to mitigate the landscape and visual impacts and without management, the habitat enhancement measures may not be implemented. We consider that a phasing condition is

a superior mechanism for securing the consolidation of the castle and restoration of the gardens and designed landscape.

Overall, we find that the proposal would not be sympathetic and this is principally due to a combination of the scale of the proposed enabling development and our concerns regarding the lack of acceptable long term maintenance arrangements.

Masterplanning

We cannot accept that the range of submitted material, prepared by different authors at different times, much of which is illustrative, in combination with future site wide surveys required by conditions, constitutes an adequate masterplanned approach. We do not consider that the approach advocated by the applicant complies with the objectives of policy Rural Area 4 or policy OP 1.

Financial information

We do not believe we have adequate financial information to demonstrate that 1025 houses is the minimum necessary amount of enabling development. An overall conservation deficit has not been quantified and we consider that the applicant is mistaken in arguing that there is a policy and legal bar from considering contributions from the overall development.

We consider that a development appraisal for a development of this scale, to be developed over at least 17 years is such an uncertain tool, no meaningful conclusions can be drawn. On the basis of the evidence before us it is far more likely that the costs of consolidating the castle ruin would increase and the residual value from the enabling development reduce to that predicted.

In our opinion the financial information is so uncertain that there is a significant risk that:

- The overall development is not viable and would not be commenced; or
- More houses than were strictly necessary were constructed; or
- Costs relative to income are higher than assumed, leading to pressure to amend the consolidation scheme, reduce costs and hence quality of the proposed new community or increase the number of houses; or
- A combination of all three.

Whether the new community could function effectively

It is not possible with the information before us to have any appreciation as to whether the proposed new community could function effectively. There are no details of a road or footpath layout, no knowledge of whether a bus service could be introduced, whether school capacity would be sufficient, whether health facilities would be adequate or how on site facilities would be provided. For a new community which would be the permanent home for approximately 2000 people, demonstrating that a new community could function effectively should be completed before, not after the grant of planning permission in principle.

Whether the conservation benefits can be secured and maintained

We are aware of no proposal to maintain the consolidated castle ruins aside from the hope that at some future point it could be converted to another use, possibly a hotel. The proposed “owner manager” model is not an acceptable approach for the long term management of the garden and designed landscape or for the implementation of a 20 year habitat management plan. The applicant has not properly addressed the need for a sustainable arrangement for the long term management of the site.

Overall conclusion

The proposal currently before Scottish Ministers would be contrary to policies Rural Area 4, Res 13, OP1, OP2, Env 4, Env 6, Env 8, T1 and T2. Overall, we consider that the proposal is contrary to the provisions of the development plan.

There are no material considerations that outweigh the planning harm that we believe would occur if the provisions of the development plan were set aside.

We also find that there is an unacceptable risk that the proposal would have an adverse impact on the setting of the A listed castle and associated gardens and designed landscape, all being contrary to the statutory requirement set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Recommendation

We recommend that planning permission in principle be refused.

DPEA case reference: CIN-EAY-001

The Scottish Ministers
Edinburgh

Ministers

In accordance with our minutes of appointment dated 12 May 2016, we conducted an examination in connection with an application for planning permission in principle for large scale mixed use leisure and tourism development including the erection of a phased enabling residential development, to enable the restoration of the castle to a hotel (subject to viability) at Loudoun Castle, Galston, Ayrshire. The planning application was the subject of a direction under Section 46 (1) of the Town and Country Planning (Scotland) Act 1997. The reasons for the direction was the potential economic benefit of the proposal and the heritage issues related to the A listed Loudoun Castle and designed landscape.

We held 2 pre-examination meetings. The first meeting was held on the 10 May 2016. However, the arrangements agreed did not take place in order to allow the applicant to provide further material including an environmental statement addendum. The second pre-examination meeting took place on 12 May 2017 where it was agreed that the impact on heritage assets, including the scale of enabling development would be addressed at an inquiry session. In addition it was agreed that there would be hearing sessions on the following issues: planning policy, landscape and visual impact, social and economic benefits, planning obligations and planning conditions. It was also agreed that further written submissions would be invited on impact on transport, impact on drainage matters, impact on natural heritage, impact on community services and impact on residential amenity.

The inquiry sessions involving 15 witnesses were held between 6 – 10 November 2017 and 23 January 2018. The hearing sessions took place between 23 – 25 October 2017 and 22 January 2018. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the applicant) being lodged on 24 April 2018.

We conducted unaccompanied inspections of the site, its surroundings and other locations referred to in evidence on 18 October 2017. An accompanied site inspection took place on 18 April 2016.

Our report, which is arranged on a topic basis, takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the environmental assessment, addendum and other supporting information submitted by the parties, and the written representations made in connection with the proposal.

In a separate report, we consider and make a recommendation on the applicant's claim for a partial award of expenses against the council.

CHAPTER 1: BACKGROUND

Site description

1.1 Loudoun Castle Estate is located to the north of Galston, approximately 6.5 kilometres to the east of Kilmarnock. It lies immediately north of the A71 and east of the A719. It is situated within the administrative boundaries of East Ayrshire Council. The general location is shown in [CD1.27](#).

1.2 The estate is located on the northern slope of the Irvine Valley and rises from the southern boundary of the estate (approximate elevation 55 metres) to the northern boundary (approximate elevation 150 metres). The castle, which is a ruin, is located broadly in the centre of the estate and is generally surrounded by woodland. There is a cottage to the north east of the castle and various buildings, including former stables, coach house and walled garden to the east of the castle.

1.3 Approximately 0.5 kilometres north of the castle runs an unmade farm track across the site from west to east. At the western end of the track are 2 cottages, with a further house accessed from the A719. Immediately south of the track are 2 areas of coniferous plantation and a further plantation to the north which follows the shape of a previous designed landscape feature known as the North Belvedere. The total site area is approximately 183 hectares and is shown in [CD1.28](#).

1.4 To the east of the site but within the estate is an area known as Big Wood, characterised by a steep sided densely wooded valley. The area of the overall estate (shown with a blue line) is approximately 246 hectares. South of the estate and between the A71 is located Loudoun Gowf Club and to the south west, between the A719 is Loudoun Academy Secondary School.

Proposal

1.5 The planning application is for planning permission in principle and is described in the planning application form ([CD1.1](#)) as:

“Leisure and tourism development including: 450 holiday lodges; 12 glamping pitches; restoration of castle to shell conversion to hotel; new leisure facilities including lake, indoor water park with retail plaza and restaurants (6,500 square metres), water sports building (600 square metres), indoor sports (5,000 square metres), spa (2,000 square metres) and cycle store. Erection of distillery (1,552 square metres) and community heat plant (476 square metres). Erection of phased enabling development, with a first phase of 300 residential dwellings, and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel; community facilities and infrastructure”

1.6 The applicant, Loudoun Woods Homes Limited does not own the site and served the required land ownership certificate on the owners of Loudoun Castle Estate, Suffolk Limited ([CD1.2](#)).

1.7 In addition to the application form and site plan the applicant has also submitted a large number of supporting documents. These are set out in section 1 – application and related documents and are included in appendix 1 of this report.

1.8 In March 2017 the applicant submitted an environmental statement addendum ([CD1.45](#)). Chapter 2 of the addendum describes the proposal for the purposes of carrying out the required environmental impact assessment. Table 2.1 (page 2-5) sets out the indicative tourism development schedule, Table 2.2 (page 2-6) sets out the indicative residential accommodation schedule and Table 2.3 (page 2-11) the key parameters of the development for environmental assessment purposes.

1.9 Although the description in the application form, the environmental statement addendum and conservation plan states that an option is for the restoration of the castle to a hotel it is not our understanding from the overall evidence that the applicant is currently proposing to restore and convert the castle into a hotel. Our understanding of the applicant's position is that the proposed enabling development is sufficient to consolidate the existing castle ruins and our assessment of the proposal is undertaken on that basis. The enabling development would not provide for either a shell or a hotel and any proposal to restore the castle to a hotel would be a separate proposal subject to viability.

1.10 The design statement ([CD1.4](#)), parameters plan ([CD1.47](#)), illustrative layout plan ([CD1.48](#)) and illustrative landscape restoration plan ([CD1.50](#)) together indicates how the applicant considers the proposal could be developed in broad spatial and design terms. However, they are not detailed proposals that form part of the application. Therefore, notwithstanding the submitted supporting information, the proposal before Scottish Ministers remains as described in paragraphs 1.5 and 1.9 above unless otherwise specified by a planning condition attached to any planning permission in principle.

Representations

1.11 *Galston Community Council* ([CD2.19](#) and [CD2.35](#)) – commented to the council when the application was submitted and to the Planning and Environmental Appeals Division when the environmental statement addendum was published that they strongly supported the proposal.

1.12 *Moscow and Waterside Community Council* ([CD2.21](#)) – commented to the council when the application was originally submitted making the following points:

- The impact of the proposal upon the A719 which passes through Moscow and Waterside has not been properly assessed;
- The new accesses onto the A719 will require new junctions on a fast stretch of the A719;
- The new northern access is over land that has been the subject of previous mining;
- The private road to Howletburn is also a right of way;
- The minor public road to Alton is unsuitable for any traffic to the proposed distillery;
- No assessment has been carried out for the impact on drainage and water infrastructure or local private water supplies;

- The garden and designed landscape does not have the capacity to absorb so much residential development;
- The previous theme park did not bring material economic improvement to Irvine Valley;
- There would be an unacceptable burden on local services such as schools and doctor surgeries to the detriment of existing residents; and
- Any development should be the minimum to ensure that the castle and garden and designed landscape is secured without damaging the historic character.

1.13 Five letters of support ([CD2.62](#), [CD2.63](#), [CD2.64](#), [CD2.65](#) and [CD2.66](#)) were received by the council from local residents making the following comments:

- The proposal should bring significant employment to the valley which is greatly needed;
- Significant tree planting would improve the visual amenities of nearby houses; and
- Providing tourist accommodation would make sure there was greater economic benefits to the area

1.14 Five letters of objection ([CD2.56](#), [CD2.57](#), [CD2.58](#), [CD2.59](#) and [CD2.60](#)) were received by the council making the following comments:

- Excessive traffic generation on the A719;
- The scale of the development is excessive in this rural location;
- Detrimental impact on natural heritage;
- The proposal is unlikely to be financially viable;
- Some of the land for housing has previously been used for open cast coal extraction;
- Nearby houses would be left overlooking a building site for many years;
- Expenditure on the castle may never materialise;
- Inadequate capacity in the Irvine Valley sewer;
- Inadequate provision for local schools and health services;
- The proposal is effectively a new town but remote from community facilities;
- The applicant has no previous experience in property development; and

- The distillery is located where a private water supply exists.

1.15 A letter of [representation](#) was also received by the Planning and Environmental Appeals Division in June 2018 making the following comments:

- The gardens were designed in the shape of a sword which is evident today from the air and in 1750 from Roy's military survey; and
- The proposed lake will destroy the original design.

Consultation replies

1.16 Consultation responses were received by the council both before and after the application was called in, in response to specific requests made by the Planning and Environmental Appeals Division and in response to the publication of the environmental statement addendum in March 2017. More substantive comments are set out in more detail in the respective topic chapters of this report.

1.17 *Architectural Heritage Society of Scotland* ([CD2.20](#)) – The society maintains its previous objection to the principle and scale of this proposal. Given the scale and potential impact on important heritage assets a full environmental impact assessment should be required before approval is considered. Much of the information submitted is sketchy and speculative.

1.18 *Ayrshire Roads Alliance (Flooding)* ([CD2.4](#)) – No objection subject to conditions requiring the submission of a flood risk assessment and drainage impact assessment and that any discharge to the River Irvine be limited to 6.95 litres per second per hectare.

1.19 *Ayrshire Roads Alliance (Roads)* ([CD2.22](#) & [CD2.29](#)) – The scope of the submitted transport assessment was agreed in general terms with Ayrshire Roads Alliance and Transport Scotland. There is no objection in principle subject to conditions and/or obligations that would ensure:

- Internal roads layout to be agreed in a proposed masterplan before construction starts;
- Offsite footway, crossing and bus stop improvements to be provided;
- Internal layout to accommodate circumferential bus routes with additional bus stops;
- Initial financial support for a bus service;
- Provision for electric vehicle charging points;
- Preparation of a travel plan and the appointment of a travel plan co-ordinator;
- Agreed road access details for the northern and southern access. The northern access to be operational prior to the occupation of the 251st house; and

- Improvements to the Bellfield Interchange to be completed before the occupation of the 251st house.

1.20 *Coal Authority* ([CD2.8](#)) – The site is likely to be influenced by previous coal mining activity and this is confirmed by the submitted phase 1 Geo-Environmental Assessment Report. Prior to the approval of matters specified in conditions, a scheme of intrusive site investigations should be submitted for approval. Matters specified in conditions should include details of how any issues identified by the intrusive site investigation have been addressed.

1.21 *East Ayrshire Council*

- *Contaminated land* ([CD2.2](#)) – Parts of the site have previously been used for limekilns, quarry and coal pits. This has been confirmed by the submitted study. Due to the sensitive nature of the development (residential, leisure etc), it is recommended that a site investigation is undertaken and that this is required by a planning condition
- *Economic development* ([CD2.27](#)) – Supports the creation of sustainable jobs and delivery of benefits to the East Ayrshire economy
- *Education service* ([CD2.26](#)) – Existing and planned early years provision in Galston Primary School and Newmilns Primary School could not accommodate the additional children and would have to be extended. Galston Primary School could not accommodate the increase in pupils from this development, however, if the site was re-zoned to Newmilns Primary School the additional pupils could be accommodated. It is likely that Loudoun Academy could accommodate the additional pupils from the development
- *Environmental Health* ([CD2.3](#)) – No objection subject to conditions regarding noise, hours of construction and the disposal of waste
- *Private water supplies* ([email 26 April 2016](#)) – The Howletburn Supply and Loudoun Lodge Supply are two private water supplies serving 6 properties that are likely to be directly affected. There are other supplies to the north of the development. The developer should ensure that all private water supplies are identified and risk assessed prior to development commencing
- *Outdoor access officer* ([CD2.15](#)) – Given the scale and nature of this application the applicant should produce an access action plan for the site to provide for:
 - Internal linkages between residential, leisure, open space and woodland areas;
 - External linkages between the development site, Galston, Loudoun Academy and Loudoun Gowf Club; and
 - External linkages to wider path networks such as the developing Irvine Valley path network and the Whitelee access network.

1.22 *Historic Environment Scotland* ([CD2.28](#) and [CD2.39](#)) – Due to the transitional arrangements in place when the planning application was submitted, the Scottish Government provided comments, albeit based on advice provided by Historic Environment Scotland. Historic Environment Scotland also commented on the environmental statement addendum. The position of Historic Environment Scotland is set out in more detail in chapters 3 and 4, but in summary they considered that the proposal does not raise national issues of such significance as to justify an objection.

1.23 *Health and Safety Executive* ([CD2.1](#) and [email 1 August 2016](#)) – Initially the Health and Safety Executive had no comment to make. However, on 1 August 2016 the Health and Safety Executive wrote to the Planning and Environmental Appeals Division explaining that a distillery may hold sufficient flammable liquids that hazardous substance consent would be required. If consent was required an assessment would be carried out to determine whether the storage of flammable liquids would be compatible with the proposed surrounding uses.

1.24 *NHS Ayrshire and Arran* ([CD2.25](#) and [APP1.20](#)) – The cumulative impact of this and other residential developments may require financial contributions to help fund improvements to appropriate health and social care services.

1.25 *Scottish Environment Protection Agency* ([CD2.17](#) and [CD2.38](#)) – Commented to the council when the planning application was submitted and on the environmental statement addendum. There was no objection subject to a condition requiring a detailed flood risk assessment prior to the finalised site layout.

1.26 *Scotland's Garden and Landscape Heritage* ([CD2.11](#)) – Supports the principle of restoration of the castle and the conservation and enhancement of the designed landscape. However, there is concern about the intensity of the development proposed for the core designed landscape and the impact this will have on the character and integrity of the designed landscape.

1.27 *Scottish Natural Heritage* ([CD2.14](#) & [CD2.40](#)) – Commented to the council when the application was submitted and on the environmental statement addendum. The proposal is likely to require a species licence under protected species legislation for potential disturbance and damage to bat roosts and badger setts. Scottish Natural Heritage would expect the applicant to complete all required surveys and provide a detailed mitigation/compensation plan prior to applying for full planning permission.

1.28 *Strathclyde Partnership for Transport* ([CD2.30](#)) – Is concerned that the proposal, particularly the residential aspect of the development, is likely to result in reliance on private car use. If permission is to be granted conditions/obligations should cover:

- Walking and cycling connections;
- A public transport strategy, including service provision, infrastructure, phasing and funding;
- Information provision; and
- Travel plan.

1.29 *Scottish Water* ([CD2.31](#)) – Commented in response to a specific request from the Planning and Environmental Appeals Division. Scottish Water had advised the developer that a drainage impact assessment and a water impact assessment would be necessary to understand the impact on the existing network. There are existing Scottish Water assets on site that should be identified and any sustainable drainage systems that would be adopted by Scottish Water should comply with the relevant guidance.

1.30 *Scottish Wildlife Trust* ([CD2.33](#)) – Commented in response to a specific request from the Planning and Environmental Appeals Division. The scale and nature of the impacts of the development have been understated in the application while the mitigation measures do not justify the claims made. Scottish Wildlife Trust North Ayrshire Members Group therefore wishes to object.

1.31 *Transport Scotland* ([CD2.6](#)) – No objection subject to the provision of a travel plan and that no more than 250 residential units are occupied until improvements are made to the Bellfield Interchange.

1.32 *West of Scotland Archaeology Service* ([CD2.32](#)) – Commented to the council after the planning application had been called in. The manager also presented evidence at the inquiry session and is summarised in more detail in chapter 3. There is concern that the adverse impacts of the current development proposals on the nationally significant designed landscape may not be outweighed by the potential benefits of the castle's restoration because of the current absence of detail on the costs of how the delivery of the consolidation package can be successfully secured. Direct archaeological issues could be addressed successfully through conditions, however, to determine to grant consent without evidence of the likely costs or the affordability would be too high a risk when dealing with nationally important heritage assets.

1.33 *Woodland Trust* ([CD2.23](#)) – Objects to planning permission being granted for this application as it results in loss and damage to ancient woodland. A significant area of the development site at Loudoun Castle is listed in Scottish Natural Heritage's Ancient Woodland Inventory.

Background to Loudoun Castle and Estate

1.34 Loudoun Castle Estate can be identified in documentary evidence from the 1100's. There is a site within the estate of an early medieval castle. However, the castle was rebuilt in the 15th century on its present site. The identity of the site today is primarily derived from major interventions to the landscape in the 18th century. Around 1714, the 3rd Earl of Loudoun engaged the 6th Earl of Mar to provide a design for the landscape in the distinctive Scottish Historical Landscape style. The design was implemented and this is recorded in correspondence and several later historical maps. Many elements of this scheme are visible in the landscape today.

1.35 Changes were made around 1800, to soften the formality of the landscape, along with a major re-building of the castle. The architect responsible for the improvements to the castle was Archibald Elliot. However, it is hard to know for sure how much of Elliot's design was actually implemented before the then Earl of Loudoun became bankrupt. Few changes to the castle or estate took place in the remainder of the 19th or 20th centuries.

1.36 In 1941, just before the castle was requisitioned by the army, the castle was badly damaged by fire and has remained a roofless ruin since. The castle was listed category B in 1971 and upgraded to category A in 1997. The estate was added to the Inventory of Gardens and Designed Landscapes in 1987. A more detailed account of the historical development of the castle and estate is set out in section 3 of the conservation plan ([CD1.53](#)).

1.37 Between 1995 and 2010 a theme park operated within the grounds of the castle. It appears from the submissions (see [APP2.1](#)) that from about 2008, the estate's owners and the owner's advisors had discussions with the council regarding various measures to increase development. This resulted in representations being made to the East Ayrshire Local Plan. The East Ayrshire Local Plan was ultimately adopted in October 2010 with a policy Rural Area 4 which in general terms identified most of the estate as a development opportunity for tourism and leisure development.

1.38 Since the adoption of the local plan further discussions between the council, the owner, development partners and key consultees has taken place leading to the submission of a planning application in principle for a similar proposal as the current application in November 2014. This application was withdrawn in September 2015. The East Ayrshire Local Development Plan, following an examination in 2016 was formally adopted in April 2017 replacing the previous local plan with a slightly different version of policy Rural Area 4.

Planning application process

1.39 The planning application was submitted on 17 September 2015. Some consultation replies were received by the council between October 2015 and November 2015. As would be expected for a planning application of this nature there were continued discussions between the council and applicant. However, there was also disagreement as to how the planning application should progress.

1.40 On 14 October 2015 a meeting was held between the applicant, council and officials from the Planning and Architecture Division of the Scottish Government in an attempt to resolve any disagreements. On 17 December 2015 the Scottish Ministers "called in" the planning application under Section 46(1) of the Town and Country Planning Act 1997. The reasons given for the call in were, "*the potential economic benefit of the proposal and the heritage issues related to the A listed Loudoun Castle, East Ayrshire and its designed landscape*".

Examination process

1.41 An accompanied site inspection took place on 18 April 2016 and a pre-examination meeting arranged for 10 May 2016. At the [pre-examination meeting](#) it was agreed that we would request responses from the outstanding consultees, allow the applicant to submit a position statement and to hold an examination with inquiry and hearing sessions between 23 August 2016 and 2 September 2016.

1.42 On 10 June 2016 a [joint submission](#) was made by the council and applicant requesting further time to agree matters. This led to further extensive work and ultimately to the cancellation of the previously agreed examination.

1.43 In March 2017 the applicant submitted the environmental statement addendum and this was subject to further consultation organised by the Planning and Environmental Appeals Division. On 28 April 2017 the council considered all the revised information but decided to continue to object to the planning application ([CD2.49](#)).

1.44 On 12 May 2017 a [second pre-examination meeting](#) was arranged. Following this meeting we issued a procedures notice for further written submissions, hearing sessions and inquiry sessions. The further written submissions were completed by 16 June 2017. The hearing sessions took place week commencing 23 October 2017 and inquiry sessions took place week commencing 6 November 2017.

1.45 Due to timetabling constraints the planning condition hearing session and the planning obligations hearing session took place on Monday 22 January 2018. A short inquiry session to hear further structural engineering evidence took place on 23 January 2018.

1.46 All documents and submissions related to the examination process are listed in appendix 1 of our report. The council's [closing submissions](#) were submitted on 21 February 2018 and the applicant's [closing submissions](#) received on 24 April 2018.

1.47 A [claim](#) for a partial award of expenses against the council was submitted by the applicant on 27 April 2018. The council's [response](#) to the claim was received on 22 June 2018. We consider and make a recommendation on the applicant's claim in a separate report.

CHAPTER 2: PLANNING POLICY

Introduction

2.1 This chapter considers the parties' position on the provisions of the development plan and other relevant policy advice and guidance. In many cases the detailed assessment of relevant planning policies and guidance is carried out in the subsequent topic chapters and where this occurs appropriate cross references are made.

Case for the applicant

Background

2.2 As set out in [APP 2.1](#) the estate owners, development partners and their advisory teams have had extensive discussions with the council and Historic Environment Scotland regarding the development of Loudoun Castle and its estate. Work on submitting planning applications has been carried out in parallel with policy development, initially with the East Ayrshire Local Plan ([CD3.1](#)) and more recently with the East Ayrshire Local Development Plan ([CD3.4](#)). Since at least 2013 the council has been aware of nature of the proposals in general and the scale of enabling residential development in particular. It is only relatively recently that any concerns have been expressed.

Development plan

2.3 In strict legal terms the development plan consists of the East Ayrshire Local Development Plan, adopted April 2017, those parts of the Ayrshire Joint Structure Plan that remain (relating to mineral development) and any adopted statutory supplementary guidance. However, for all practical purposes the relevant development plan policies are contained in the East Ayrshire Local Development Plan. The provisions of the development plan are very important, as there should be a presumption in favour of a proposal that complies with the development plan.

2.4 An important objective of the East Ayrshire Local Development Plan is promoting sustainable economic development. Tourism and recreation development is identified as a key opportunity to promote the local and regional economy. The development at Loudoun Castle Estate is specifically mentioned in the spatial strategy and vision for the plan.

Policy Rural Area 4 and policy Res 13

2.5 There is agreement that policy Rural Area 4 and policy Res 13 are key planning policies. However the council's approach to the application of their own policies is disputed in four areas:

- (i) The proper interpretation of policy Rural Area 4 and policy Res 13;
- (ii) Need for a masterplan;
- (iii) That the tourism and recreation development should be considered as part of the enabling development; and
- (iv) Whether a business plan is necessary

(i) *The proper interpretation of policy Rural Area 4 and policy Res 13*

2.6 Policy Rural Area 4 is a site specific policy which applies to the whole site area of the planning application. This is important, as a site specific allocation, its development cannot be frustrated by an overly rigid approach to any of the general policies that would apply to any development. It also means that the council accepts that some impacts are inevitable but are nonetheless outweighed by the benefits of development. It is in two parts. The first part fully supports and encourages the area identified for tourism and recreation development. The support is unconditional and tourism and recreation development is not defined and so must mean tourism and recreation uses in the general sense.

2.7 The policy also states that lodge and hotel development will be particularly supported. The policy also mentions retail. The proposal includes 450 lodges and the conversion of the castle to a hotel. Ancillary retail development is also proposed along with a range of other tourism and recreation related developments. The proposal therefore complies with the range of uses set out in policy Rural Area 4.

2.8 The second part of policy Rural Area 4 states that, *“subject to the provisions of all other local plan policies or the provisions of any future masterplan that may be agreed, the council will be particularly supportive of sympathetic enabling development which would involve or contribute to the restoration or enhancement of Loudoun Castle itself and of its associated garden and grounds **OR** (applicant’s emphasis) which would secure and enhance the function and viability of the Castle Estate as a major destination.”*

2.9 For the enabling development the policy does set out conditions. It is subject to other local plan policies or the provision of a masterplan that is agreed. The policy states that the council will be particularly supportive of sympathetic enabling development which therefore means that policy Rural Area 4 is linked to policy Res 13. Policy Rural Area 4 also states that the castle and gardens can be restored **OR** enhanced (applicant’s emphasis). There is therefore no policy requirement for full consolidation of the castle and gardens. An enhancement is any improvement on the existing situation.

2.10 Underneath the table on page 122 of volume 2 of the local development plan there are 5 notes. These notes are really explanatory text and do not constitute the planning policy as far as applying Section 25 is concerned. The notes are really explanations of what the council may require for development management purposes. Whether the council actually needs such listed requirements will depend on the relevant circumstances. Failing to meet the requirements of a note does not render a proposal as potentially contrary to the development plan. It would be unreasonable for a policy objective to be defeated by an administrative development management requirement.

2.11 Policy Rural Area 4 refers to sympathetic enabling development. Policy Res 13 refers to enabling development being the minimum necessary and that the character and setting of the historic asset is preserved and enhanced. The policy assessment of whether the enabling development is sympathetic has to be considered in the round, taking into account many factors. This includes weighing the benefits against any impacts and bearing in mind that the site is subject to a land use allocation and where any enabling development would obviously have to be of a sizeable scale.

(ii) Need for a masterplan

2.12 Policy Rural Area 4 refers to the provision of a masterplan (although only in relation to the tourism and recreation development). Policy OP1 also refers to a masterplan and the provision of a masterplan is an area of disagreement with the council.

2.13 However, when taken together, the parameters plan ([CD1.47](#)), illustrative layout plan ([CD1.48](#)), illustrative landscape restoration plan ([CD1.50](#)), design statement ([CD1.4](#)), planning conditions and planning obligation equate to a masterplanning approach as defined by Planning Advice Note 83 ([CD3.19](#)). There is no reason why a masterplan has to be contained in a single document to achieve the relevant planning objectives. The policies do not prohibit the submission of a masterplan at the next stage of the development process. The council has been unable to demonstrate where any of the submitted information is deficient.

2.14 In addition, Planning Advice Note 83 also says that the information provided in a masterplan depends on the degree of certainty over the development. In this case, planning permission in principle is the essential first step to achieve firm commitments from development partners. Detailed design work cannot be funded until the development partners have the security of a planning permission in principle. The acceptability of a planning application for planning permission in principle was agreed with the council and Historic Environment Scotland at the very start of the development process. At no time during the previous planning application or the current application have the council used their power to require further information.

(iii) That the tourism and recreation development should be considered as part of the enabling development

2.15 Policy Res 13 applies to a large listed residential or institutional building located within its own grounds. Clearly the category A castle complies with this description. Policy Res 13 goes on to say that enabling development will be housing. Therefore policy Rural Area 4 logically means that the council will be particularly supportive of sympathetic new build housing. Given the ruinous state of the castle and the degradation suffered by the remnant gardens, the scale of any necessary enabling housing development would be significant. It also means that enabling development is positively supported by the development plan in relation to Loudoun Castle. The proposed enabling development, unlike that which may occur in other circumstances, is not therefore seeking an exception to normal policies.

2.16 The council are wrong to suggest that any of the wider tourism and recreation development can be considered as part of the enabling development. That would stretch the meaning of the two policies in a way that the actual words used cannot mean. Tourism and recreation development cannot enable itself and in any event the nature of tourism and recreation development makes such a proposition commercially unrealistic. Such a burden for such a specialised form of commercial development would, in practice, deter any private sector investment.

2.17 A fair reading of policy Rural Area 4 and policy Res 13 cannot mean that only when the restoration of the castle affects the viability of the tourism and recreation development that enabling development is justified. It is clear that it is only the historic gain of restoring or enhancing the castle and grounds that enabling development is justified, not the wider

economic benefits. The council's interpretation places additional and unjustified burdens on the allocated tourism and recreation uses that would be in practice self-defeating. It would mean none of the planning policy objectives could be achieved.

2.18 As in policy terms enabling development can only be residential, the scale of residential development is determined by the sum necessary to get the castle and its grounds to a secure condition so that the tourism and recreation can be realistically implemented.

(iv) The need for a business plan

2.19 As policy Res 13 only refers to housing as the enabling development, only the housing development requires financial justification. The cost estimates [APP 1.2](#) and development appraisals [APP 1.3](#) and [APP 1.51](#) satisfy this requirement. These documents together also demonstrate that the scale of enabling development is the minimum necessary to secure the castle. There is no policy requirement for a business plan to justify the development of a site which is allocated for tourism and recreation development in the adopted development plan.

2.20 The council's reference to various policies that mention a business plan is an attempt at post facto justification. There is no requirement to produce an overarching business plan or to account for the tourism and recreation development in the development appraisal.

Conclusions

2.21 Subject to appropriate future detailed designs (which will be assessed by the council in consultation with Historic Environment Scotland), planning conditions and obligations, it is contended that the proposal does amount to sympathetic enabling development. Furthermore, the proposal addresses all other relevant development plan policies, relevant Scottish Government policy guidance and advice. All the detailed submissions demonstrate this compliance.

2.22 The proposal therefore complies with policy Rural Area 4 and policy Res 13 and the council's concerns are based on a misunderstanding of their own policies.

Policy OP1 and policy OP2

2.23 Policy OP1 applies to any development proposal and has 12 general criteria. The aim of the policy is to promote high quality sustainable development. Sustainable development is defined as enabling and supporting development that balances the costs and benefits of a proposal over the long term. This is what the proposal seeks to do.

2.24 The proposal secures the long term future of the A listed castle and designed landscape, would improve woodland management, create jobs and boost the local economy. Where the criteria are relevant, and bearing in mind the application is for planning permission in principle, the proposal would comply. There is no objection from Historic Environment Scotland or any other technical consultee. All relevant matters have been appropriately addressed by the submitted information, including the amended environmental statement, when considered overall. The council's criticisms of impacts are not accepted, particularly in the context of a site specific allocation which would result in significant benefits.

2.25 As the site has been identified in policy Rural Area 4 it was subject to a strategic environmental appraisal as set out in the environmental report ([CD3.5](#)). The aim of policy OP 2 is to make sure a proposal addresses the identified significant environmental impacts.

2.26 The environmental report and the submitted environmental statement and addendum are consistent in as much as they identify that there would be significant environmental impacts. However, many of the impacts can be mitigated by further design, planning conditions and the proposed planning obligations. Any residual environmental impacts are outweighed by the overall economic, social and environmental benefits.

2.27 Again overall, and considering that the proposal is for planning permission in principle, it is considered that the submitted supporting information appropriately addresses the impacts identified by the environmental report.

Residential and industry policies

2.28 Although the proposal includes residential development and a small scale industrial development none of the residential and industry policies are directly relevant. The site has been identified for development under policy Rural Area 4 and residential enabling development is therefore accepted in principle. The council have been aware of the likely scale of enabling development for a long time.

2.29 As the residential development is enabling development it is agreed that there is no need for provision of affordable housing. Policy Res 4 is not relevant, again because the principle of residential enabling development has been established by policy Rural Area 4. The proposed distillery could potentially relate to policy Ind 3 but the intention is for the distillery to be more of a tourism and visitor attraction rather than an industrial complex in its own right.

Tourism policies

2.30 Policy Rural Area 4 allocates the site for tourism and recreation uses and is therefore the key policy for the proposal and policies Tour 1 – 3 must be assessed in that context. Policies Tour 1 and Tour 3 provide further support for tourism and recreation development at Loudoun Castle and estate. All the criteria set out in both policies essentially repeat the policy tests that apply as a site allocation through policy Rural Area 4, and neither policy adds any new dimensions.

2.31 Policy Tour 2 is not relevant. Although the proposal includes tourism accommodation and is outwith a settlement boundary, the site is also allocated through policy Rural Area 4. It is suggested that the council only seeks to argue that policy Tour 2 is relevant because it mentions the need for a business plan. As previously argued, there is no policy requirement for a business plan for the tourism and recreation aspects of the development and only the residential development can be the enabling development. This is a completely different set of circumstances than are envisaged in policy Tour 2 which applies, for example, to a proposal for a hotel that could then seek permission for housing as a way to circumvent the strict rural housing policies.

Technical and environmental protection policies

2.32 There are a number of technical and environmental protection policies that are potentially relevant to the proposal. However, it has to be recognised that the application is for planning permission in principle and there are no detailed designs to assess. This will be the next stage in the development process and any detailed proposals can be assessed by the council against these policies with the assistance of consultation responses from the relevant consultees.

2.33 However, sufficient supporting information has been submitted appropriate to a planning application for planning permission in principle. A transport assessment ([CD1.46](#)) and travel plan ([CD1.7](#)) has been submitted and subject to conditions neither Transport Scotland nor Ayrshire Road Alliance have any objections. The proposal therefore complies with policies T1 and T2.

2.34 It is accepted that a planning obligation will be necessary to address other aspects of the development and a draft obligation has been prepared. The proposal therefore complies with policy Inf 5. There are other policies relating to broadband provision, green infrastructure and waste that again can be addressed either through planning conditions or in the preparation of the detailed design.

2.35 The submitted environmental statement addendum has assessed the environmental impacts on nature conservation, landscape, cultural heritage, archaeology, flood risk, geology, air quality and noise. There is no objection from any of the relevant consultees. Therefore, again, subject to conditions and appropriate assessment of the final design, the proposal would comply with all relevant environmental protection policies (policies Env 1-14).

2.36 The council only disputes policy Env 4 (impact on gardens and designed landscapes) and policy Env 8 (protecting and enhancing the landscape). In relation to policy Env 4, the conservation plan has been prepared by highly regarded specialists who have thoroughly researched and understood the historical development of the castle and estate. A detailed assessment has found that the northern fields are the least sensitive areas for further development. The proposal includes significant new planting and restoration of the designed landscape as well as long term management. It is accepted that there would be impacts on the designated garden and designed landscape but these are not considered to be of such significance that they would be unacceptable, particularly considering the benefits. It should be noted that Historic Environment Scotland raised no objection and that the detail of the housing development will still require to be assessed. It is considered that the proposal complies with policy Env 4.

2.37 The submitted landscape and visual impact assessment was prepared by an appropriately qualified professional using a widely accepted methodology and viewpoints agreed with the council. Again, it is accepted that there would be some significant landscape and visual effects. However, these need to be considered in the context of a site allocated for development and the benefits from new planting and long term maintenance. The impacts are not considered to be unacceptable overall and therefore the proposal complies with policy Env 8.

Development plan conclusions

2.38 The proposal seeks to establish a significant, high quality, tourism facility that will bring new, substantial investment into the area, including the creation of many jobs at the proposed resort. The proposal complies with and implements a key objective of the development plan. In addition the castle and grounds, currently deteriorating heritage assets would be enhanced and restored. The site specific allocation in the local development plan must mean that the council accepts that some environmental impacts are inevitable.

2.39 An environmental impact assessment has been carried out and this work helps assess the proposal against the provisions of the development plan. Where inevitable impacts occur they can be mitigated through planning conditions and design and have to be weighed against the overall heritage and economic benefits. Overall, none of the impacts are considered to be unacceptable.

2.40 Subject to appropriate assessment of the detailed designs, planning conditions and a planning obligation it is considered that the proposal complies with the provisions of the development plan.

Supplementary guidance

2.41 The council has a number of statutory and non-statutory supplementary guidance documents and it is known that others are in preparation. There is statutory [supplementary guidance](#) regarding developer contributions. It is accepted that a planning obligation would be necessary. So far as the guidance is relevant it has been complied with in the preparation of the draft obligation (see appendix 2).

2.42 The council had published a non-statutory supplementary guidance note regarding masterplanning and it is understood that an updated version is intended to replace this as statutory supplementary guidance (now adopted January 2018). Both versions are based on Planning Advice Note 83.

2.43 There is no absolute requirement for the production of a single document called a masterplan. Bearing in mind the application is for planning permission in principle, it is considered that in combination, all the submitted information is sufficient for a decision to be taken. The council has not requested any further information neither has any of the consultees.

Scottish Planning Policy

2.44 Scottish Planning Policy introduces as a key principle a presumption in favour of development that contributes to sustainable development. It is considered that the proposal is consistent with a number of principles set out in paragraph 29, namely:

- Due weight to net economic benefit;
- Responding to economic issues, challenges and opportunities;
- Supporting good design;

- Delivery of accessible housing, business and retailing;
- Protecting cultural heritage; and
- Protecting and promoting natural heritage.

2.45 It is therefore considered that the proposal is an example of development that contributes to sustainable development and the policy presumption should apply. Paragraph 32 also states that where proposals accord with up-to-date plans they should be considered acceptable in principle and consideration should focus on the detailed matters arising. The proposal is for planning permission in principle for a site allocated in an up to date local development plan. The principle of the development should therefore be accepted.

2.46 Scottish Planning Policy also provides policy guidance on other topic matters. As the East Ayrshire Local Development Plan has been prepared to accord with Scottish Planning Policy a similar approach is taken between the two documents. Like the development plan, Scottish Planning Policy encourages appropriate rural economic development and expects the planning system to support businesses and employment. Scottish Planning Policy also supports the protection of heritage assets, important landscapes, areas of woodland and ecology. Large development proposals need to provide a transport assessment to demonstrate that transport impacts have been assessed. Paragraph 142 sets out the circumstances where enabling development may be acceptable. Policy Rural Area 4 is consistent with these policies and the application has demonstrated how relevant issues can be addressed and the investment secured. The proposal accords with Scottish Planning Policy.

National Planning Framework

2.47 The National Planning Framework is the Scottish Government's spatial expression of its policies including its economic policies. The Scottish Government wishes to see active rural places and tourism and recreation uses are part of achieving that aim. Cultural heritage is also a mechanism to secure active rural development. Policy Rural Area 4 supports this approach. Being able to bring this project forward is strongly supported by the National Planning Framework and it is suggested that the council has not attached sufficient weight to the support provided by National Planning Framework.

Scottish Government planning advice notes

2.48 There are a number of planning advice notes that are potentially relevant to the proposal. However, the advice contained will mainly be more relevant at the next stage when the detailed design is worked up. So far as the guidance is relevant they have been taken into account in developing the submitted supporting material. The proposal therefore accords with Scottish Government planning advice notes.

2.49 The council have argued that a masterplan should have been submitted. Planning Advice Note 83 sets out what is considered to be an effective masterplan and this includes:

- Clear brief based on a thorough assessment of the site and its needs;
- Client commitment to quality development;

- Multi-disciplinary team;
- Confidence that all parties are clear what is needed and how it would be achieved;
- Accurate interpretation of context of the site and relevant policies;
- Collaboration with stakeholders;
- Economic realities;
- Appropriate and realistic; and
- Ability to deliver.

2.50 All the above matters have been addressed in the submitted supporting information. There is no reason why the above objectives cannot be achieved by more than one document. A multi-disciplinary team has worked together to finalise a deliverable solution. The submitted information clearly shows an appreciation of the site and its context. Stakeholders have been consulted on a continual basis. Design context and options have been presented in the design statement, parameters plan, illustrative layout plan and illustrative landscape restoration plan.

2.51 The council have been provided with details of the proposed investors, assured of the funding commitments and been given assurances that the works to the castle, grounds and leisure development will form part of an agreed delivery programme. When the submissions are considered in the round, all that is required by Planning Advice Note 83 has been met.

Historic Environment Scotland Policy Statement and managing change guidance notes

2.52 Historic Environment Scotland Policy Statement sets out the general principles that should be applied if change is proposed to a historic asset. The applicant has appointed appropriately qualified conservation professionals to prepare the conservation plan and heritage chapters in the submitted environmental statement addendum. In preparing these documents the advice contained in the various managing change guidance notes have also been taken into account.

2.53 It is recognised that further studies are required and detailed proposals have to be worked up for both the castle, gardens and archaeology. However, this work cannot progress until planning permission in principle is granted. Until this occurs, important historic assets will continue to deteriorate. The applicant has worked closely over a long time with Historic Environment Scotland and Historic Environment Scotland has not objected to the proposal.

2.54 The applicant considers that they have submitted all the information they reasonably can for this stage of the development process and therefore also consider that the proposal complies with all the relevant guidance regarding impact upon historic assets.

Other guidance

2.55 There are various published economic strategies including Tourism Development Framework for Scotland ([CD3.29](#)), Tourism Scotland 2020 ([APP4.2](#)), Ayrshire and Arran Tourism Strategy ([CD3.28](#)) and East Ayrshire Tourism Action Plan ([EAC1.22](#)). The proposal would be consistent with these strategies and would make a significant contribution to the local and regional economy.

2.56 The Historic England guidance note entitled “*Enabling Development and the Conservation of Significant Places*” ([CD4.02](#)) has limited, if any weight, as it has no jurisdiction in Scotland. The important policy principles are contained in the local development plan, Scottish Planning Policy and Historic Environment Scotland Policy Statement. There is some detailed technical advice which is useful and this has been used where appropriate.

Overall conclusion

2.57 It is the applicant’s case that the proposal complies with the provisions of the development plan and there are no material considerations that indicate planning permission should be refused. Indeed, significant economic, heritage and landscape benefits all strongly support the proposal. Planning permission in principle should therefore be granted.

Case for the council

Introduction

2.58 The planning application was submitted in September 2015 and called in by Scottish Ministers in December 2015, before the council had completed its own assessment. Since the application was called in the council has considered the application in April 2016 and again in April 2017, after the receipt of additional information, including the environmental statement addendum. The report to the planning committee dated 28 April 2017 ([CD2.49](#)) is the council’s most up to date assessment. The planning committee took the view that the application could not be supported because of the lack of information supporting the principle of development.

Development plan

2.59 The development plan comprises the East Ayrshire Local Development Plan (adopted 3 April 2017 – [CD3.4](#)), those parts of the Ayrshire Joint Structure Plan relating to minerals development (until replaced by a minerals subject local development plan) and any statutory supplementary guidance ([EAC1.41](#)). However, in practice the East Ayrshire Local Development Plan is the only part of the development plan with relevant policies.

2.60 The East Ayrshire Local Development Plan has only recently been adopted and it complies with Scottish Planning Policy. The local development plan’s overall objective is to support appropriate sustainable economic development with tourism identified as a key opportunity.

Policy Rural Area 4

2.61 Policy Rural Area 4 is the dominant planning policy in relation to this proposal. The policy allocates much but not all of the designated garden and designed landscape for tourism and recreation development. Tourism and recreation development is not precisely defined and is meant to apply to a broad range of tourism and recreation uses. The policy in the local development plan is similar to a policy in the previous 2010 East Ayrshire Local Plan, which in turn was developed when the castle and estate was an active theme park.

2.62 The council do not consider that the applicant is correct to separate the policy into parts. The policy has to be read as a whole, including the 5 notes. All parts of the policy are relevant to the application of Section 25 of the Act. The clear objective of the policy is to support the castle and estate for further tourism and recreation development. In this context, appropriate enabling development may help fund the restoration of the castle and gardens. The policy cannot properly be read as allowing residential enabling development to restore the castle alone. In the council's view, the tourism and recreation development cannot be separated from the enabling development.

2.63 A masterplan approach to the whole development is key to the delivery and objectives of the policy. This is supported by Planning Advice Note 83 and the council's adopted supplementary guidance on masterplanning. A masterplan is needed to co-ordinate all the development within the allocated site and to make sure all impacts and trade-offs are considered in relation to the planning constraints, particularly the castle and gardens. Any enabling development must be appropriate and sympathetic. This means considering the overall impacts, taking into account many factors including other planning policies. The council recognised that any enabling development is likely to be significant but the policy does not specify any scale. A masterplan would be the most obvious mechanism to demonstrate that any enabling development was sympathetic and therefore appropriate.

2.64 The council does not consider that the submitted information, even if considered in total, amounts to a masterplan approach. The submitted information includes only the most basic parameters. There is no meaningful layout, street plan or infrastructure plan. What minimal design information has been included is all illustrative and of limited use. It is therefore not possible to carry out a meaningful assessment. This is a serious failing with the proposal as it stands and cannot therefore be said to comply with policy Rural Area 4.

Policy Tour 2 and policy Res 13

2.65 Policy Rural Area 4 also states any proposal must comply with other policies of the local development plan. Policy Res 13 requires the submission of a detailed business plan to justify the scale of the enabling development. Policy Tour 2 also requires a business plan for a hotel proposal outwith settlement limits. In Planning Advice Note 83, one of the functions of a masterplan is to set out the delivery strategy for large scale development, which must include the financial basis for the development to proceed.

2.66 As it stands, there are many uncertainties that only a business plan can clarify. Is the hotel essential to the operation of the other tourism and recreation uses? Is the tourism and recreation development fully funded? If it is fully funded why is enabling development needed only to stabilise the castle? How will the hotel fit out costs be funded? Will a hotel even be provided?

2.67 The council does not accept that policy Res 13 means that only residential development can be the enabling development. A key policy principle is that the scale of enabling development must be the minimum necessary. This cannot just be asserted and it is reasonable for the council to appoint appropriate experts to assess the case made.

2.68 In any event, even in the applicant's own terms, the submitted development appraisal does not show that the scale of residential development is sufficient to even stabilise the castle structure as it currently stands. The council's own expert advice is that significantly more residential development than proposed would be required.

2.69 The lack of an overall business plan linked to an overall masterplan for the development is a significant failing. There is considerable uncertainty over what is actually proposed and insufficient justification to demonstrate that the scale of the enabling development is the minimum necessary. The proposal as submitted cannot comply with policy Tour 2 or policy Res 13.

Policy OP 1 and policy OP 2

2.70 Policy OP 1 applies to all development. For the reasons set out in more detail in the council's evidence on impact on heritage and enabling development, it is considered that the scale of enabling development and the impact on the garden and designed landscape means that the proposal is contrary to criterion i).

2.71 The scale of the enabling development and the lack of a masterplan also means that the proposal would be contrary to criteria iii), v) and vi). The adverse impact of the enabling development on the garden and designed landscape and the landscape impact generally would mean the proposal would also be contrary to criteria ix) and x). The proposal would not comply overall with policy OP 1.

2.72 Policy OP 2 is intended to make sure that development proposals implement the mitigation measures identified in the local development plan environmental report ([CD3.5](#)). It is accepted that the identification of the site under policy Rural Area 4 would mean that some impacts are inevitable. Nonetheless, it is considered that the scale of enabling residential development would result in unacceptable landscape impacts and detrimental impacts on the character of the garden and designed landscape.

Residential policies

2.73 The proposal is not a site allocated for residential development under policy Res 1. A development of up to 1025 houses would be very large in an East Ayrshire context and the council is concerned at the impact such a substantial development over 17 years would have on the other allocated sites. The applicant has provided no information assessing this likely impact.

2.74 Policy Res 3 relates to affordable housing. The council would not require the provision of affordable housing for an enabling residential development. This is because an affordable housing requirement would merely increase costs which would have to be met by more housing. This would run counter to the policy principle that the scale of enabling development should be the minimum necessary.

2.75 Policy Res 4 relates to housing outwith settlement boundaries. It indicates that there is normally strict control over housing proposals outwith settlements. Nonetheless, in this instance, the principle of sympathetic enabling development has been accepted by policy Rural Area 4.

Technical and environmental protection policies

2.76 There are a number of technical and environmental protection policies that are potentially relevant to the proposal. It is accepted that as the application is for planning permission in principle there are limitations as to how some of these policies can be applied and assessed. The council accepts that a transport assessment has been prepared and there is no dispute that some form of planning obligation would be necessary. In general terms, the council is satisfied that subject to a proper assessment of the detailed proposals, appropriate planning conditions and a planning obligation many of the technical and environmental protection policies could be satisfactorily addressed.

2.77 Policy Env 4 protects the designated garden and designed landscape and this is a consideration repeated in other policies including policy Rural Area 4 and policy Tour 3. It is the council's position that the assessment provided by the applicant in the environmental statement addendum and conservation plan is incomplete and flawed. It is considered that the proposal would have significant adverse impacts on the designated garden and designed landscape. Indeed, the council is concerned that if the proposal were to be built, Historic Environment Scotland may have to revisit whether the site could remain in the inventory of gardens and designed landscapes. The proposal would therefore be contrary to policy Env 4 and policy Tour 3.

2.78 Policy Env 8 relates to the landscape character of the area. In the opinion of the council, the Irvine Valley around Galston is in a large part characterised by Loudoun Estate. The proposal, in particular the proposed scale of the enabling housing development, would bring about a fundamental change to the pattern of land use within the Irvine Valley and unacceptably diminish the landscape character of the local area. The proposal would therefore be contrary to policy Env 8.

Development plan conclusions

2.79 The council is supportive of development at Loudoun Castle and Estate in principle but any development must be presented in a masterplan format supported by a sufficiently detailed development and funding appraisal so as to meet the policy requirements of the local development plan.

2.80 All development at Loudoun Castle and Estate must be comprehensively planned. It is not acceptable to separate the enabling development from the delivery of tourism and recreation development. Proposals should be accompanied by a masterplan and sufficient financial information to justify the scale of enabling development. These key policy requirements have not been met.

2.81 In addition, the proposals as they stand would have adverse impacts on the designated garden and designed landscape and adverse impacts on the general landscape character of the Irvine Valley. The proposal would therefore be contrary to policies Env 4, Tour 3 and Env 8. Overall, the proposal does not comply with the provisions of the development plan.

Supplementary guidance

2.82 The council has a range of statutory and non-statutory guidance and a programme for further development ([EAC1.41](#)). At this stage, as no detailed proposals are available it is not possible to assess whether such guidance is complied with, although it is expected that any detailed design would do so. The council's existing and draft guidance (adopted January 2018) regarding masterplanning are closely based on Planning Advice Note 83 and is assessed further below.

Scottish Planning Policy

2.83 Scottish Planning Policy states that as a general principle, *“the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.”* The site has been identified as a development opportunity but any development should not have unacceptable impacts that would damage the recognised heritage assets.

2.84 For the reasons set out above, the scale of enabling development would cause a planning harm, all the planning policy requirements have not been met and therefore the proposal cannot be considered as development that contributes to sustainable development.

2.85 It is accepted that Scottish Planning Policy promotes rural economic development, including tourism and recreation development, however, this is not at the expense of natural or cultural heritage. In the council's view, the scale of the enabling development has not been justified and the distinctive landscape and historic character would be harmed. Although the site is allocated, the proposal as it stands has not sufficiently addressed recognised planning constraints.

2.86 The East Ayrshire Local Development Plan identifies sufficient housing land to meet requirements over a 10 year period to 2027, there is a 5 year effective housing land supply available. The scale of proposed residential development would comprise by far the largest housing site in East Ayrshire. Such a scale of development cannot proceed without impacting on other sites, yet this aspect has not been assessed.

2.87 Paragraphs 135 - 151 comprise the “Valuing the Historic Environment” section of Scottish Planning Policy. Key principles include sensitively managing change to the historic environment, ensuring enabling development is the minimum necessary and of itself does not unacceptably harm the character and setting of historic assets. As set out above, it is the council's view that these key principles have not been met. Insufficient detail has been provided to give assurance that in particular the garden and designed landscape, can or will be sensitively managed. There is no masterplan providing the detail that would normally be expected for development of this nature. The scale of enabling development has not been adequately justified and would be detrimental to the character of the castle, its setting and the designated garden and designed landscape. Overall, the proposal would not comply with the policy principles set out in Scottish Planning Policy.

National Planning Framework

2.88 The National Planning Framework identifies tourism as a key growth sector and that rural areas may be an appropriate location for such activities. However, it also states that future investment is also dependent on continuing environmental quality as well as the historic environment. The council allocated the site for tourism and recreation development because it recognised a unique opportunity. However, for the reasons given above, the proposals currently submitted cannot be supported.

Scottish Government planning advice notes

2.89 Planning Advice Note 44 ([CD3.10](#)) outlines design principles in order for development to minimise the impact on the landscape. This includes testing a variety of alternative concepts. No such information has been submitted and as set out above, the council considers that the overall landscape impact and impact on heritage assets is unacceptable. It is insufficient for the applicant to argue that this information can be provided later. It is necessary at this stage for a proper assessment of the impact on landscape and heritage assets as well as other matters.

2.90 As explained above, the preparation of a masterplan is a requirement of the East Ayrshire Local Development Plan and specifically policy Rural Area 4. Planning Advice Note 83 ([CD3.19](#)) sets out what is a masterplan and how an effective masterplan can improve design quality. This includes:

- Mapping an overall development concept;
- Providing a consistent framework for development;
- Illustrating the proposed form in three dimensions;
- Creating a distinct and appropriate character; and
- Explaining how the development would be delivered regarding phasing, timing and funding.

2.91 Whilst the submitted information includes some analysis it is considered inadequate. What information that has been submitted is frequently illustrative, no circulation framework has been provided, no indication of the final built form or open spaces, insufficient information to assess the landscape or heritage impacts, no three dimensional diagrams and no clear delivery strategy.

Historic Environment Scotland Policy Statement and managing change guidance notes

2.92 Historic Environment Scotland Policy Statement ([CD4.7](#)) sets out the general principles that should apply to development that may impact on heritage assets. However, the applicant's submissions have omitted key steps. There is no information as to whether grants have been investigated or whether the wider tourism and recreation development could have contributed to the stabilisation of the castle or the repair to the designed landscape.

2.93 There remains no indication as to whether conversion to a hotel is possible or even would go ahead. There is insufficient detail to assess the impact of the residential enabling development upon the designed landscape. Whilst a significant amount of information has been gathered, it is not considered this demonstrates a sound understanding of the site as no overall assessment has been provided (as opposed to assessing the relative sensitivity of small parcels) or (as set out elsewhere) the full understanding of the stabilisation costs to the castle.

2.94 The submitted parameters plan and illustrative layout plan betray the fact that insufficient work and planning has been carried out. In such circumstances, and in the light of Historic Environment Scotland Policy Statement, the precautionary principle should apply.

2.95 Managing Change in the Historic Environment: Gardens and Designed Landscapes ([CD4.3](#)) states that development proposals affecting designated gardens and designed landscapes should maintain the specific qualities and integrity of the site. It is the council's view that the scale of the enabling development is such that the integrity of the garden and designed landscape is likely to be detrimentally affected, with the designed landscape being subsumed and overwhelmed by a suburban style residential development.

2.96 Managing Change in the Historic Environment: Setting ([CD4.4](#)) sets out how setting can be defined and analysed. For the reasons set out elsewhere, it is not considered that the assessment for identifying the location for enabling development is sound. Whilst it is considered that significant amounts of enabling development could likely be accommodated, what is proposed is altogether of a different scale and cannot be accommodated.

2.97 The council accepts that Managing Change in the Historic Environment: Castles and Towerhouses ([CD4.6](#)) states that there is no presumption in favour of either consolidation or restoration projects. Works to the castle to allow its conversion to a hotel are in principle supported. However, the proposals go beyond consolidation as they include the insertion of a steel frame without any commitment that the castle will ultimately become a hotel. As set out elsewhere, the council cannot agree to either the estimates for stabilising the castle ([APP1.2](#)) or that the development appraisal ([CD2.55](#) and [APP1.51](#)) has established that the scale of enabling development is adequate. In addition, it is not clear how any cost over runs would be met. Overall, it is not considered that the guidance published by Historic Environment Scotland has been met.

Other guidance

2.98 It is accepted that the allocation of Loudoun Castle and Estate for tourism and recreation uses is consistent with a range of national and local economic development and tourism strategies. This in part has led to the development of policy Rural Area 4.

2.99 Historic England – Enabling Development and the Conservation of Historic Places ([CD 4.2](#)) has no equivalent as guidance in Scotland. However, the applicant's expert witnesses have used the guidance and it is considered the general principles, policy and guidance is equally applicable to Scotland and is therefore of relevance.

2.100 For the reasons set out elsewhere, the council does not consider that the proposal can comply with the guidance. It would harm the heritage value of the castle and designed

landscape, there is insufficient financial information, liabilities have been separated from assets, there is a lack of transparency and the enabling development has not been demonstrated as the minimum necessary.

Overall conclusions

2.101 The council is supportive of the principle of development at Loudoun Castle and Estate. However, it is considered that the current proposal cannot comply with important aspects of the relevant policies of the development plan.

2.102 For similar reasons, the proposal cannot comply with important aspects of Scottish Government's, Historic Environment Scotland's and others' relevant policy guidance and advice. There are therefore no material considerations that would outweigh the provisions of the development plan.

Other parties

2.103 In the evidence provided by Historic Environment Scotland they explained that the Scottish Government's guidance regarding enabling development is set out in paragraph 142 of Scottish Planning Policy and that any guidance produced by Historic England has no jurisdiction in Scotland. They also referred to the principles and guidance contained in Historic Environment Scotland Policy Statement and the relevant managing change notes. This included the importance of robust conditions or planning obligations to make sure that the conservation benefits were delivered and that sustainable long term management arrangements would be in place.

2.104 Strathclyde Partnership for Transport expressed concern that the development may be over reliant on trips made by private cars. Planning policies would support improved public transport provision. The other consultees (summarised in chapter 1) sometimes referred to policy requirements in specifying matters that had to be addressed in planning conditions or a planning obligation.

2.105 Those individual local residents supporting the development stressed the economic benefits that they consider the proposal would bring. Those objecting, stressed the impacts on the castle and designed landscape and also had concerns regarding the scale of enabling development.

Reporters' conclusions

Development plan

2.106 Section 25 of the Town and Country Planning Act (Scotland) 1997 requires Scottish Ministers to make a decision in accordance with the provisions of the development plan unless material considerations indicate otherwise.

2.107 There is agreement that technically, the development plan consists of the East Ayrshire Local Development Plan (adopted April 2017), those parts of the Ayrshire Joint Structure Plan that remain in force (relating to mineral development) and any formally adopted statutory supplementary guidance. However, for all practical purposes the key provisions of the development plan are contained in the East Ayrshire Local Development Plan. We concur with this assessment.

2.108 There was also agreement that the overall objective of the development plan was to support sustainable economic development, that East Ayrshire was in need of economic support and tourism was a key opportunity for economic development. We find therefore that there is policy support for appropriate economic development. We note that this overall policy objective is consistent with a similar approach adopted in Scottish Planning Policy and the National Planning Framework. However, such support is not unqualified. When read as a whole, it is clear to us that the development plan also expects proposals for economic development to also address, wherever possible, the impacts from such proposals. We find therefore that there is policy support for appropriate economic development but such development must overall, also be environmentally and technically acceptable.

Relevant planning policies

2.109 As is often the case, the East Ayrshire Local Development Plan has site specific policies, policies that apply to particular types of development and general policies that would apply to any proposal. Inevitably, there is a degree of overlap between these different types of policies. We agree with the applicant, that the general policies of the local development plan have to be interpreted in the context of a site allocation for general tourism and recreation development, with a recognition that enabling residential development would be needed. We accept that having made such an allocation the council would have been aware that some impacts would be inevitable. The proposal is also a complex one, containing broadly three related elements; the consolidation of the castle ruin and its grounds, new tourism and recreation development and the enabling residential development. There are therefore a number of relevant policies. Below we identify which policies are relevant and identify the essential policy requirements which are considered in more detail in the individual topic chapters before reaching our overall conclusions as to whether the proposal complies or not with the provisions of the development plan in chapter 13.

2.110 It also has to be recognised that the proposal is for planning permission in principle. As set out in paragraphs 1.5 and 1.9, the actual proposal before Scottish Ministers consists of the range of uses set out in the application form ([CD1.1](#)) and applied to the red line site area shown on ([CD1.28](#)). The extensive supporting information is useful in understanding how the proposal could be developed, nonetheless, any proposals or assumptions are merely illustrative unless defined by planning conditions attached to the planning permission or specified in clauses of a planning obligation.

Policy Rural Area 4 and policy Res 13

2.111 Policy Rural Area 4 is a site specific allocation which refers to enabling residential development. Policy Res 13 is a policy which specifically relates to enabling development. We agree with both the applicant and council that these two policies are key development plan policies against which the proposal should be assessed. The applicant and council adopt different approaches to interpreting the two policies and this is therefore a key dispute between them. The applicant, in its [closing submissions](#) claimed that the council's interpretation was wrong in law. We have not been able to agree with every point the applicant has made regarding the interpretation of these two policies.

(i) *Proper interpretation of policy Rural Area 4 and policy Res 13*

2.112 Policy Rural Area 4 is a site specific allocation identified as site 366M on the proposal map of the local development plan. The red line of the planning application makes up most of this allocation although it is the blue line of the application that reflects the defined allocation. We believe this reflects the discussions between the land owner and the council as the policy was formulated both for the previous 2010 local plan and the current local development plan.

2.113 It seems to us that the aim of policy Rural Area 4 is to see the castle and its grounds enhanced and become a major tourism destination. To this end, there is a recognition that enabling development is likely to be necessary. Our understanding, in general terms, is that is what is proposed in the submitted planning application.

2.114 Policy Rural Area 4 refers to tourism and recreation development. There is no formal definition in the East Ayrshire Local Development Plan regarding what constitutes tourism and recreation development. Both parties argued that this meant tourism and recreation uses in the general sense and so includes a broad range of activities. It is agreed that the activities described in the planning application form (apart from the enabling residential development) constitutes tourism and recreation uses. We agree with this assessment.

2.115 Policy Rural Area 4 also states that, "*subject to the provisions of all other local plan policies or the provisions of any future masterplanthe council will be particularly supportive of sympathetic enabling development...*" Any local development plan should be read as a whole and any proposal is subject to all relevant planning policies irrespective of whether this is referred to or not.

2.116 There was also agreement that "*sympathetic*" needed to be considered in the round. "*Sympathetic*" related to the totality of impacts (e.g. heritage, design, technical considerations etc) but also included weighing in the balance any benefits of the development. This balancing exercise had to be carried out in the context of a development plan site allocation where some impacts would be inevitable. Again, we agree with this approach.

2.117 In considering whether the enabling development is "*sympathetic*", we also consider that it is necessary to take into account that the application is for planning permission in principle, where there would be a further opportunity to assess any detailed proposals and that planning conditions and a planning obligation could be attached.

2.118 We also agree with the applicant that policy Rural Area 4 refers to both restoration or enhancement of the castle and grounds. The policy therefore has no particular requirement as to the final form of the castle or its grounds aside from a minimum requirement that there is an enhancement compared to its current state.

2.119 We cannot agree with the applicant that the "*Notes*" are not part of policy Rural Area 4 for Section 25 purposes and should instead be considered as explanatory text. The subheading "*Notes*" clearly implies a secondary aspect but does not mean that they have the same status as if they were part of the explanatory text. We accept that on page 4 of volume 2 of the local development plan it states that, "*Notes providing specific requirements for sites are set out in the text.*" However, "*text*" could also mean the text of the policy. We

cannot accept that “text”, when read in context means the explanatory text. In any event, even if we are wrong, we do not consider that this would have any practical effect. The 5 notes attached to policy Rural Area 4 essentially repeat policy requirements set out elsewhere in the local development plan. As a local development plan has to be read as a whole, even without the notes, there would be a policy requirement for a masterplanned approach (policy OP1), respect Loudoun Castle Historic Garden and Designed Landscape (policy Env 4), address flood risk (policy Env 11) and complete a transport assessment (policy T2).

2.120 Policy Rural Area 4 does not set any particular maximum scale for the enabling development. The applicant argued that the council must have been aware that to achieve the policy objectives of policy Rural Area 4 the scale of enabling development would have had to be of the magnitude proposed in the planning application (ie approximately 1000 houses). Historic Environment Scotland in its evidence stated that it recognised a significant amount of enabling development would be necessary. The council argued that it knew that the scale of enabling development would be significant but that is not the same as endorsing any particular number.

2.121 Irrespective of what was or was not discussed between the applicant, council and Historic Environment Scotland over the years leading up to the planning application, it seems to us that the scale of enabling development must be “*sympathetic*” in the round (as described above) and meet the requirements of policy Res 13 (see below). Again this can only be carried out in a detailed assessment in the following individual topic chapters. We do not accept that policy Rural Area 4 establishes a simple formula where the amount of enabling development automatically equals whatever the cost of enhancing the castle and the gardens. Not least because there are a number of alternative conservation strategies with a range of costs and conservation benefits.

(ii) Need for a masterplan

2.122 Note (i) to policy Rural Area 4 refers to masterplanning for the tourism related development. The second paragraph of the policy regarding enabling development also refers to other local plan policies and we note that policy OP 1 refers to a requirement for a masterplan in certain circumstances. We conclude, that for all practical purposes the intention of the development plan is that the development of the site, including any enabling development needs to be masterplanned.

2.123 Planning Advice Note 83 and the council’s adopted supplementary guidance ([CD3.33](#)) encourages a particular form and content for a masterplan. However, we consider that the policy test is that there is an appropriate approach to comprehensively developing the site rather than any particular form such an approach should take. We consider that the range of supporting material submitted by the applicant would be policy compliant if it was clear that this material was sufficient and adequate to demonstrate a comprehensive approach, again, bearing in mind that it is a planning application for planning permission in principle and the ability to attach planning conditions.

2.124 We have concerns that the supporting material, prepared by different authors and at different times might make it harder to adopt a comprehensive approach to site planning compared to a conventional masterplan approach. Nonetheless, whether the information is adequate and sufficient has to be assessed in detail. Therefore, in the following topic chapters we consider whether the information before us achieves the same purpose of a

masterplan approach bearing in mind the ability to attach conditions and a planning obligation. We note, in chapter 12, that the applicant agrees that a range of site wide issues should be addressed before any development commences.

(iii) That tourism and recreation not part of enabling development

2.125 We cannot agree with the applicant that as a matter of policy and law the tourism and recreation development must not be taken into account in deriving the appropriate scale of residential enabling development.

2.126 Policy Res 13 refers to works to a large listed residential or institutional building located within its own grounds. There is agreement that Loudoun Castle falls within this definition. The policy then goes on to set out a series of tests for enabling development, which in summary are:

- The only means to prevent the loss of the asset and to secure its long term future;
- Minimum level of development to bridge any funding gap;
- Designed to ensure the character and setting of the asset is preserved and enhanced;
- Subject to a section 75 agreement; and
- Adequate financial information that can be independently assessed

2.127 Policy Res 13, like policy Rural Area 4, does not specify any particular limits to the scale of enabling development as such. It does however specify requirements that the enabling development should meet. As previously stated in paragraph 2.116, we conclude that the ultimate acceptable scale of enabling development has to be derived from being sympathetic overall (as described above) and satisfying the tests for enabling development set out in paragraph 2.126 above.

2.128 We accept that Policy Res 13 refers to housing. In our experience, residential development is the most common form of enabling development. However, we do not consider that means no other uses should be considered. The phrase “*minimum necessary to bridge any gap in funding*” implies to us that any residual value or other uses have to be taken into account. As we discuss below, we consider that this interpretation is consistent with paragraph 142 of Scottish Planning Policy and the whole emphasis of the guidance published by Heritage England ([CD4.2](#)).

2.129 We also cannot agree that it is inherently contradictory for tourism and recreation development to be taken into account when establishing the scale of enabling development. We can foresee circumstances where the commercial realities of some forms of tourism and recreation development means that a judgement would have to be made as to whether it would be realistic to assume any financial contribution to the wider development. However, in our view, that is a different matter from saying there is a policy bar for any tourism and recreation development to be considered (or indeed any other form of development other than residential).

2.130 Fundamentally, it would be illogical, for example, to ignore any tourism and recreation development if it was likely to make a “super” profit. If significant returns were possible, to simply ignore them would mean more houses than strictly necessary would be built, undermining the longstanding principle of the minimum level of development necessary as well as increasing the potential risks of unacceptable impacts upon the heritage asset. In saying this, we are not suggesting that the tourism and recreation development would make a “super” profit. However, we do consider that potentially, returns from other uses other than houses should be taken into account.

2.131 We accept that any financial appraisal considering returns from uses other than housing would have to take into account the different commercial nature of say tourism and recreation development compared to housing. For example, the different levels of uncertainty regarding returns and therefore acceptable profit margins relative to risks. However, this is all about what constitutes an appropriate financial assessment rather than whether returns from other forms of development (such as tourism and recreation) should be automatically set aside. We also accept that as tourism and recreation development is an allocation under policy Rural Area 4, such development itself is not subject to a minimum necessary test. However, that again is a different matter from arguing that the minimum necessary test means the minimum number of houses to fund any given restoration project and that the assets and returns generated by other elements of the proposal must be set aside in all circumstances.

2.132 In any event, it is not our understanding that the returns from the tourism and recreation development are intended to make no financial contribution to the overall development. Our understanding is that the tourism and recreation development, in combination with returns from the existing woodland resource funds the restoration of the garden and designed landscape. The final development appraisal ([APP1.51](#)) also apportions some costs to the tourism and recreation development. The final budget estimate ([APP1.2](#)) lists in section 5 (page xvi) a range of costs that have not been included and are therefore not funded by the residential development. These costs must therefore be funded by anticipated returns from the wider tourism and recreation development. The costs of funding the design process, which we would consider would be significant for a proposal of this complexity, are also presumably funded from the overall development and not the residential scheme.

2.133 In chapter 11 we discuss the applicant’s proposal to provide various financial bonds to ensure development is completed in the event of the council having to intervene to complete, for example the consolidation of the castle ruin. Financial bonds also have to be funded and again this appears to be from the overall development because they are not costs attributed to the residential development. If returns from the tourism and recreation development are to be taken into account for some elements of the proposal, then such sums must be demonstrated, they cannot just be asserted. We consider this is made clear in the last paragraph of policy Res 13.

(iv) Need for a business plan

2.134 Policy Res 13 specifically refers to the need for a detailed business plan for the overall development. We can see the utility of an overall business plan and that it could be a helpful tool to assist a decision maker in understanding how the overall development, particularly one that is so complex, is to be funded. However, we consider it is important to understand the reasoning for this requirement.

2.135 We would suggest that a fair reading of policy Res 13 is that the purpose of the business plan is to demonstrate that the enabling residential development is the minimum necessary. This objective does not have to be achieved by a single document entitled “*Business Plan*.” A range of other information may be appropriate.

2.136 We are concerned that there was a suggestion in some of the council’s evidence that a business plan was necessary in order to assess the overall viability of the development. We do not consider that is the purpose. It is not the role of the planning system to protect developers from their own commercial decisions. There are many proposals that have gained planning permission but ultimately have not been built because they are not commercially viable. In policy terms, the test is whether sufficient financial information has been submitted in order to be confident that the minimum amount of enabling residential development has been proposed rather than the submission of a document entitled “*Business Plan*” per se. We consider the adequacy of the submitted financial information in chapter 4.

2.137 We would add that the test of “*sympathetic*” enabling development is closely inter-related to the test of minimum amount of enabling development. Obviously the scale of enabling development could have a potential direct physical impact upon the castle and its grounds. However, the scale also determines the length of construction and the greater the number of houses (and therefore the size of community) the more elements that would have to be taken into account in coming to the overall conclusion as to whether the enabling development was “*sympathetic*” in the round.

Policy OP 1 and policy OP 2

2.138 Policy OP 1 and policy OP 2 are relevant to the current application. Policy OP 1 has 12 criteria. These criteria refer to the provisions and principles of the local development plan, design matters, including the use of masterplans and a range of other impacts including natural heritage, built heritage, landscape and meeting highway requirements.

2.139 Policy OP 2 requires the mitigation measures identified in the environmental report ([CD3.5](#)) be satisfactorily addressed in any proposal. The mitigation measures are set out in pages 394 – 399 of the environmental report, and in summary include:

- No large scale loss of landscape features;
- Consider land stability;
- No loss of the wildlife site, ancient woodland or trees;
- Investigate flooding issues;
- Introduce bus service to reduce car trips;
- Protect watercourses;
- Consider impacts on listed buildings, the designated garden and designed landscape and archaeology; and

- Provide for new open space.

2.140 For both policies, the matters identified, when considered together, aim to make sure that the allocated tourism and recreation development and the enabling development are overall environmentally and technically acceptable. These matters essentially duplicate many of the considerations set out in policy Rural Area 4 and policy Res 13, and the relevant technical and environmental protection policies discussed below. These impacts will be assessed in the following individual topic chapters, bearing in mind, that the site is allocated for development. In our view, the issue is not whether there are any environmental or other impacts but whether, bearing in mind the site's allocation, the residual impacts, after mitigation, are acceptable overall.

Residential and industrial policies

2.141 Policy Res 1 identifies the housing sites intended to meet East Ayrshire's housing land requirement up to 2025. In total, land estimated for 7905 units is identified. The proposed residential enabling development does not form part of this allocation even though it would amount to the single largest residential development site. It was accepted by all those witnesses we asked that 1000 houses as enabling development would be unique in Scotland. The main witness for Historic Environment Scotland said the next largest example of enabling development that they were aware of in Scotland was one for 250 houses in Aberdeenshire.

2.142 In paragraphs 2.120 and 2.121 we rehearsed the argument as to whether the council had in effect endorsed this scale of residential development by implication when policy Rural Area 4 was formulated. We note that the local development plan spatial strategy says that residential development is to be focussed within Kilmarnock (page 13). The fact that the East Ayrshire Local Development Plan makes no mention of any scale of enabling development is consistent with the council's claim that it had no magnitude of enabling development in mind.

2.143 Up to 1000 houses amounts to a new community of approximately 2000 people whose permanent home it would be. In our judgement, it would be important that the submitted information demonstrated that a) the design and function of a new community would provide for an acceptable living environment and b) the significant additional housing development over and above what is considered to be a generous supply has no adverse consequences for other developments. In our judgement a new community must be acceptable in its own right irrespective of any financial justification.

2.144 We are concerned that the focus of both the applicant and council appeared to be ensuring that the scale of enabling residential development was the minimum necessary to fund the stabilisation of the castle. We agree that this is an important consideration but we do not consider that it is the only consideration. It is also important that the implications of what would in effect be a new community on the wider area are considered and that sufficient thought at this stage of the development process has taken place to be sure the new community would work as a place to live for approximately 2000 people.

2.145 Policy Res 3 relates to affordable housing. A housing allocation in the Kilmarnock and Loudoun housing sub market area normally requires 25% affordable housing provision. However, both the council and applicant explained that for enabling development there should not be an affordable housing element because the additional costs would mean that

there would be a need for an even bigger element of enabling development. We understand and accept the logic of this argument. We would add that it must be considered a disbenefit that the proposal for a new community of approximately 1000 houses has no affordable housing within its mix.

2.146 The proposal includes a distillery and on this basis the applicant indicated that policy Ind 3 could also be relevant. However, our understanding is that the proposed distillery is really intended to be a tourism use rather than an industrial complex in its own right. We do not therefore consider that policy Ind 3 is directly relevant.

Tourism policies

2.147 We agree that policy Tour 1 is relevant, although it repeats the support for the importance of tourism and Loudoun Castle as a tourism development opportunity that is already set out in policy Rural Area 4.

2.148 Although policy Tour 2 and policy Tour 3 refer to various forms of tourism and recreation developments within and outwith settlements, we do not consider them directly relevant. Policy Rural Area 4 is in effect a land use allocation. In these circumstances it would seem strange to also apply policies relating to particular forms of tourism and recreation development. In any event, even if we are mistaken in this view, the criteria listed in policy Tour 2 and policy Tour 3 do not add any new policy requirements over and above the requirements required by the other relevant planning policies.

Technical and environmental protection policies

2.149 There are a number of potentially relevant technical and environmental protection policies, although many would become more relevant when detailed proposals have been prepared. As indicated above, we agree with the applicant that the assessment of the proposal against these technical and environmental protection policies has to be in the context of a site specific allocation, which recognised the need for residential enabling development.

2.150 Policy T1 seeks to increase active travel and reduce reliance on private car vehicle trips. Policy T2 requires a transport assessment and travel plan and policy T4 encourages the protection and creation of existing and new paths. Whether the objectives of these policies have been addressed, bearing in mind that the application is for planning permission in principle, is assessed mainly in chapter 8 and chapter 11.

2.151 Policy Inf 2 (broadband) and policy Inf 4 (green infrastructure) are most likely to be relevant at the detailed design stage, although they may inform appropriate planning conditions and/or planning obligations. Policy Inf 5 relates to development obligations. A planning obligation is proposed and this is assessed in chapter 11. In addition, the council and applicant argued that development obligations if applied to the enabling development would simply result in needing further enabling development to pay for such contributions which would be counterproductive. This issue is considered in more detail in chapters 4 and 11.

2.152 We accept that it is relevant that new development takes into account the need to manage waste both during construction and when completed. However, this is most likely

to be able to be achieved through planning conditions and/or through detailed design proposals.

2.153 Policies Env 1 (listed buildings), Env 2 (archaeology) and Env 4 (gardens and designed landscapes) are directly relevant and assessed in detail in chapter 3. Policy Env 6 (nature conservation) is considered in chapter 7. The impact on landscape (policy Env 8) and woodlands (policy Env 9) are both considered in chapter 5. Matters of flooding and surface water drainage (policy Env 11) is considered in chapter 9 and pollution (policy Env 12) is considered in chapter 10 regarding residential amenity.

2.154 There is no dispute that parts of the site have been used previously for mineral extraction (policy Env 13) and this is a matter that would have to be addressed in conditions and potentially in the detailed design proposals. Likewise, the objective of policy Env 14 (low carbon buildings) is a matter most directly addressed in the detailed design but could also be a matter appropriate for planning conditions. Schedule 8 of the local development plan sets out the open space standards for residential development. It would be important to be sure that adequate provision for open space could be addressed in any final residential layout.

2.155 In carrying out the assessment of the individual technical and environmental policies we also consider that it is important to recognise the inter-relationship between the policies and the potential for policy requirements to have financial implications which in turn, could impact on how the submitted financial information is considered.

Supplementary guidance

2.156 The council has adopted statutory guidance relating to masterplanning based on Planning Advice Note 83. As set out above, whether the material submitted with the application is adequate to show how the site could be comprehensively developed is considered in the following topic chapters.

Scottish Planning Policy and the National Planning Framework

2.157 Scottish Planning Policy and the National Planning Framework set out a number of important principles and policies that are relevant to the development. However, we note that the East Ayrshire Local Development Plan has been prepared in the knowledge of these policies and principles and we believe is consistent with them. For example, both Scottish Planning Policy and the East Ayrshire Local Development Plan have similar policy approaches to design, heritage, sustainable transport etc. We conclude that if the proposal complied with the provisions of the development plan overall, it would also generally comply with the policies and principles of Scottish Planning Policy and the National Planning Framework. We also consider that in such circumstances the proposal would amount to development that contributes to sustainable development and the policy presumption in favour of development would apply. However, the converse would also apply.

2.158 We recognise that both Scottish Planning Policy and the National Planning Framework attach weight to the importance of economic development and we consider this matter in more detail in chapter 6. There are a variety of planning advice notes and circulars that are potentially relevant and contain useful advice. However, we agree with the applicant and council that in most cases such advice is likely to be more useful for the following detailed design stage. However, where relevant (for example circular 4/1998

([CD6.1](#)) (planning conditions) and circular 3/2012 ([CD6.2](#)) (planning obligations) we have taken such advice into account in our detailed consideration in the following topic chapters.

Historic Environment Scotland Policy Statement and managing change notes

2.159 The Historic Environment Scotland Policy Statement and the three managing change notes are relevant and contain important principles and useful advice. However, the key policy requirements are also repeated in the East Ayrshire Local Development Plan and Scottish Planning Policy. We have taken the above guidance into account in our detailed assessments in chapters 3 and 4. We would also emphasise the need, which is self-evident, that any conservation benefits deriving from the enabling residential development must be secured and appropriate arrangements must be in place to make sure that there is sustainable long term management arrangements so that the castle and grounds do not simply deteriorate again.

2.160 As we explain in chapters 3 and 4, Historic Environment Scotland confined its own assessment to a relatively narrow set of considerations. The fact that Historic Environment Scotland did not make a formal objection does not, in our view, imply that the proposal is compliant with the above guidance in every respect.

Other

2.161 We accept that there are a range of economic strategies that identify the potential for tourism development generally and some make reference to Loudoun Castle. We consider that it is important that any benefits of the proposal, including economic benefits are fairly identified and considered where carrying out the overall balancing exercise.

2.162 We agree that the Heritage England guidance regarding enabling development ([CD4.2](#)) has no jurisdiction in Scotland. The key principles are set out in the local development plan and Scottish Planning Policy. Nonetheless, where sensible policy has been developed following similar principles, and in the light of experience, there are good grounds to take such guidance into account. We note the importance (supported by Historic Environment Scotland) in securing conservation benefits and that mechanisms are in place for long term maintenance. We note that many of the applicant's advisors also took the Heritage England guidance into account. We address these matters in more detail in chapter 4.

Conclusions

2.163 One of the planning objectives of the local development plan is to support the sustainable economic development of East Ayrshire and tourism has been identified as a key opportunity. The site has been allocated for tourism and recreation development, to see the castle and grounds enhanced to become a major tourism destination and with a recognition that to achieve this enabling development would be necessary. In general terms, this is what is proposed in the submitted planning application.

2.164 Aside from the local development plan there are numerous other policies and guidance which we have identified. However, these other policies and guidance do not add a different policy dimension and in our view can be seen to complement and support the local development plan.

2.165 To comply with the provisions of the development plan the proposal in general and the enabling residential development in particular should be “*sympathetic*”. This must be considered in the round, taking into account all relevant elements, balancing both the various impacts against any benefits and in the context of a site specific allocation. It is also necessary to recognise the proposal is in the early stages of the development process and further assessment, controlled by planning conditions and/or planning obligations is part of the rationale behind applications for planning permission in principle.

2.166 In the following topic chapters we assess the proposal against the “*sympathetic*” development test from the perspective of the matters relevant to those chapters. We carry out our overall assessment in chapter 13.

2.167 We consider that the submitted information should demonstrate that an adequate masterplan approach has been followed. This does not need to be a single document entitled a “*masterplan*”. However, sufficient information, bearing in mind the stage in the development process, should be available to demonstrate that essential elements of a masterplan approach have or could be addressed. The applicant’s case is that in total, sufficient information has been submitted and that planning conditions should be attached to make sure certain site wide matters are addressed before development commences. Again, whether this is adequate is considered in each topic chapters with overall conclusions made in chapter 13.

2.168 There should be sufficient financial information to demonstrate that the minimum level of residential enabling development is proposed. This is separate from, but closely linked to ensuring that the residential enabling development is also sympathetic in the round. We do not consider that there has to be a single document entitled “*Business Plan*” but the information has to be adequate. We cannot agree with the applicant that there is a bar, in policy and in law, in taking into account the wider tourism and recreation development. However, in taking the wider development into account any assessment would have to be realistic, acknowledging the commercial realities of the different types of tourism and recreation development. Our assessment of the submitted final development appraisal is carried out in chapter 4.

2.169 Finally, the proposal and any planning permission must secure any conservation and other benefits if they are to be taken into account and provide adequate framework for the sustainable long term management of the castle and its grounds. Where management is an issue these are considered in the topic chapters but the main assessment is carried out in chapters 11 and 12.

CHAPTER 3: IMPACT ON HERITAGE ASSETS

Introduction

3.1 This chapter considers the parties' position in relation to the impact of the proposal on the heritage assets of the site. Particular matters to be addressed are:

- Assessment of the impact of the proposal on the castle and listed cottage;
- Assessment of the impact of the proposal on the setting of the castle and listed cottage;
- Assessment of the impact of the proposal on the Inventory Garden and Designed Landscape; and
- Assessment of the impact of the proposal on the archaeology of the site.

Listed buildings

3.2 [Figures N7.2 and N7.3](#) in volume 3 of the environmental statement addendum provide an indication of the location of the listed buildings within the site boundary. [Tables 7.5 and 7.6](#) also provide a full list of designated buildings and landscape elements, together with unlisted structures within the curtilage of the castle.

Inventory Garden and Designed Landscape

3.3 The designed landscape at Loudoun Castle is listed as being of national interest and is included in Historic Environment Scotland's Inventory of Gardens and Designed Landscapes ([CD4.22](#)). The inventory identifies it as having outstanding historical and scenic value, high architectural value, and some horticultural, arboricultural, silvicultural, nature conservation and work of art value.

Case for the applicant

Impact on castle and listed cottage

3.4 The general sequencing of the proposed works to the A listed castle are detailed in appendix 1 of the budget estimate ([APP1.2](#)). Updated structural reports ([APP1.50](#)) provided in evidence by the applicant's engineer in preparation for the inquiry session in January 2018 also provided further detail of the proposed works to the castle, as do the Internal Repair Schedule ([CD1.11](#)), External Repair Schedule ([CD1.10](#)) and elevations [CD1.21](#), [CD1.22](#), [CD1.23](#) and [CD1.24](#). Witness reports and precognitions included in appendix 1 of our report also provide further information on the proposed works.

3.5 An internal steel frame has been developed as the preferred solution for the stabilisation of the historic fabric and this solution has been the basis for the budget estimate. A steel frame would stabilise the structure and enable further conversion in the future. It will provide a safe working environment during the construction process and significantly shorten the construction programme compared to traditional consolidation. It will also give future developers, contractors and investment funders cost certainty when carrying out the conversion works.

3.6 The proposed works to the listed cottage constitute repairs only and would not be funded from the enabling development.

3.7 A conservation plan ([CD1.53](#)) was commissioned to explore and inform the possible conservation and restoration strategies for the designed landscape and buildings. It provides evidence to support the restoration works and inform the costs of that work. The plan also underpins the assessment of effects on the historic assets in chapter 7 of the environmental statement addendum ([CD1.45](#)).

3.8 The plan considers 6 options for the restoration of the castle. These are option A (partial demolition and consolidation); option B (partial demolition; consolidation and restoration); option C (consolidation); option D (consolidation and interventions); option E (partial restoration); and option F (restoration and re-instatement). The conclusion was that all of the options which involved part demolition produced an unacceptable impact to the significance of the building. The solution should be one which preserves the entire shell of the building to its extent before the 1941 fire.

3.9 Chapter 7 of the environmental statement and addendum provides an assessment of the effects of the project on the historic environment, including buildings, structures, designed landscape and historic areas. The assessment is based on consideration of the likely magnitude of the impact during the construction and operational phases of the project. It also assesses three broad levels of restoration of the castle; a) stabilisation of the structure; b) rebuilding of the castle as a "shell"; and c) re-development as a hotel. The delivery of each would be subject to commercial viability. The relationship between the options in the conservation plan and those of the environmental statement is also explained in a letter from the applicant to Historic Environment Scotland ([CD1.55](#)).

3.10 During the construction phase impacts on the castle would be direct to the physical fabric and to views and setting, but would be short/medium term. However, the effects would result in a long term beneficial effect as a result of the conservation of the castle ruin.

3.11 In terms of the operational effects on the castle and based on the whole development being completed, the proposal would have a high beneficial impact on the asset by achieving the conservation of the historic fabric. This would result in a major beneficial significance of effect.

3.12 The magnitude of impact on Loudoun cottage would be low to medium, meaning that effects would range from minor to moderate. During the construction phase, this would be direct, and effects would be short/medium term. As with the castle, long term beneficial effects would result, because of the conservation of the buildings and structures.

3.13 A full summary of the likely environmental effects on historic buildings, landscape and setting is included in Table 7.9 of the environmental statement addendum. Overall the project will have a high beneficial impact on the castle by achieving the conservation of the historic fabric, which will result in a major beneficial significance of effect. The predicted impacts on the listed buildings within Loudoun Castle Estate, including the A listed Castle, do not therefore raise historic environment issues that are contrary to either national or local development plan policy.

Impacts on the setting of the castle and listed cottage

3.14 The setting of the castle and listed cottage is primarily defined as the landscape designed by the Earl of Mar around 1714 which has the castle situated at the centre of an array of allées.

3.15 The impact on the setting of the castle is assessed in chapter 7 of the environmental statement. The views identified in the conservation plan are also used in the summary assessment in table 7.9 of the environmental statement. Views towards the castle from within the designed landscape and the south boundary range from very high to medium sensitivity. With the landscape proposals, the beneficial impacts on all views would be of medium magnitude, meaning that effects would range from major beneficial to moderate in significance. This is a significant positive effect.

3.16 The majority of new-build tourism, leisure and housing elements would be invisible in views away from the castle and cottage, and would be screened in views towards them. Significant impacts on the setting of the castle and listed building do not stem from the proposed residential development, which cannot be seen from within the interior of the designed landscape that forms the setting of these listed buildings.

3.17 Overall, the setting of the castle and listed cottage will be enhanced by the proposals to restore the structural planting in line with the principle of the Mar designed landscape. This would re-establish the centrality of the castle in the landscape, improve the appearance of the setting, and enhance the conceptual framework within which the design was conceived. The predicted impacts on the setting of the listed buildings within Loudoun Castle estate do not therefore raise historic environment issues that are contrary to either national or local development plan policy.

Impact on the garden and designed landscape

3.18 The Mar designed landscape is the most culturally significant single element of the historic assets at Loudoun Estate. It is of greater significance than the castle or cottage alone but that does not mean it should be treated as being of greater importance than the castle. The conservation aim cannot be solely about conserving the castle in its setting because the designed landscape as a whole is considered to have a greater cultural significance when compared to the cultural significance of the castle.

3.19 The significance of the landscape is as a surviving example in the Scottish historical style, as set out in the conservation plan. This style of design depends on strong lines, straight avenues, views to distant features and axial relationships between buildings, planted landscape features such as belvederes, and pre-existing site features, history and topography.

3.20 The conservation plan confirms that the views and setting of the designed landscape are one of its most important component parts. Views looking out from the landscape, views looking towards it from a distance, and from closer up were all considered in its 1714 design, and in subsequent alterations. The plan identifies a number of views (paragraphs 4.40 – 4.42 and appendix 11) towards and away from the castle, and the designed landscape. The immediate visual setting of the designed landscape can therefore be considered generally to include areas on the south side of the Irvine Valley, and from the floodplain to the east and west.

3.21 In general terms, the conservation plan concludes that substantial change and new buildings can be accommodated without negatively affecting the significance of the designed landscape, but that these need to be designed with care.

3.22 The proposed landscape restoration works will take account of the approach explained in the conservation plan, the principles in the illustrative landscape restoration plan ([CD.1.50](#)), and further research and discussions with Historic Environment Scotland. No primary date has been chosen for the illustrative landscape restoration plan so that significant elements which were subsequent to the 1714 design such as the garden layout to the south east of the castle could be included. This is in accordance with Historic Environment Scotland guidance in Scotland's Inventory of Gardens and Designed Landscapes 2016 ([APP1.34](#)).

3.23 The restoration works will include the felling of existing conifer forestry plantations and replacement with broadleaved woodland; creation of tree lined avenues; improvements to existing broadleaved woodlands and the 'Strips' (eg. Alton Strip and Willowland Strip) which formed part of the original design. Restoration of further landscape features would be added, and this would be limited to two formal water features.

3.24 A full summary of the likely environmental effects on the designed landscape is included in Table 7.9 of the environmental statement addendum. There would be direct impacts of high magnitude on areas of newly planted areas of broadleaf woodland, including historic allées and improved areas of existing woodland and on close and distant views of them. In areas of very high sensitivity such as views E of Loudoun Castle and view N away from the castle, effects would be offset by the conservation of the castle and the proposed new/replacement planting resulting in moderate to substantial significance of effects. In areas of low to negligible sensitivity such as coniferous plantations, the project would have negligible to moderate significance of effect.

3.25 The character of certain elements within the designed landscape and in views towards it primarily from the south would be altered. However, the restoration of the most significant surviving elements of the 1714 design and the replanting of the lost structural planting would offset the effects of the proposals.

3.26 The assessment concluded that the main impacts on the designed landscape would be from the construction of the new build tourism, leisure and housing elements of the proposal. There would be significant direct effects on the designed landscape, ranging from moderate to major. There is a commitment to replant commercial forestry areas with broadleaf woodland where appropriate, restoring the historic design of the landscape and increasing the amount of woodland within the designed landscape. In the long term, this would increase screening of the new build elements of the project and would offset the adverse effects of the project. The designed landscape will be enhanced by the proposals to restore the landscape. The proposals will improve its appearance and its condition, restore lost elements and enhance the conceptual framework within which the landscape design was conceived.

3.27 The assessment also concludes that the proposed conservation of the castle, in conjunction with the restoration of the elements of the designed landscape, each being integral to the other, would have beneficial effects on its setting and on the designed landscape.

3.28 The predicted impacts on the designed landscape can be appropriately addressed and managed as there is a commitment to ensure the long-term maintenance of the designed landscape which will be controlled by proposed planning conditions and a planning obligation.

Impact on archaeology

3.29 An assessment of the likely effects on buried archaeology has been undertaken, by way of a desk based assessment, walkover survey and subsequent Light Detection and Ranging (LiDAR) survey. With the exception of the built heritage, there are no known archaeological sites within the project site.

3.30 Chapter 8 of the environmental statement addendum assesses the likely significant environmental effects of the development on the archaeological resource. A summary of the effects are set out in table 8.4 of the statement.

3.31 The archaeology in the immediate vicinity of Loudoun Castle is likely to be of high significance. In the remainder of the site, it is considered to be of no more than medium significance.

3.32 Mitigation measures to allow the identification, excavation, recording, analysis and publication of the results to mitigate the effects of development are proposed. In addition, prior to any work taking place, a 3-D laser scan of the castle would be undertaken to record the existing appearance and allow analysis of the surviving structures prior to adaptation. Further surveys would be undertaken during and following stabilisation works, prior to any new construction. All excavation within the castle footprint and immediately surrounding areas would be undertaken by or monitored by archaeologists as deemed safe. This would allow 'preservation by record' of archaeological remains that would otherwise be lost.

3.33 Overall the assessment concludes that the significance of the effect on the archaeological assets remains minor adverse or negligible as a result of the increased knowledge and understanding that would result from their identification and, where appropriate, excavation. A comprehensive archaeological management plan would be produced as part of the detailed submissions at a later stage in the consenting process. This approach has previously been agreed with the West of Scotland Archaeology Service and can be controlled through the use of planning conditions and Section 75 Agreement

Conclusions

3.34 A multi-disciplinary team of experienced conservation professionals have carefully researched and assessed the castle and the gardens and designed landscape. Whilst there would be impacts, the overall cultural significance would be protected. This is accepted by Historic Environment Scotland. Appropriate conditions and obligations can secure delivery and ensure future maintenance. Both the council and Historic Environment Scotland would be further involved as the details of the proposal are worked up in the next stage of the development process.

Case for the council

Impact on castle and listed cottage

3.35 The council's position on these matters is set out in the committee report of 28 April 2017 ([CD.2.49](#)). A number of other documents have been prepared on behalf of the council, including the Environmental Statement: Conservation Management Plan Appraisal ([CD.2.51](#)); and Audit of Heritage Assessment ([CD2.47](#) and [CD2.48](#)). More detailed structural analysis of the works required is included in the report prepared by the council's structural engineer ([EAC1.46](#)). Witness reports and precognitions included in appendix 1 of our report also provide further comments on the proposed works to the castle.

3.36 The application is for planning permission in principle. There is not currently an application for listed building consent and no detailed proposals are available for assessment. This presents significant obstacles in reaching a conclusive view on the potential impact and whether that might be acceptable as part of the overarching scheme.

3.37 The council's structural engineer at the inquiry also highlighted that he does not rule out the use of the steel frame, but it is not the only option. He acknowledged that some projects could benefit from the use of a steel frame but the masonry still requires full consolidation to ensure the conservation of the historic and listed fabric.

3.38 Notwithstanding these concerns a well-designed consolidation scheme would be able to meet the relevant tests in Historic Environment Scotland Policy Statement ([CD4.7](#)) and consolidation of the castle as a ruin is likely to be acceptable in broad policy terms.

Impact on the setting of the castle and listed cottage

3.39 The applicant has failed to satisfy the tests set out in Historic Environment Scotland's Managing Change: Setting ([CD4.4](#)) and Managing Change: Gardens and Designed Landscapes ([CD4.3](#)). Issues relate to consideration of visual impacts; extent, character and scale of the existing built environment and how the proposed development compares; the magnitude and cumulative effect of the proposed change; the ability of the landscape to absorb new development without eroding its key characteristics; and the effect of the proposed change on qualities of the existing setting including its sense of remoteness, sense of place, and cultural identity.

3.40 The castle is the principal (but not unique) focus of the designed landscape and gardens. The designed landscape extends beyond the red line application site, therefore the setting of the listed buildings and designed landscape impacts should be treated together.

Impact on the garden and designed landscape

3.41 In general, the compartment-by-compartment analysis of the landscape is helpful, as is the applicant's assessment of the significance of some of the key elements (table 13 of the conservation plan [CD1.53](#)). There are three exceptions:- the walled garden and character areas E2 and E16 (appendix 11 of the conservation plan). The council disagrees that these are of moderate significance. The assessment does not adequately consider the importance of the views from raised ground to the south towards the castle. As a

consequence, the conservation plan's treatment of the north fields E2 and E16 as being suitable for enabling development without, or with acceptable, adverse impact on the overarching special interest of the designed landscape is not adequately demonstrated.

3.42 Generally, there are serious concerns regarding the analysis and interpretation of the landscape. The conservation plan fails to adequately explore the overall inter – relationship of elements and the extent to which they combine to form an overarching artistic intent. The emphasis on the avenue or allee views does not adequately consider the general effect of planted tree belts, belvederes, enclosures, areas of ancient trees or intervisibility. The distant views of the avenues and allees cannot be separated from the pattern of enclosed agricultural land, limited industrial endeavour (primarily mining on the western and eastern fringes), and woodland. The foreground, mid-ground, and backcloth of improved fields are an essential part of the overall tapestry.

3.43 The viewpoints used in assessing impact have been based on the applicant's landscape and visual impact assessment, and do not consider heritage value and impact as distinct from general landscape issues. Furthermore, they fail to adequately consider the form, scale, and massing of detail together with intrusive elements such as infrastructure. There is a lack of clarity regarding the proposed design of enabling development and it does not adequately consider features such as parking, fencing, signage, lighting, earth movement, service infrastructure, paths and pavements, and new roads which would have the potential for significant adverse impacts.

3.44 The considerable historical and cultural importance of the castle and its landscape are not fully recognised in the proposals. The illustrative landscape restoration plan does not align with the parameters plan. The lake has also been removed from the parameters plan although it is included on the illustrative layout plan. It would not be characteristic of the surrounding landscape and is likely to involve considerable earth works to accommodate its construction on a steeply sloping site.

3.45 Furthermore, the quantum of enabling development cannot be assessed with any reasonable degree of certainty. The scale, density and extent of the development could obscure and erode the defining characteristics of the landscape of parkland, vistas, formality, great house and ancillary structures. It would have a detrimental impact on our ability to experience, understand and appreciate the inventory site.

3.46 There is scope for some development within the designed landscape generally, if required to secure the future of the castle and introduce a sustainable new economic use. It should be located away from the north-south vista, principally comprising the south eastern area south of Loudoun Academy together with the north eastern and north western outer fields, away from the key central avenue with views of the castle against the backdrop of pasture land with wooded screen planting.

3.47 The applicant has downplayed the significance of the open northern fields where three new townships are proposed. The change in the scenic properties there would seriously impact on the character of the designated designed landscape. This would result in a direct adverse impact which, depending on the scale and character of the development, might constitute an unacceptable alteration to the important values of the asset.

3.48 In addition to direct impacts on elements of the designed landscape, the proposals will impact on the visual appreciation of it and on its broader setting within the Irvine Valley.

These indirect impacts have not been fully assessed, and concerns remain over the degree of certainty about the predicted significance of the proposed alterations.

3.49 Given the potentially very significant adverse impact on the designed landscape, and on the setting of the listed buildings, the council consider that these issues could not be adequately controlled by condition on the basis of the current submitted information. There is the possibility that development of this scale means that Historic Environment Scotland may have to revisit whether the site could remain in the Inventory of Gardens and Designed Landscapes.

3.50 As a consequence, the council considers it likely that there will be a significant impact on the designed landscape and hence the setting of the castle, all being contrary to policy Env 4.

Impact on archaeology

3.51 The West of Scotland Archaeology Service, advisors to the council provided comments in its inquiry report ([EAC1.9](#)) and also provided evidence at the inquiry.

3.52 Valuable archaeological work has been carried out by the applicant. Following technical discussions between West of Scotland Archaeology Service and the applicant's archaeologist, there is agreement on the process by which direct archaeological impacts could be addressed should consent be granted. However although archaeological field evaluation to identify previously unrecorded archaeological remains in advance of each phase of development has been proposed by the applicant, and could be secured through conditions, doing so after consent has been granted reduces the opportunities to amend or inform the design of the development, and leaves the developer with an un-quantified financial risk of potentially significant archaeological costs.

Conclusions

3.53 There is no detailed scheme for the consolidation of the castle. However, it is accepted that in principle, a well designed scheme of consolidation could comply with the relevant heritage policies. For practical purposes the setting of the castle equates to the designated garden and designed landscape. Offsetting impacts against benefits is premature with the lack of detail. These matters should be resolved before the granting of planning permission in principle as they cannot be controlled through planning conditions.

Historic Environment Scotland

3.54 Historic Environment Scotland's position is set out in the consultation responses to the planning application ([CD2.28](#)) and ([CD2.39](#)). It does not object to the proposal, however it also advises that should not be taken as support for the proposals. Inquiry statements and witness precognitions are also included in appendix 1 of our report.

Impact on castle and listed cottage

3.55 Historic Environment Scotland confirms it has no role in relation to the impact of the proposals on the category B listed cottage. It is restricted to impacts on category A listed buildings and their settings.

3.56 There are concerns about the deteriorating condition of the castle and designed landscape. Significant intervention will be required to protect the interest of both heritage assets. It is accepted that the level of investment required cannot be achieved on the site without some significant detrimental impacts on elements of the historic assets present on the site.

3.57 In terms of the direct impact on the castle itself, the proposals would result in a positive outcome for the building. The building is in a parlous state, intervention is essential and urgent, and there is a range of acceptable solutions for achieving positive outcomes.

3.58 There is still need to understand what is proposed for Loudoun Castle. Various options are included in the documents but there is currently no finalised scheme. There will be a degree of uncertainty at this stage, but the overall scheme would need to ensure that there is an appropriate mechanism in place to allow discussion and agreement of the solutions adopted as works progress.

3.59 The conservation plan is a good piece of work based on sound and thorough research and there is no reason to disagree with the conclusions about the historical and architectural development of the building. A range of potential conservation solutions is set out in the plan and this is a helpful approach. However, options A and B in the plan (see paragraph 3.8) are not supported by Historic Environment Scotland because these options do not represent good conservation practice, and there would need to be detailed justification supporting this level of intervention. It sees no issue in principle with the remainder of the options set out in the conservation plan.

3.60 The preference is for an option that conserves as much as possible of the historic character and fabric, and which also secures the long-term viability of the building. Providing an active use for the building is most likely to provide on-going funding for maintenance and, subject to detailed discussions about what physical interventions are necessary, this is likely to be its long-term preferred option.

Impact on the setting of the castle and listed cottage

3.61 Managing Change in the Historic Environment: Setting ([CD4.4](#)) sets out a three-stage approach on the assessment of setting impacts. While this approach has not been followed explicitly by the applicant in the environmental statement, there is an adequate understanding of those potential impacts in the submissions. The relevant assets have been identified, the setting has been assessed and the impacts have been identified. There would be some impacts on the setting of the castle and it is noted that the assessment of impacts assumes a level of landscape restoration, which is not detailed at this stage, and this detail requires much more discussion to ensure that mitigation is delivered. Overall, Historic Environment Scotland agree with the assessment of the impacts on the setting of the category A listed castle.

Impact on the garden and designed landscape

3.62 It is accepted that the inventory site is in need of investment and given its condition and scale it could absorb some carefully designed new development. To do nothing would be a risk to the designed landscape. However, any development should ensure the protection and conservation of the significant surviving elements of the early 18th century design.

3.63 The conservation plan has informed the landscape design proposals, however it is not clear that it has informed the design of the rest of the proposed development. The landscape masterplan, the landscape management plan, and subsequent applications dealing with the detail of the design of the development should be informed by the conservation plan and planning conditions to that effect should be imposed.

3.64 In its assessment of the impact of the proposed development on the designed landscape, Historic Environment Scotland adopted the recommended three stage approach in the Managing Change in the Historic Environment: Gardens and Designed Landscapes Guidance ([CD4.3](#)) to understand the significance of the designed landscape. These are: identify the current baseline; assess the potential impact of a proposed change on the site; and mitigate by identifying options to avoid, reduce or compensate for adverse impacts and to enhance positive benefits.

3.65 The designed landscape provides the setting for the category A listed Loudoun Castle and like the castle, it is in a poor condition and continues to deteriorate. However, despite its poor condition, most of the designed landscape remains in single ownership and the structure of the design has survived intact since the early 18th century. It retains its overall integrity, its wholeness and coherence, and many significant features have survived. The significant surviving elements of the inventory site are the castle, which forms the centrepiece of the design, surrounded by its wooded core from which a series of avenues radiate to the south and west across the landscape, forming a strong planted framework connecting belvederes and areas of woodland.

3.66 In terms of the significant features of the inventory site, and based on the development proposals as set out in the parameters plan, the development proposals together with the replanting proposals would have a largely beneficial impact. The stabilised castle as a centrepiece with removal of commercial planting from the core of the estate with the reinstated North and South Avenues and replanted North Belvedere will reinforce the strong structural planted framework of the designed landscape.

3.67 The northern agricultural fields (character areas E2 and E16) form part of the post-Mar expansion of the inventory site and lie outwith the ornamental core of the designed landscape, but effectively extend its influence over the surrounding area. These fields are part of the productive area of designed landscape which forms an important element in longer views across the Irvine Valley from the south. The effects on the northern fields with the landscape proposals are likely to be of moderate significance, which is considered to be a significant effect.

3.68 The housing development would be screened in views from the castle and the core of the designed landscape by topography and established woodland. However, the housing development would be visible in longer views from the south, which provide key views of the designed landscape. The erection of enabling housing development in these areas would result in a significant change to the character of this area and would alter the understanding of the relationship between the agricultural areas and the core of the estate.

3.69 Given the sloping nature of the site and its visibility in long views from the south, great care would be required to minimise the visual impact of development in this location if these impacts were not to compromise the cultural heritage value of the garden and designed landscape.

3.70 However, it is a proposal for an enabling development, which would fund the stabilisation of the castle and secure heritage benefits for more significant areas of the designed landscape. The northern area is of less significance than areas of parkland and woodland to the south, so while development in this location would have a significant impact, it will still allow the significant features of the early 18th Mar design to be understood. The northern fields could accommodate some enabling development and the landscape planting proposals, such as the replanting of the North Avenue would go some way to reduce the impact.

3.71 The proposed leisure development in an area of parkland to the north of the castle is identified as an area of high sensitivity in the environmental statement. Set on rising ground to the north of the castle development in this area would change the character of this part of the inventory site.

3.72 Major earthworks are also proposed to create a lake on a steeply sloping site. The environmental statement acknowledges that the leisure development and lake, with the landscape proposals, would have a significant effect which would be adverse. Historic Environment Scotland agree with this assessment and add that extensive earth movement and the insertion of large scale structures in this location would change the character of this area from that of open estate ground bounded by structural policy planting to a very large-scale leisure centre with multiple buildings set around an artificial lake. None of which is there any historical precedent. It would have a significant adverse visual and physical impact on this area of parkland which forms an important part of the early 18th century design.

3.73 The lodge development would also change the character of the policy woodlands and there are concerns about the ability of these sensitive areas to absorb this level of development. However, with the revisions to the proposal, the removal of the lodges from the areas to the south east and immediately to the north of the castle, while the lodge development would have an impact, with careful design, location, tree protection and sensitive woodland management measures, it should be possible to minimise the physical and visual impact of the lodge development on the designed landscape. Likewise, the woodlands are currently in a poor condition and proposals that will ensure their long-term management and the conservation and restoration of the surviving elements of the pleasure grounds, such as the historic path network, cascade and water feature is welcomed.

3.74 The environmental statement assesses a range of individual areas (and views) within the inventory site, but there is no overall assessment of the impact on the garden and designed landscape as a whole. The only overall conclusion is a brief statement in paragraph 5.32 of the non-technical summary ([CD1.44](#)) which concludes that '*considered on balance, the proposals would not have a significant adverse effect on the Loudoun Castle Garden and Designed Landscape*'. Historic Environment Scotland do not agree with this assessment and believe it underplays the impact of the proposed development on the inventory site and overstates the effect of the landscape restoration proposals in mitigating that impact. The landscape proposals may mitigate some of the adverse impacts of the proposed development on the designed landscape but this mitigation has been overstated in the submitted material. The proposed development would involve significant detrimental impacts on the designed landscape at Loudoun. It would also have a significant impact on some key views.

Conditions and obligations

3.75 In reaching its judgements on the impact on the historic assets, Historic Environment Scotland consider that robust conditions and obligations are required to secure the conservation benefits to the castle and the restoration of the gardens and designed landscape. It would be unacceptable for the significant adverse impacts to occur without realising the benefits that persuaded Historic Environment Scotland that the development was not overall objectionable.

3.76 Conditions and obligations must also ensure appropriate long term maintenance of the historic assets. Again, it would be unacceptable for improvements to be undertaken to the castle and gardens and designed landscape but thereafter not maintained properly. This would just postpone and not address the deterioration of the historic assets.

3.77 Finally, Historic Environment Scotland want to be involved in future discussions over the detailed proposals that would have to be developed.

Conclusions

3.78 The proposal would have some significant detrimental impacts. However, the proposal could also result in some significant heritage benefits. Accordingly, assuming the heritage benefits can be secured and long term maintenance arrangements can be put into place, Historic Environment Scotland does not object.

Architectural Heritage Society of Scotland ([CD2.20](#))

3.79 The society maintains its previous objection to the principle and scale of this proposal. Given the scale and potential impact on important heritage assets a full environmental impact assessment should be required before approval is considered. Much of the information submitted is sketchy and speculative.

Scotland's Garden and Landscape Heritage ([CD2.11](#))

3.80 Supports the principle of restoration of the castle and the conservation and enhancement of the designed landscape. However, there is concern about the intensity of the development proposed for the core designed landscape and the impact this will have on the character and integrity of the designed landscape.

Garden History Society ([CD2.13](#))

3.81 Welcomes the opportunity to restore the designed landscape that development will provide. However there are concerns that such a level of development cannot be contained within it without harming the significant elements that justified the inclusion of Loudoun Castle in the Inventory. The scale of the project will put too much pressure on a very fragile environment.

Reporters' conclusions

Preliminary matters

3.82 The assessment relating to the impact on heritage assets is contained in chapters 7 and 8 of the environmental statement addendum. In turn, this assessment is underpinned by the research and analysis set out in the conservation plan. As is recognised good practice, the assessment relating to the impact on landscape resource and visual receptors (although closely related) is contained in chapter 6 of the environmental statement addendum. We consider landscape and visual impact in chapter 5 of this report.

3.83 We think it is important to clarify the form of development that is being assumed in any assessment, particularly when there are no detailed layouts or plans available. We understand that the assessment assumed:

- Consolidation and stabilisation of the castle ruin as set out in the budget estimate;
- Development of the site with the basic physical characteristics as summarised in tables 2.1 and 2.2 of the environmental statement addendum;
- A lake;
- Approximately 1000 houses of enabling development built over 17 years;
- That the illustrative landscape restoration plan is implemented within the initial construction period (years 1 – 3); and
- That the landscaping is thereafter actively managed.

3.84 The application form states “... *erection of phased enabling development, with 1st phase of 300 residential dwellings and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel.*” However, the environmental statement limits the assessment to approximately 1000 houses. We note that the latest submitted development appraisal ([APP1.3](#)) provides a justification for 1025 houses and the applicant’s suggested condition caps the residential development to 1025 houses.

3.85 As we indicated in paragraph 1.9, whilst there is a suggestion in some of the material before Scottish Ministers that the castle ruin could be made into a shell (eg missing walls replaced, roof etc) or converted into a hotel, that is not our understanding of the applicant’s current intention. No costings have been provided except those in the budget estimate, and those relate to consolidating the existing ruins. For the purposes of our assessment we have therefore assumed that the proposed works to the castle would be along the lines set out in the budget estimate and only relate to consolidating the existing ruins.

3.86 The council’s position was that the setting of the castle, for all practical purposes equated to the boundary of the designated garden and designed landscape. The main witness for Historic Environment Scotland thought that the setting would cover a wider area. We agree a case could be made for such a wider setting because part of the original design aim was to have views from the castle to landmarks within the wider landscape.

3.87 However, we note that the applicant's character areas and analysis was restricted more or less to the designated gardens and designed landscape and that Historic Environment Scotland had no objection to this approach. We therefore conclude that as far as a setting of a listed building can be mapped the designated gardens and designed landscape is a reasonable proxy under the circumstances.

3.88 Notwithstanding that the same spatial area is used, we agree with Historic Environment Scotland that separate assessments should be undertaken for the impact on the setting of the castle and the impact on the designated gardens and designed landscape. This is because Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a statutory duty to have regard to the desirability of preserving the setting of a listed building whereas the protection of designated gardens and designed landscapes is policy based. Secondly, there is a different nature between a setting of a building and the physical aspects of a garden and designed landscape.

Impact on castle and listed cottage

3.89 There is agreement that there are no anticipated impacts on the listed cottage and other curtilage buildings. There is also agreement that the castle is in need of intervention and is central to the heritage assessment both as a category A listed building and the centre piece of the gardens and designed landscape.

3.90 Significant inquiry time was spent debating the methodology and costs of consolidating the existing castle ruin. However, this was mainly in the context of establishing a reliable cost estimate to compare with the development appraisal in order to justify the scale of enabling development. We consider this matter in chapter 4. In terms of the actual works to the listed castle there was considerable agreement:

- There is no detailed scheme before Scottish Ministers;
- Although challenging, there is no technical reason why the ruins could not be consolidated;
- Listed building consent will be required;
- Further studies and surveys would be necessary in order to prepare sufficient detail in order to submit an application for listed building consent; and
- That subject to proper assessment of the application, there was no reason to assume consent would not be forthcoming.

3.91 We therefore find that the principle of consolidating the castle would be an important heritage benefit consistent with policy Rural Area 4 and a range of heritage policies. At this stage the precise mechanism is unclear but would in general terms be that after planning permission in principle has been granted, an application for listed building consent would be prepared and the overall development could not proceed until that had been granted.

3.92 However, it is also important that the approved works to consolidate the castle must also be secured. It would be unacceptable for example, for the repairs to be started but not finished whilst the rest of the development, including the residential enabling development carried on.

3.93 It is also important that provision is made for the long term maintenance of the castle. It would also be unacceptable for the castle ruins to be consolidated only for there to be no maintenance or inadequate maintenance so that over time the building continued to deteriorate as now.

3.94 We discuss these matters in detail in chapters 11 and 12. In summary we concluded that a phasing condition ensuring that the enabling housing development could not commence until the castle consolidation and restoration of the gardens and designed landscape had been completed was the best mechanism to ensure that the consolidation had been secured. Although, it should be noted that the applicant does not agree with this approach and considers it commercially unrealistic.

3.95 Regarding long term maintenance, we are aware of no detailed proposals for the long term maintenance of the consolidated ruin. Obviously, if the castle was restored fully and used as a hotel that would ensure maintenance. However, such a situation cannot be guaranteed. The applicant suggested that after consolidation there would be no need for repairs for approximately 20 years. However, as there is no detailed scheme available it is not possible at this stage to verify such an assertion. We would be surprised for there to be no need for any maintenance over a 20 year period for a structure without a roof, even if it just amounted to an annual inspection.

3.96 As we discussed in chapters 11 and 12 it may be possible, following further discussions that some kind of provision could be made to ensure long term maintenance. Historic Environment Scotland suggested some kind of financial bond. However, as it currently stands there is no agreement. Even if it was accepted that the consolidation would provide a maintenance free 20 year period it would merely postpone but not address the condition of the castle. Ultimately, without long term maintenance the building would start to deteriorate again. We consider that such a risk that this might occur is unacceptable. This means that the weight that can be attached to the conservation benefits of consolidating the castle ruins has to be significantly reduced as the proposal amounts in effect to only a temporary solution.

Impact on the setting of the castle

3.97 The heritage impact assessment considers the impact during construction and operation. We understand that the peak construction activity would take place in the first 3 years and is likely to include:

- Construction traffic;
- Construction compounds, fencing, hard standing, plant and equipment, materials, temporary haul roads etc;
- Scaffolding and cranes (for the castle);
- Constructing the proposed leisure and recreation facilities and starting work on the enabling residential development;
- Felling of the areas of coniferous forestry plantation and replanting;

- Top soil stripping, stock piling and excavations, including the major excavations required to create a lake on a sloping site; and
- Works lighting and associated construction noise.

3.98 Activity would occur throughout the site, around the castle, in the areas shown for the tourism and recreation development, extensive forestry operations and at the western side of the area of residential enabling development. We would suggest that as a result of this widespread activity the setting of the castle would experience significant change. However, we do not consider that this would be unacceptable. The peak period of construction activity is intended to be for 3 years which we would consider to be temporary. In addition, significant construction activity is an inevitable consequence of the policy Rural Area 4.

3.99 There is no overall assessment of the impact of the proposal on the setting of the castle. We note from the applicant's heritage assessment that it is considered that there are significant impacts upon areas E2, E4, E8, E9 and E16, albeit that these impacts are offset by the conservation benefits of the consolidation of the castle and restoration of the gardens and designed landscape. We consider the offsetting of impacts from benefits below.

3.100 We agree there would be significant impacts to these areas. The proposal would physically change what are currently fields with surrounding woodland into areas of buildings with woodland. In particular, the enabling residential development would result in approximately 1000 houses over 44 hectares, sustainable urban drainage ponds, roads, changes to topography, street furniture and vehicular movement. Construction would include soil stripping, compounds, plant etc and would last at least 17 years. The impact of such an extensive period of construction would see a dynamic mix of completed houses, housing under construction and site preparation as development progressed from west to east. We accept that some development would be inevitable as a result of policy Rural Area 4, however policy Rural Area 4 is not precise as to what is permitted and as discussed in paragraphs 2.120 - 2.121 we do not agree that any particular scale of residential development has been established.

3.101 We cannot agree that locating lodges in existing woodland and fractional ownership houses within the walled garden can necessarily be considered as beneficial changes. We accept that there are beneficial elements to these areas, however without there being details of layouts it is impossible to know what the impact of the numbers specified in the application would be.

3.102 We recognise that outside the application site area there would be no direct physical changes to the designated garden and designed landscape. We accept that there is limited inter-visibility between the core area surrounding the castle and the rest of the site. Nonetheless, the nature of the setting of the castle would change significantly as a result of the proposal. We consider that this change would be adverse.

3.103 We accept that any heritage benefits need to be weighed against the adverse impacts. We also accept that in deciding whether changes are acceptable it is necessary to take into account the changes that are an inevitable consequence of policy Rural Area 4. However, because of the general nature of the range of acceptable uses this is hard to

define and we have previously found in chapter 2 that development must generally be sympathetic. Finally, the impact of doing nothing has to be weighed in the balance.

3.104 The two main components of beneficial impacts relate to the consolidation of the castle ruin and restoring the gardens and designed landscape as shown in the illustrative landscape restoration plan. We agree that both have the potential to be major beneficial impacts. However, to be so considered the benefits must be identified, secured and thereafter maintained.

3.105 We found above (paragraphs 3.92 - 3.93) in relation to the castle that the improvements could be secured (although the applicant considers that our approach would render the project unviable) but were unaware of any agreed mechanism to ensure the castle ruins were thereafter maintained.

3.106 We recognise that the illustrative landscape restoration plan has the potential to be the basis for the restoration of the gardens and designed landscape and that if such improvements could be secured and maintained would represent a major heritage benefit. The illustrative landscape restoration plan has been based on extensive research and a thorough understanding of the estate which has been verified by the Historic Environment Scotland witness, who herself is a recognised expert on gardens and designed landscapes.

3.107 However, the plan is only illustrative. It is an indication of what might be achieved. It is not an agreed proposal. It shows general locations for different forms of planting. It is not a detailed planting plan. It has had to be prepared without any knowledge of the detailed locations of new development, the proposed phasing, locations of sustainable urban drainage ponds, road layout and infrastructure. We do not doubt the current intention of the applicant to implement the general concept set out in the illustrative landscape restoration plan, however, planning permission goes with the land and a different developer may have a different opinion.

3.108 A meaningful landscape restoration plan, particularly one that is to be planted at the beginning of the development, can only be prepared with the general knowledge of the extent of developable areas, road layout and phasing etc. In short, as a supplement to a masterplan for the overall development. To date no such masterplan exists. It is the applicant's position that this is a matter of detail that can be prepared after the grant of planning permission in principle. We disagree. Without an understanding of the surrounding development the applicant can do no more than indicate a general design concept. We consider that it would not be prudent to attach weight to the heritage benefits of the restored gardens and designed landscape based solely on a general concept.

3.109 A planning condition can be attached to require a landscaping scheme and an obviously unacceptable scheme could be resisted. Nonetheless, there is no guarantee that the design concept shown in the illustrative landscape restoration plan would be replicated if circumstances changed in terms of the developer, technical information or costs. We also believe that Historic Environment Scotland has overestimated its ability to influence an acceptable design once planning permission in principle is granted.

3.110 As set out above and in more detail in chapters 11 and 12, we are confident that a phasing condition could ensure delivery of an approved landscape restoration plan (although the applicant does not agree). With regard to maintenance, as set out in detail in chapters 11 and 12, we agree with the council and Historic Environment Scotland that the

mechanism suggested by the applicant is not acceptable and in our view would not provide a sustainable long term management solution to any restored gardens. We consider that having such a solution is essential or otherwise without maintenance any planting may not have the desired effect or would simply decline again.

3.111 We are therefore faced with significant physical impacts upon the setting of the castle, which even without design details are relatively certain, which have to be balanced against potential benefits which are uncertain. We cannot therefore agree with the heritage assessment in chapter 7 of the environmental statement that significant impacts are outweighed by the conservation benefits. We accept that it is possible that the benefits proposed could be achieved. It is possible that with further discussion an acceptable method for long term maintenance of the castle and grounds could be devised. However, as it stands, we consider that a risk remains that these matters cannot be addressed. We consider that this risk is unacceptable given the scale and complexity of the proposal. This risk is increased by the applicant's approach of postponing any meaningful masterplanning until after the grant of planning permission in principle.

3.112 We therefore conclude that there is an unacceptable risk of adverse impacts on the setting of the castle. On the basis of the information before us we cannot conclude that the setting of the castle would be preserved or enhanced. There is therefore a risk that the proposal would breach those planning policies aimed at protecting the setting of listed buildings. We consider that, for the purposes of making the overall planning balance in chapter 13, the proposal could result in unsympathetic impacts on the setting of a category A listed building.

Impact on the garden and designed landscape

3.113 The physical impacts during construction would occur during the first 3 years and we consider that these impacts would be significant. However, for the same reasons as given for the impact on the setting of the castle, we do not consider that these impacts would be unacceptable.

3.114 However, the nature of the impacts on the garden and designed landscape would be different to those on the setting of the castle. Aside from the direct physical changes that would occur within the designated area there would also be indirect impacts in changing views. In particular, views of the garden and designed landscape from more elevated land on the southern side of the Irvine Valley.

3.115 There is general agreement over the relative sensitivities of the different character areas. We therefore accept that in summary, the key elements that contribute to the cultural significance of the garden and designed landscape are the castle itself, the woodland core surrounding the castle, the various avenues, the northern belvedere and the strong landscape framework provided by tree planting.

3.116 We therefore accept that areas E2 and E16 (the location of the enabling residential development) are less sensitive locations. The tree belts, northern avenue and belvedere which create the strong framework would not be directly altered and are proposed to be renovated and enhanced.

3.117 However, that does not mean these two areas are unimportant to the garden and designed landscape. We would suggest that there would be a significant change to the

character between a strong woodland framework enclosing fields compared to a woodland framework which forms part of a new community of approximately 1000 houses.

3.118 There would also be the localised impacts during construction of the houses, which although covering a relatively small area at any one time, would be a dynamic component as construction of the housing moved from west to east across the site. This would last for at least 17 years, which we do not consider can be regarded as temporary. The location of the enabling development is also the area most easily viewed from the elevated locations on the southern side of the valley, which would only be screened after a considerable period of time and assuming that the planting is secured and maintained. In our opinion, the enabling residential development would introduce a significant change to the nature of the designated garden and designed landscape and would result in the “retreat” of the most important areas into the core area surrounding the castle.

3.119 No details of the proposed lake are provided but it is inevitable that significant direct changes would occur on a sloping site because of the earthworks and excavations required. We agree with Historic Environment Scotland that a lake would be uncharacteristic and without historical precedent.

3.120 As with our analysis of the impact on the setting of the castle, we have reservations about accepting that there would be no impact from locating a substantial number of lodges in existing wooded areas without seeing details of layout, space for construction, services and access. Such development may not be realistic without felling some established woodland. The various proposed leisure and recreation buildings would also have localised direct effects which would contribute to the overall impacts on the garden and designed landscape.

3.121 We accept that the intention of the applicant is to enhance the garden and designed landscape. Based on the research set out in the conservation plan a number of enhancements are planned that would help restore the garden and designed landscape which include consolidating the castle ruin, re-instating avenues and replanting significant areas of coniferous woodland with broadleaf trees. However, we find ourselves in agreement with Historic Environment Scotland, that overall, the heritage assessment underplays the likely impacts and overstates the mitigation measures.

3.122 As with the impact on the setting of the castle, a key aspect is the weight that should be attached to the illustrative landscape restoration plan. As stated above the plan is illustrative and has been prepared with incomplete knowledge of the overall development. In our opinion, a meaningful landscape restoration plan can only be prepared after, or in tandem with, a masterplan of the overall development. Whilst a condition can be attached requiring the submission of a landscape plan and certain minimum elements insisted upon, that is not the same as assuming what is shown on an illustrative plan would be the scheme finally provided. We consider that Historic Environment Scotland has overestimated its ability to influence the final design once planning permission in principle has been granted.

3.123 Again, as with our assessment in relation to the impact on the setting of the castle, any benefits in terms of the restoration and enhancement of the gardens and designed landscape must be secured and thereafter be maintained if the heritage benefits are to be taken into account.

3.124 We discuss these matters in more detail in chapters 11 and 12. In summary, we consider that any approved landscaping scheme could be secured by a phasing condition (although the applicant disagrees). Again, as explained in chapters 11 and 12, we agree with the council and Historic Environment Scotland that the applicant's mechanism for long term maintenance of the gardens and designed landscape is not appropriate.

3.125 As with our consideration of the impact on the setting of the castle, it may be possible that further discussions could resolve this issue. However, as it stands the direct and indirect impacts upon the gardens and designed landscape are relatively certain, whereas the proposed benefits are uncertain. Overall, as the proposal currently stands, there is a risk that the development would not protect and enhance the designated garden and designed landscape. We consider that such a risk is unacceptable in the context of the scale and complexity of the proposal. For the purposes of the overall planning balance we consider that the proposal introduces an unsympathetic impact upon the gardens and designed landscape and therefore agree with the council that the proposal is contrary to policy Env 4.

Impact on archaeology

3.126 In relation to the impact on archaeology, the differences between the parties has narrowed as a result of the inquiry process. There is agreement that the two key areas of archaeological significance relate to a) the castle and its immediate surroundings and b) the rest of the site. The area surrounding the castle is the most likely to be the most significant in archaeological terms.

3.127 The sum set aside for archaeological investigation during the consolidation of the castle has now been agreed. It will be for the final scheme, when it is prepared, to set out how archaeological matters are to be addressed.

3.128 Regarding the rest of the site, there was disagreement whether archaeological investigations would have timing and cost implications that the applicant has not taken into account and could have implications for the development appraisal. We consider this matter in chapter 4. However, subject to an appropriate planning condition there was no suggestion that matters of archaeology would preclude development of the site or result in breach with policy Env 2.

Conclusions

3.129 There is agreement that in principle that the castle ruin can be consolidated and that this would be an important heritage benefit, albeit that no detailed scheme has yet been prepared and any consolidation would be subject to the approval of a detailed submission.

3.130 However, we also find that there is an unacceptable risk, in the context of a proposal of this scale and complexity that:

- There would be no long term provision for the maintenance of the consolidated castle ruin;
- There would be adverse impacts on the setting of the castle due to the uncertainty over the provision and maintenance of the assumed heritage benefits; and

- There would be adverse impacts on the designated garden and designed landscape due to the lack of certainty over the assumed restoration of the gardens and their long term maintenance

3.131 Overall, we find that there are unacceptable risks of adverse impacts on the heritage assets compounded by a lack of a masterplanned approach. There are therefore risks of the development being unsympathetic, breaching policies designed to protect the setting of listed buildings and being contrary to policy Env 4.

CHAPTER 4: ENABLING DEVELOPMENT

Introduction

4.1 This chapter considers the method and hence costs involved in stabilising the castle and the development appraisal prepared by the applicant to justify the scale of enabling development. There is a close inter-relationship with the policy framework (chapter 2), impact on heritage assets (chapter 3) and the mechanisms available regarding planning obligations and conditions (chapters 11 and 12).

4.2 The evidence summarised in this chapter was prepared by a number of expert witnesses and includes the key points made in the respective closing submissions. For the applicant this related to Mr Sanders, Mr Shaw, Mr Quigley, Mr Thorniley-Walker and Dr Boyle. For the council this related to Mr Drummond, Mr Smith, Mr Adam and Mr Lang. Mr Parsons gave evidence for Historic Environment Scotland. The inquiry reports and precognitions for all the expert witnesses (which includes their experience and qualifications) are listed in appendix 1.

4.3 The witnesses relied upon a number of key background documents. These documents evolved both during the application and inquiry process. To understand the evidence of the various witnesses it is important to understand this evolution. The following paragraphs set out the key documents before Scottish Ministers and their evolution.

Preliminary matters

4.4 When the planning application was called-in in December 2015 the main documents provided by the applicant relating to enabling development were: Loudoun Castle Engineers Report ([CD1.09](#)), External Repair Schedule ([CD 1.10](#)), Internal Repair Schedule ([CD1.11](#)), a series of letters from Shaw and Jagger ([CD1.40](#) – [CD1.41](#)) and a cost report from Towner and Townsend ([CD1.43](#)) confirming the costs.

4.5 Subsequently the council submitted as one of their documents, Loudoun Castle – Enabling Assessment ([EAC1.36](#)), which appears to be a document prepared by the applicant for consideration by the council.

4.6 As set out in chapter 1, the applicant decided to prepare additional information in 2016. Aside from the environmental statement addendum, this included updated cost information ([CD1.52](#)) and an updated development appraisal ([CD1.51](#)). It appears that during the preparation of these documents meetings were held or comments on drafts were invited between the respective expert witnesses for the applicant and council.

4.7 In relation to the evidence considered at the inquiry session, the two key background documents are the revised budget estimate ([APP1.2](#)) and the revised enabling development case ([APP1.3](#)). It should be noted that the applicant's document ([APP1.1](#)) helpfully summarises the relationship between the various documents submitted on behalf of the applicant.

4.8 The council's expert witnesses tended to rely on appendices attached to their inquiry reports (see appendix 1). However, [EAC 1.28](#) is an assessment of the applicant's development appraisal submitted in December 2016 and [EAC 1.45](#) is an assessment of the applicant's development appraisal [APP1.3](#).

4.9 As described in chapter 1, although most of the evidence was heard at the inquiry session held between 6 – 10 November 2017, there was an additional inquiry session held on 23 January 2018. This inquiry session related to structural engineering evidence. The process leading up to this session resulted in general agreement as to the existing condition of the castle (ie at November 2017) and an [agreed matters statement](#) relating to costs.

4.10 In the run up to the inquiry session in November 2017, the respective witnesses held a number of discussions regarding the development appraisal. This resulted in a measure of agreement regarding certain assumptions. Following the inquiry session we therefore invited Dr Boyle (for the applicant) to update his development appraisal (see [APP1.51](#)) and to allow Mr Lang (for the council) to comment (see [EAC 1.48](#)). Our assessment is therefore based on Dr Boyle's final development appraisal.

Case for the applicant

Need for enabling development

4.11 The only practical source of funding for the very significant cost of stabilising the castle is from the residential enabling development. The council seeks to argue that the tourism and recreation development should contribute to the restoration of the castle. As explained at the policy hearing, this is a flawed interpretation of the council's own policy. The whole purpose of policy Rural Area 4 is to deliver a major tourism and recreation development. That cannot be achieved if the castle is an unsafe ruin. The proposed tourism and recreation development cannot enable itself and it would be counterproductive to attempt to do so as it would risk any commercial investment in the proposed tourism and recreation development.

4.12 Other sources of capital funding are not available because the overall development is a commercial project and because the size of funding is so large and overwhelming. The Heritage Lottery Fund would only provide funding for not for profit organisations such as councils or charities. The Heritage Lottery Fund has become increasingly cautious about high risk projects and there is never any guarantee that an application would be successful. The Heritage Lottery Fund would certainly not provide support for a hotel and so the castle would have to remain as a ruin. Any ruin would still have to be managed by some form of not for profit organisation. In practice, it is difficult to sustain sufficient people with the capacity to keep a not for profit organisation in operation.

4.13 Historic Environment Scotland can give capital grants but these are usually limited to £500,000. It is likely that Historic Environment Scotland would be cautious in providing public money to a commercial proposal where there is an obvious source of funding from enabling development, particularly where enabling development is supported by local policy. In any event, even if funding was secured, £500,000 amounts to only approximately 50 houses and would not make a significant difference to the scale of necessary residential development.

4.14 It is important to recognise that there is a degree of urgency in progressing the necessary repairs to the castle to prevent any further deterioration. Applications for funding take time and there can be no guarantee of success. The applicant's team of advisors have considerable experience of seeking funding for conservation projects and in their opinion, particularly in relation to a commercial project with enabling development supported by the

local development plan, there would be no realistic prospects of success. Any attempt to do so would be an unproductive use of time and money.

4.15 Policy Rural Area 4 actively supports the principle of enabling development. The proposal is not therefore an example of development that is contrary to normal planning policies and is proposed as an exception to achieve a conservation goal. The requirement for enabling development to be the minimum necessary should be interpreted in this context. Again, as explained at the policy hearing session, the minimum necessary test is more appropriately understood in relation to ensuring that the scale of enabling development is “sympathetic” overall.

4.16 The adopted local development plan supports the principle of enabling development. A realistic cost for the stabilisation of the castle has been prepared by experienced conservation professionals and published guidance has been followed that shows approximately 1000 houses would be needed to fund these works. The proposed Section 75 obligation and planning conditions provide adequate safeguards to address the outstanding concerns of the council.

Cost of stabilising the castle

4.17 The applicant has assembled a team of experienced conservation professionals. Mr Shaw (Architect) has been involved since 2007. Mr Quigley (Quantity Surveyor) was appointed in June 2016 and Mr Thorniley-Walker (Structural Engineer) in October 2017 to take over from Mr Brian Smith, who had to step down from the project for personal reasons.

4.18 A methodology for stabilising the castle and associated budget estimates have been prepared and shared with the council. Valid criticisms have been taken into account and proposals adjusted accordingly. Following the inquiry process, further site visits and discussions have taken place and differences have narrowed. There is no real dispute about the general approach necessary to stabilise the castle.

4.19 When the planning application was submitted Mr Shaw and Mr Smith had an outline scheme for stabilising the castle and ultimately converting the castle into a hotel. This was illustrated in the submissions.

4.20 In 2016, these initial thoughts were developed into a set of comprehensive proposals to secure the long term future of the castle. The particular challenge in this project is that the current ruins are fundamentally unsafe with various sections of the castle at risk of collapse at any moment. The castle as a building has to be made safe before even detailed surveys can be undertaken. Once the building is made safe, work can proceed on a cell by cell basis starting with the least difficult areas first. As work progresses, the building would become increasingly stable allowing the more challenging areas to be properly stabilised last.

4.21 The castle has therefore been divided into a number of discrete areas. In turn a sequence of works have been developed. This is based on Arc Engineers Limited “Loudoun Castle Enabling Works – Initial Thoughts for Sequence of Works” (Appendix 1 of [APP1.2](#)). The areas are identified on a plan and cross referenced to the sequence numbers in the unnumbered pages following xxxvii of the document.

4.22 In broad terms, for most of the discrete areas the necessary tasks are:

- Remove vegetation;
- Create access for mobile machinery;
- Remove loose wall tops and net;
- Level the base on top of the debris;
- Install support system;
- Install integral scaffolding;
- Stabilise wall top (on average removing top 900 mm of stone);
- Undertake conservation work;
- Remove scaffolding;
- Remove support (in part); and
- Remove debris on the ground (as walls are now safe and stabilised).

4.23 The proposed works also includes the inclusion of a permanent steel frame in parts of the castle. The steel frame would provide stability to the relatively slender masonry walls, would make stabilisation safer and quicker (for example by allowing temporary floors to be installed) and provide greater flexibility for future uses, including a hotel.

4.24 The final budget estimates have made increased provision for the need for extensive archaeological input which is likely to be necessary because of the known presence of 15th century and 17th century walls that were later incorporated into the main 19th century building.

4.25 The main advantages of the methodology are considered to be:

- A systematic sequence to progressively and safely stabilise the ruins;
- The steel frame with composite floors would provide permanent stability to the ruins (rather than a temporary system of props and structural scaffolds, which are costly and require regular maintenance). As a consequence, the frame and floor are more cost effective;
- The access floor will provide a safe environment to work, a cover above the work zone, space to set out and store materials so repairs can be more efficiently organised. This would reduce time and hence the cost of the repairs;
- The frame would minimise the extent of necessary wall rebuilding as walls could be tied into the frame;

- The frame would make access easier and safer;
- The frame would act both as restraint to the walls and for support of potential future floors; and
- Sufficient provision has been made to potentially allow wall heads to be protected.

4.26 Much inquiry time was spent debating the extent of wall downtakings. However, following the site visits that took place after the main inquiry sessions in November, this has effectively been resolved with no significant differences. This is demonstrated in Mr Thorniley-Walker's rebuttal inquiry report ([APP1.50](#)).

4.27 It is accepted that a steel frame is a modern insertion. Whether the steel frame is an appropriate intervention has to be assessed on a project by project basis. In this instance, the applicant's team are confident the conservation advantages outweigh any disadvantages and do not foresee any difficulty in justifying the approach in a future application for listed building consent. The council's Structural Engineer, Mr Adam, accepted that it was a legitimate option.

4.28 It is accepted that the general methodology set out will have to be modified in particular sections of the building. This could occur as more detailed surveys are completed and of course, any final scheme would be subject to listed building consent where the council and Historic Environment Scotland would be involved in the detailed assessment.

4.29 It is considered that the methodology set out is of sufficient detail at this stage of the development process. It has been tested through the inquiry process and contrary to the council's original assertions has shown to be viable and realistic. Any outstanding matters of detail are capable of resolution through the formal consenting process. Scottish Ministers can have confidence that a practical method has been properly tested.

Council's concerns

4.30 It is accepted that the council's heritage consultant has a number of concerns about the methodology. These concerns are considered to be exaggerated and relate to detailed matters that are capable of resolution through the formal consenting process. Although the council has developed an alternative methodology this is essentially a hypothetical exercise as the council will not be actually commissioning any works. It is suggested that the council's claim for a need for an alternative methodology was unhelpful and resulted in an unnecessary distraction that merely prolonged the inquiry process.

4.31 It is considered that the council has been too prescriptive in the detail of the preliminary works. In reality, this would be a matter for the appointed contractor to determine in consultation with the commissioning team. The council have not proposed an alternative to the stage by stage sequential approach.

4.32 The Gatehouse has deliberately not been included in the budget estimates because it is in good structural condition and would only require relatively superficial repairs. The

council's provision for grouting is excessive, unnecessary and unlikely to receive the support of Historic Environment Scotland.

4.33 The budget estimates have provided for considerable eventualities that means within the overall budget envelope the outstanding concerns of the council would all be addressed through the listed building consenting process and in the light of more detailed information. There is no reason to suppose the general approach to stabilisation of the castle is inappropriate to stop any further deterioration of the castle and secure the long term future of a category A listed building.

Cost estimates

4.34 Providing realistic cost estimates at this stage of a complex conservation project is a matter of experience and professional judgement. The cost estimates have to be robust and realistic as otherwise they are of little practical use. On the other hand, there is no benefit in such estimates being so cautious that the project becomes unviable due to hypothetical fears.

4.35 In this case, the cost estimates have been tested within the team of experienced conservation professionals. Rates and methods have been further tested by speaking direct to specialist contractors. Initial drafts have been shared with the council and adjustments made where reasonable to do so. Finally, the budget estimates have been tested through the inquiry process. The applicant stands by the total cost (including 10% contingency) of £12.8 million at 2016 prices.

4.36 The council's comments regarding an appropriate provision for archaeology have been accepted and there is no longer any dispute. It is now agreed that appropriate provision has been made.

4.37 The dispute over masonry wall consolidation, including the extent of downtakings was extensively debated at the November inquiry sessions. Following various further site visits and meetings the council has produced revised costs (see [agreed matters statement](#)). The estimated costs for masonry wall consolidation are now both approximately £10.3 million. The applicant has reservations about the council's revised costs. The detail provided is not sufficient to comprehensively verify the final sums. Some of the rates used appear unrealistically high. It should also be noted that the two estimates are based on different methodologies and so are not directly comparable. Nonetheless, in cost terms, there is general agreement.

4.38 The council's criticisms over the chosen procurement method and the suggested cost implications are not accepted. Firstly, at this stage, no decisions have been taken about the procurement route, aside from the fact that a specialist contractor would be required. Any reliance on United Kingdom wide indexes to draw conclusions are not valid because such indexes would be skewed by the amount of construction activity that occurs in London and the South East of England. In the regions, particularly in Scotland, the level of activity and the number of contractors available mean that such indexes are not helpful. Should a contractor attempt to use such indexes to negotiate up prices then a different contractor would be found.

4.39 The criticisms regarding the provision for preliminaries is also not accepted. Adopting a 10% figure is an accepted approach. In the case of a stabilisation contract,

management costs are reduced because there are a limited number of trades on site – compared say to a new build project where numerous trades are necessary and project management more complex. Specific obvious preliminaries (eg crane hire, fencing) have been specifically priced. General site management would be recovered through the overheads and profit margins inherent in the actual rates used. Historic Property Restoration, a recognised specialised contractor, has confirmed that they would be able to work within the general cost envelope provided by the preliminaries.

4.40 The cost estimates allows for a further 10% as a contingency as well as other specific contingencies. Again this is a typical approach for this type of conservation project. The council's provision of 15% is unrealistically high and justified on the assumption of a 5% additional cost for extra design work. As the project is one of stabilisation there is no need for a specific design contingency.

4.41 It should be noted that the council's cost estimates include some costs that are expressed within cost ranges. The council's final sum assumes that all the costs are at the top of these ranges. If it is assumed that these costs came into the lower range then the council's final sum would be approximately £14.2 million. That is a difference of only £1.2 million. That is significantly lower than the £4.1 million that the council's consultants were advising when the council decided to recommend to Scottish Ministers that the planning permission should be refused. Overall, Scottish Ministers can have considerable confidence that a robust cost envelope has been established for the works necessary to fund the stabilisation of the castle.

Development appraisal

4.42 A key principle in establishing that the minimum amount of enabling development is proposed is that the residual value is reduced to zero. That is, the total income minus the costs of providing the enabling development (including reasonable profit) should equal the cost of stabilising the castle. As set out in the English Heritage guidance ([CD4.2](#)), the tool for demonstrating this is a development appraisal.

4.43 Dr Boyle of Rettie and Co prepared all three development appraisals. Dr Boyle is an experienced property economist who has advised numerous national clients including the Scottish Government. Rettie and Co is one of the leading independent firms of property specialists with an established reputation for providing leading research for the development industry. Dr Boyle was therefore able to draw upon the experience of a number of other property professionals. All the assumptions used were tested within the company and by speaking directly to housebuilders and other developers where possible. Industry standard software was used and many meetings were held with the council's consultant to agree as many of the assumptions as possible.

4.44 It is inevitable at this stage in the development process that such an appraisal will be high level. Like similar assessments (for example traffic impact assessments or retail impact assessments) any development appraisal is assumption based. The key issue is whether such assumptions are reasonable.

4.45 The council has taken issue with the fact that the three development appraisals have used slightly different assumptions. It has to be recognised that the preparation of a development appraisal is an iterative process. Some of the changes are as a result of requests made by the council's consultant. Others have been made in the light of more

recent information and checking the assumptions against actual developments. The fact that the appraisals have been amended is a strength and not a weakness. The final appraisal ([APP1.51](#)) was prepared at the request of the Reporters and took into account discussions with the council's consultant as well as new evidence obtained from developers.

4.46 It is also important to recognise that the English Heritage guidance is now dated and relates to a property market which is not directly comparable to Ayrshire. Whilst the guidance specifies certain common costs such as professional fees and profit levels, that does not mean these figures have to be used in order that a development appraisal is reliable. On the contrary, the appraisal is likely to be far more robust and reliable if actual local experience is utilised.

4.47 The summary of the development appraisal is set out in Fig 3.1 on page 12. Appendix D expresses the outputs in terms of cash flow from September 2017 – December 2033.

4.48 The site is assumed to have 1025 houses split into four phases. The total building area equates to 1,158,350 square feet. The expected sales rate is between £162.70 - £177.26 per square foot. This is agreed by the council. The disposal fees for sales agent and sales legal fees are 1% and 0.75% of the total revenue figure. This is also agreed by the council.

4.49 An average sales rate of 6 houses a month is assumed based on three developers operating in a hub and taking into account site preparation time and infrastructure provision. This is generally agreed by the council.

4.50 An average build cost of £102.40 per square foot is assumed. This is an average figure and a conservative assumption, many large scale housing schemes can be built at less cost. The council accepts this is a reasonable build cost assumption but only for "estate" type houses. In the council's view costs could be higher if higher design specifications were necessary because of the site's sensitive location. There is no reason to automatically assume that houses built by national housebuilders are of a poor design. However, in the event that higher design specifications were required any increase in build costs would be offset by an increase in sales price and therefore there would not be any total impact on the overall outcome of the appraisal.

4.51 Onsite infrastructure costs are based on industry standards and the offsite costs are based on advice from the applicant's highway consultants and derived from the consultation replies received by the council. A contingency of 5% of the house construction costs has been provided. The council agrees that all these assumptions are reasonable.

4.52 In the first two development appraisals, professional fees were assumed to be 10% but applied to house construction costs only. The council argued the 10% should be applied to both house construction costs and infrastructure costs. Having spoken to actual developers the professional fees used varies between 4%-7%, with the norm being 5%. However, this figure is applied to both costs. As a conservative assumption the professional fees have been assumed to be 7.5%. However, this figure is not applied to the contingency. Firstly, professional fees of over £10 million seems too high. Secondly, the contingency might not be used and finally, sub-contractors would normally be expected to

incorporate their own contingency in a project of this nature to minimise risks to the main developer.

4.53 The council argues that provision should be made for certain abnormal costs for archaeology, mining and landscaping. This is not accepted. The applicant's archaeological consultant did not anticipate any extra-ordinary archaeological costs in relation to developing the northern fields. The applicant has commissioned a mining risk assessment ([APP1.44](#)) and this shows that whilst there has been a legacy of mining, any likely constraints are spatially concentrated and therefore can be avoided. The landscape restoration plan is to be funded by timber sales and from the main development and so cannot be considered as an abnormal cost.

4.54 In the previous appraisals a finance rate of 6.5% was assumed. Again, this assumption has been tested with actual developers. The larger national housebuilders can command lower interest rates than smaller enterprises. The interest rate has therefore been reduced to 5%, which is still considered to be a conservative assumption.

4.55 It is accepted that profit margins would generally be assumed at 20%. However, in this instance, housebuilders would be buying into a 17 year development programme. This lower risk should be reflected by reduced profits. It is considered that 18% is a reasonable assumption for an acceptable profit margin.

4.56 It should be noted that whether the interest rate should be 6.5% or 5% does not make any significant difference to the overall outcome. Likewise, even if professional fees were 8.5% then the residual value would still be over £12 million.

4.57 The development appraisal demonstrates that just over 1000 houses would be required to equal the costs of stabilising the castle. The assumptions used are considered to be conservative and have mostly been accepted as reasonable by the council. Others have run the software and got similar results. The applicant has received a number of expressions of interests from developers and financial institutions, which of itself demonstrates the viability of the overall project.

4.58 The council's consultant concludes that the residual value per plot would be £3,240. This is simply not credible and bears no relation to actual residual values achieved in Ayrshire which typically fall within the range of between £10,000 - £20,000. It is suggested that this supports the applicant's final appraisal of £13,000 being conservative and illustrates that the cumulative impact of the council's consultant's unduly pessimistic assumptions are unrealistic.

Overall conclusions

4.59 The very significant cost of the restoration works required in order to secure the long term future of Loudoun Castle necessarily gives rise to the need for enabling residential development to fund the cost of the castle stabilisation and restoration works. No other sources of funding are realistic and the council are wrong to suggest the cross funding from the tourism and recreation development can be taken into account. To do so would be a fatal misreading of policy Rural Area 4 and counter-productive in terms of delivery.

4.60 Suitably experienced and qualified conservation specialists have worked together to provide a method as to how the castle can be stabilised and this method has been costed. The method and costs have been tested and considered to be robust and realistic estimates for this stage of the development process.

4.61 A development appraisal has been carried out using industry standard software, utilising conservative assumptions, the majority of which have been agreed by the council. This has demonstrated that just over 1000 houses are needed to meet the cost of stabilising the castle. Further safeguards necessary to secure the delivery of the repairs, provide further details and assurances over phasing are provided for in the applicant's proposed planning obligations and conditions.

Case for the council

Need for enabling development

4.62 In anticipation of the examination process the council appointed a team of specialists in building conservation and development appraisals to assess the information submitted on behalf of the applicant. The methodology, cost estimates and development appraisal are all interlinked. The method of completing the repairs will determine the cost, which in turn is the basis for the development appraisal to demonstrate the minimum necessary enabling development.

4.63 The methodology set out by the applicant was of insufficient detail to properly assess. The council developed and costed its own method. The council's consultants have had various meetings with the applicant's team before and throughout the inquiry process. It should be noted that when the planning application was submitted to the council there was no detailed cost estimate or development appraisal.

4.64 There is agreement that "*Enabling Development and the Conservation of Significant Places*" ([CD4.02](#)) is relevant guidance for assessing proposals relying on enabling development. In summary, enabling development may be acceptable if it is the only means to conserve an important heritage asset and it is the minimum level of development necessary. At its heart is the need to demonstrate that a conservation deficit exists.

4.65 There is no overarching development appraisal covering the whole proposal. The applicant has therefore failed to demonstrate that there actually is a conservation deficit. By ignoring the tourism and recreation development the applicant is attempting to separate the assets of the overall site from the liabilities. This is not acceptable. In addition, the applicant has not fully explored whether grants are available or whether alternative delivery mechanisms, other than a commercial development would be possible. The applicant claims that should costs exceed the submitted budget estimate they would be underwritten by the developer. This statement begs the question as to whether any enabling development is necessary.

4.66 The proposed scale of enabling development is a fundamental aspect of the application for planning permission in principle and its acceptability has to be resolved before planning permission in principle is granted. Issues regarding the costs of repairs and the scale of enabling development cannot be addressed by conditions.

Methodology

4.67 The applicant shared its draft version of the cost estimates with the council. These were assessed by the council's consultants. It is important to recognise that reliable cost estimates cannot be prepared unless based on a realistic conservation methodology. The council's consultants did not consider the methodology was in sufficient detail and so prepared their own approach and costed that method separately. The two different approaches are summarised in Mr Adam's second inquiry report ([EAC1.46](#)) at paragraph 1.2 (council) and paragraph 1.3 (applicant).

4.68 It is also important to point out that the scope of the works that have been costed only stabilises the castle as a ruin. They do not cover the cost of the works to make the building a shell or the additional costs to convert and fit out the castle into a hotel use. In addition, the applicant's method is not a fully worked up scheme. The approach has only been prepared in sufficient detail for the purposes of making a cost estimate which can then be tested in the development appraisal.

4.69 Although much inquiry time was spent debating different approaches, ultimately there was considerable agreement. There is agreement over the current condition of the castle. It is accepted that consolidating the existing ruin is technically feasible albeit also technically challenging. The key difficulty is parts of the existing structure are dangerous and that restricts the extent of pre-survey work and constrains the sequence of works.

4.70 The concern is that the applicant has been too optimistic about the reality of attempting to repair a building in such a potentially dangerous condition. There may not be a safe side to all walls. The sequence for making walls safe and consolidating the walls may not be as straightforward as suggested. Access, particularly to inspect and repair the internal walls and some of the towers could be particularly challenging.

4.71 The council also considers that the applicant's assertion that the gatehouse and bridge need no repairs to be unverified by any detailed assessment.

4.72 A key dispute that emerged was whether a steel frame should be used. The council accept that it is a possible option that may be appropriate. However, it is too early to determine this at the current stage. A steel frame will not negate the need to consolidate the walls. There is no structural reason for the insertion of a steel frame either to allow public access or for the conversion to a hotel. The general principle in conservation is that any intervention should be the minimum necessary. At this stage, the need for a steel frame has not been justified.

4.73 In any event, at this stage the installation of a steel frame is academic. Ultimately, how the castle is to be repaired would only be resolved through an application for listed building consent. More detailed information than currently available would be necessary for the submission of an application for listed building consent.

Cost estimate

4.74 The cost estimates are a means to an end not an end in themselves. It is important that any cost estimate is realistic or otherwise the wrong conclusions could be drawn from the development appraisal.

4.75 The applicant's final cost estimate has not been based on a detailed scheme that can be easily priced. There remains many uncertainties and unknowns. If the costs are to be realistic this uncertainty has to be managed. The council's concern is that the applicant has not adequately or realistically identified the cost of even stabilising the existing castle ruins. No costs have been prepared to form either a building shell or to convert the castle into a hotel.

4.76 The council was originally concerned that the applicant had not made sufficient provision for archaeological surveys of the castle and its immediate surroundings. However, by the time of the inquiry in November 2017 this matter had been agreed and the current estimates are considered realistic.

4.77 Following the joint site visits in November 2017 and January 2018 the council revised its suggested method. The main differences are:

- Extent of dountakings has been reduced;
- Quantity of the rubble and debris lying on the ground within the castle has been increased;
- The extent of wall rebuilding has been reduced;
- The work to the east tower has been more accurately assessed;
- The supply of new stone has been reduced;
- The amount of gravity grouting has been reduced; and
- Heavy consolidation work has been provided for.

4.78 The council now estimates that the masonry consolidation works would be £10,315,141 compared to the applicant's cost of £10,322,177. The costs are now effectively the same, although they are based on different approaches and are not directly comparable.

4.79 How a contract is procured makes a difference to the final cost. The applicant's cost estimate is based on the assumption that they are tendered market rates. The council does not accept the same rates would be applied if there was a negotiated tender situation. Established United Kingdom indexes demonstrate that on average different methods of contract have different outcomes for total costs (see Appendix 3 of [EAC 1.7](#)). It is therefore reasonable to add an additional allowance of 12% to cover the cost of a negotiated contract.

4.80 Preliminaries are general cost items that may be attributed to the entire project such as plant and equipment, supervision, security and insurance etc. The applicant has applied

a 10% figure for preliminaries. For a project of this nature it would be more accurate to attempt to identify obvious items that would have to be covered. The council is concerned that the applicant's approach underestimates the real cost of preliminaries.

4.81 The applicant has only allowed 10% for contingencies. The council does not consider that this is appropriate, particularly when there are so many uncertainties. The council consider that an additional 5% should be allowed should unforeseeable items come to light.

4.82 The council therefore considers that a more realistic cost estimate at this stage would be £15,229,622 compared to the applicant's estimate of £12,837,060.

Development appraisal

4.83 The council appointed Mr Lang of Graham Sibbald chartered surveyors to assess all the development appraisals prepared on behalf of the applicant. For the purpose of Mr Lang's assessments he assumed that the cost of stabilising the castle was £12.8 million and that only the residential development would contribute to the repairs. However, it is the council's position that no overall conservation deficit has been demonstrated and the council considers that a more realistic figure for stabilising the castle is £15.2 million.

4.84 The council accepts that the correct methodology has been applied and that the software used, is a recognised software package for completing development appraisals. Although not accepting the conclusions, the applicant has correctly calculated the quarterly cash flows in Appendix D of the development appraisal.

4.85 The council notes that whilst the applicant has addressed some of the comments made previously, they have also changed some of the assumptions that had previously been agreed. The applicant frequently justifies some of their assumptions on what they describe as "soft market testing". However, claims of market testing is not the same as evidence.

4.86 It is agreed that the applicant has correctly applied Land and Buildings Transaction Tax and the legal and agents fees for buying and disposal of the land. However, it should be noted these are all percentage based and so if the base sum changes so will these costs.

4.87 The level of professional fees had previously been agreed at 10%. However, the applicant now claims that professional fees should be applied to house build costs and infrastructure costs (but not the contingency) at 7.5%. The council cannot accept this change. Applying 10% to all construction costs, including the contingency would increase the overall cost of the project by £3,978,701.

4.88 The council accepts that a planning obligation contribution would not be appropriate for affordable housing. For the purposes of the exercise it accepts the other identified offsite infrastructure. However, it is unclear how, or why, some of the offsite infrastructure costs should be apportioned between the enabling development and the leisure and tourism development.

4.89 The council agrees the 5% contingency, the income per square foot and the cost of construction per square foot. The council would however, point out that the costs are only

for typical modern estate housing. Any extra costs for higher quality materials that might be necessary given the sensitive location have not been assumed. The council do not accept that any increase in construction costs due to design reasons will automatically be recouped by higher sales value.

4.90 For the purpose of the exercise the council had previously agreed an average monthly sales rate of 5. The applicant has increased this to 6. Whilst 6 a month is possible on occasions it is not considered a conservative assumption for 6 houses to be completed a month for 17 years. The time taken to sell houses is important because interest charges will increase costs if it takes longer to complete the development.

4.91 The council cannot accept a profit margin of 18%. A realistic figure is 20%. The applicant acknowledges that 20% is realistic normally but suggests the development is lower risk and therefore a lower profit margin is justified. A very large development such as being proposed is actually higher risk than a more usual size development which would be completed relatively quickly. A realistic profit margin of 20% would increase the overall costs (and hence reduce the residual value) by £3,462,542.

4.92 The applicant has also assumed that there are no abnormal costs, this is in despite of evidence of mining legacy, likely archaeology costs and landscaping costs. A prudent developer would not purchase land and hope that their development would be able to work around any difficulties. Instead they would pay less for the site.

4.93 Previously interest rates had been agreed at 6.5%. The applicant has now reduced the rate to 5% on the basis that national housebuilders can secure lower interest rates from lenders. This approach is wrong in principle because it assumes only certain development companies can be involved. In any event, a good argument can be made that for a development over 17 years where interest rates could vary, a conservative assumption would be for even higher rates than 6.5%.

4.94 Overall, the council does not consider that the submitted development appraisal can be relied upon. If more realistic assumptions were used the development appraisal would show that the residential enabling development would have to be 3,963 houses. This figure should actually be higher because the council considers the costs of stabilising the castle to be more than £12.8 million claimed by the applicant.

Overall conclusions

4.95 The applicant has ignored any contribution from the leisure and tourism development and has not demonstrated that other sources of funding or delivery mechanisms are impossible. An overall conservation deficit has not been demonstrated and this is a fundamental flaw.

4.96 The cost estimates are not considered to be realistic and in any event are only partial, relating to stabilising the castle as a ruin, not the conversion to a hotel as specified in the planning application.

4.97 The applicant's development appraisal is not considered to be based on prudent assumptions. If realistic assumptions were used it would conclude that significantly more houses than 1000 would be required to fund even the partial stabilisation of the castle.

4.98 The proposal does not meet the principles or guidance for enabling development in a number of important respects and these difficulties cannot be rectified by planning conditions or the terms of a planning obligation.

Reporters' conclusions

Conservation deficit

4.99 In chapter 2, we found that there was no policy bar that excluded consideration of income from the allocated tourism and recreation development. We accept that the commercial nature of such development might require particular judgements or approaches to properly interpret such financial information but we cannot agree with the applicant that any potential income from the tourist and recreation development must be ignored for policy reasons. By excluding consideration of the tourist and recreation development it is not possible to establish the size of an overall conservation deficit or even whether one exists. We agree with the council that this is fundamental.

4.100 We accept that on the evidence available to us about the costs of stabilising the castle ruins it is very likely that an overall conservation deficit of some form does exist. However, its scale has not been quantified. The scale of enabling residential development needed to fund conservation work is relevant in policy terms because in our view, the test of minimum necessary level of development to fund such works is clearly closely related to such development being "sympathetic".

4.101 In chapter 2 we also noted that the applicant had attributed some costs to be funded by the wider tourism and recreation development. The applicant has stated that the cost of renovating the gardens and designed landscape would be funded from timber sales and the wider development. In the final development appraisal some of the costs of the offsite infrastructure was split between the enabling development and the wider development. We note that in the applicant's final budget estimate (page xvi of [APP1.3](#)) various costs are excluded and therefore are not funded from the enabling development. These costs include pre-contract surveys, insurance costs, planning conditions and works to the gatehouse and bridge. We can only assume that these excluded costs would also be funded by the wider development.

4.102 There would be other costs that would follow from the planning obligations and planning conditions which the applicant considered necessary to make the proposal acceptable such as necessary pre-development survey work, design work and financial bonds. Again we can only assume these costs are to be funded from the wider development. Cumulatively we do not consider that these costs would be trivial. We do not consider that it is helpful to assert that costs can be funded from a particular source without quantifying, even approximately, the size of that source.

4.103 We accept that public funds for building conservation work are likely to be limited and would be made subject to conditions. We accept that there would be no guarantee that any applications for such funds would be successful. Even if such an application was successful, any funding would only be likely to cover a proportion of the overall cost. Nonetheless, such alternative funding may assist in reducing the overall scale of enabling development.

4.104 On behalf of the applicant it was claimed that alternative delivery mechanisms, such as a historic building trust would not be practical. However, the chosen commercial approach also has limitations and risks. In some of the submissions the applicant has suggested that once the ruin is stabilised it would be taken over and converted to a hotel. No costs associated with this work have been submitted. Such costs we would have thought would be significant. If, even under these circumstances, a commercial return is possible, this would support our view that the wider tourism and recreation development could significantly reduce the scale of enabling development. On the other hand, as we discussed in chapter 3, if commercial development is not realistic, the long term maintenance of the ruin would need to be addressed. We are aware of no detailed information demonstrating a viable long term future of the castle either as a hotel or a managed ruin.

4.105 The evidence before us is not sufficient to quantify the scale of any conservation deficit. The submitted financial information is partial and in parts contested by the council. It is impossible to know whether the scale of enabling development is the minimum necessary as required by policy Res 13. With only partial financial information it is impossible to know whether those elements that are to be funded by the overall development are realistic. Without identifying an overall deficit or providing adequate financial information policy Res 13 cannot be complied with.

4.106 Policy Res 13 was developed to be broadly consistent with paragraph 142 of Scottish Planning Policy. The proposal would therefore also not comply with the general principles of Scottish Planning Policy regarding enabling development. Demonstrating the existence of an overall conservation deficit, demonstrated through adequate financial information that enabling development is the minimum necessary are also key themes of the English Heritage guidance.

4.107 We would add an observation in a remark made in paragraph 8.78 of the applicant's closing submission. It states, "... *it can now be appreciated that Francis Shaw's letters in September 2015 provided a good pre-estimate of the likely cost of stabilisation and consolidation (CD1.40 and CD1.42).*" That is not the conclusion that we draw. On the contrary, it appears to us that key decisions concerning the overall conservation strategy were made on the basis of assumed costs (ie shell building suitable for fitting out £9 – £9.5 million) which it is now clear are no longer valid (see paragraph 4.113 below).

4.108 For a proposal for planning permission in principal of such complexity and which would take at least 17 years to complete, we consider confidence in the financial information is essential. Over this period much can change in terms of the developer, costs, technical approaches and general economic conditions. It would be, for example, unacceptable for repairs to be started to the castle but not completed or for there to be continual pressure for further residential development if circumstances change.

Methodology and budget estimates

4.109 Lots of inquiry time was taken, and written evidence submitted, regarding disputes as to the methodology for stabilising the castle ruins and the costs involved. We were impressed by the level of knowledge and experience of the conservation professionals representing both the applicant and council. In our view, ultimately, a considerable level of agreement was reached.

4.110 There is no dispute that it is technically possible to stabilise the castle ruins, albeit it would be a challenging project. The difficulty in stabilising the ruins arises because of the dangerous condition of some of the walls and structures and therefore complicated arrangements are necessary to sequence the works.

4.111 There was also agreement that more survey information would be necessary to develop a formal submission for listed building consent and the methodology was only necessary at this stage in order to develop a realistic cost envelope for the works. There was no dispute that intervention was necessary to prevent further deterioration and that without intervention the building could deteriorate to a point where further intervention would become too difficult and even prohibitive. This was estimated at between 5 – 10 years.

4.112 The bulk of the work is consolidating the masonry walls to prevent further progressive decline and collapse. Although the applicant and council advocated different methodologies, both parties argued that a realistic cost for the works would be £10.3 million. There was a dispute as to whether a steel frame should or should not be used. However, the council's expert witness accepted that it was a possible option and it was agreed that ultimately the detail of any repair works, including whether a steel frame should be inserted, would be determined in a future application for listed building consent.

4.113 In terms of the total estimated cost, the applicant considered that a provision of £12.8 million would be sufficient whereas the council considered that £15.2 million was a more realistic budget envelope (in 2016 prices). The three main reasons why the council's estimate was higher related to additional provision for preliminaries, procurement approach and overall contingency.

4.114 Preliminaries are costs that can be attributed to the whole project such as site supervision, security, insurance etc. The applicant set aside 10% of the cost for preliminaries. The council accepted that a flat percentage rate was an acceptable approach but that it would be better in the circumstances of a complex conservation project to make specific provision for readily identifiable matters. In the absence of a fully worked up scheme we imagine that it would be difficult to identify all preliminary matters with any precision.

4.115 The council's evidence clearly shows that different procurement routes, for example free market tender or negotiated contract can make a difference to the final contract price. However, we note that the averages derived for the United Kingdom wide index hid big variations, which suggests any difference depends on the nature of the individual contract. The applicant submitted a letter from a specialist contractor supporting the costs as being realistic.

4.116 Our understanding is that for any large scale conservation project it is prudent to allow for a contingency of between 10% - 15%. The uncertainty associated with the current project and the acknowledged need for further survey work suggests to us that a higher contingency is more appropriate than a lower contingency.

4.117 We have no reason to doubt that the two different budget estimates are based on genuine differences of professional opinion. We do not consider that we have the knowledge or experience to substitute our own judgement for that of experienced conservation professionals. In terms of making a recommendation for Scottish Ministers we do not consider that is necessary. For the purposes of making a recommendation we

consider that it is sufficient to note that the evidence suggests that the cost of stabilising the castle is currently estimated to fall within the range of £13 million - £15 million (in 2016 prices).

4.118 However, it is also important to recognise that the works currently costed are unlikely to be the precise works that will actually be undertaken in the event that planning permission in principle is granted. More detailed survey work may result in additional work. Further deterioration of the castle can be anticipated from that in 2016 and its condition when works could actually start. Scottish Ministers will have to consider our report. No party has argued that planning permission in principle should be granted without a planning obligation. In our experience a timescale of at least 3 months should be allowed to negotiate, complete and register a planning obligation. In a project of such complexity the planning obligation could well take much longer to negotiate. The planning permission in principle cannot be issued until the obligation has been completed. It is unlikely that commercial agreements would be finalised until planning permission in principle is finalised.

4.119 We discuss planning obligations and conditions in chapters 11 and 12 respectively. However, even if Scottish Ministers recommend only the planning obligation and conditions that the applicant considers to be necessary to make the scheme acceptable there is considerable work necessary before the first matters specified in condition and/or an application for listed building consent could be submitted. For cash flow reasons the applicant considered that it was necessary for the works to the castle and the residential development to start at about the same time. We would be surprised if any contract to stabilise the castle could be issued for tender before 2021. There was agreement that the works would take 3 years to be completed. There is no guarantee that this timetable would not slip further.

4.120 In such a likely scenario further deterioration to the castle is likely. Costs and rates are likely to change due to inflation and other wider economic factors. Detailed surveys and the listed building consent process might reveal more complex technical problems than currently thought. In such circumstances, even if the applicant's cost estimate of £12.8 million is currently considered to be the preferred estimate, it is far more likely that such a cost will increase. Any planning decision taken by Scottish Ministers should be done so in the knowledge of this risk, which we consider to be high.

4.121 It is our understanding that it is the applicant's position that any increase in costs of stabilising the castle would be absorbed by the wider tourism and recreation development. We are cautious about accepting this comment at face value. Above we have already expressed concerns over the lack of transparency about such assertions in the absence of financial information for the overall development. Even if this is set aside, planning permission goes with the land and whatever the current applicant's intention another developer may have a different point of view. In any event, whilst a small increase in costs could no doubt be accommodated, no commercial developer can underwrite escalating costs indefinitely. At some point, rising costs can no longer be met.

4.122 If costs of stabilising the castle do increase, the most likely response is to seek to reduce the scope of the stabilisation works and/or attempt to increase the scale of enabling development. In chapter 3 we have set out our concerns about the lack of detail over the future of the castle ruins. In chapters 11 and 12 we consider the matter of maintenance of the stabilised ruins, which would be necessary as an interim measure even if the castle is ultimately converted into a hotel.

4.123 In our judgement, the uncertainties regarding both the actual costs of stabilising the castle ruins as well as the uncertainties over the long term future of any ruins are material factors in weighing the overall planning balance, which we address in chapter 13.

Development appraisal

4.124 The purpose of a development appraisal is to identify the expected total income from a development and compare that with the expected total costs involved in completing the development. The difference (sometimes called the residual value) is the amount a prudent housebuilder would pay for the land and therefore the amount available to fund the cost of stabilising the castle from the enabling development.

4.125 There was no dispute that the applicant's final development appraisal ([APP1.51](#)) applied the correct methodology using appropriate, widely recognised software that could be replicated using the same assumptions.

4.126 However, in understanding the nature of the output from a development appraisal we consider that it is important to understand the mathematics that underpin the final output. The summary sheet in figure 3.1 of the appraisal illustrates that the two largest factors are the sales rate per square foot (assumed to be between £162.70 - £177.26 per square foot) and the construction cost per square foot (assumed to be £102.40 per square foot). This is because the appraisal assumes that 1025 houses amounts to 1,158,350 square foot. Small changes to the assumed sales rate per square foot and construction costs per square foot can make a big difference to the final outcome. This is compounded by further variables being based on a percentage of either total sales or total costs.

4.127 The English Heritage guidance (paragraph 5.14.2 of [CD4.2](#)) indicates that assumptions should be fixed at the time the development appraisal is carried out. The reason for this is otherwise there is too much variability in the final outcome. The appraisal assumes that the 1025 houses would be built over a 17 year period, which is assumed to start in September 2017 and finish in December 2033. In line with the guidance, the appraisal holds the assumptions constant over this time. Clearly, construction cannot start in September 2017. Our best guess is that construction would start in 2021 at the earliest. In reality, all the assumptions are likely to vary up and down over a 17 year or more period. We would caution against attaching significance to the accuracy of the assumptions used. We would suggest that the appraisal could be recalculated each quarter and there would inevitably be big differences in the final outcome.

4.128 In our judgement, the big difficulty in this case is the size of the proposed residential development and therefore the time it will take to be completed. At the inquiry we heard evidence from all the experts that the proposal is by far the largest proposal for enabling development in Scotland. The witness for Historic Environment Scotland said that the next largest proposal they were aware of was for 250 dwellings.

4.129 We can see the utility of using a development appraisal for a relatively small development that would be completed over a few years. In such circumstances a development appraisal would be a useful tool, helping to inform the decision maker that the scale of enabling development and the assumptions were reasonable. We cannot say the same for a proposal for approximately 1000 houses built over 17 years. Notwithstanding

the advocated use of a development appraisal in the English Heritage guidance, we question whether in this instance it is an appropriate tool to guide decision makers.

4.130 To illustrate our concerns we would refer to the sensitivity analysis provided in figure 3.2 of the appraisal. That shows that if a construction rate of only £4.00 per square foot less had been assumed (ie £98.40) and a sales rate only £10.00 per square foot more was assumed (ie approximately £187.26) then the residual value would be approximately £24 million, meaning that approximately 500 houses would be sufficient to fund the castle works. On the other hand, if the council's assumptions are adopted almost 4000 houses would be needed. Such extreme variations caused by relatively small (and credible) changes to assumptions renders a development appraisal meaningless in quantifying even the approximate minimum level of enabling development.

4.131 In our opinion, assuming that the applicant is correct that the costs of stabilisation are approximately £12.8 million and that there should be no contribution from the wider development (which we do not accept) - all that can be safely concluded is that it is likely that a significant level of enabling development is necessary.

4.132 The reality is that no one can correctly forecast the costs and income for 1000 houses over a 17 year period with any reasonable level of certainty. It is possible that the applicant is correct and 1000 houses would be the minimum necessary. However, it is equally likely that 1000 houses is either too many or inadequate. If it turned out that 1000 houses was more than the minimum necessary the general impacts, including those on the heritage assets, would be greater than they needed to be. That would in our opinion amount to a significant planning harm. On the other hand, if the funds generated turned out to be inadequate, either the development would not proceed or there would be pressure to increase the number of dwellings. We would add that the uncertainty surrounding the calculation of the minimum number of dwellings is of a much higher order than the uncertainty surrounding the costs of stabilising the castle ruins.

4.133 In any event, leaving aside our concerns about the utility of a development appraisal in this instance, we cannot accept that the final appraisal submitted by the applicant is based on conservative assumptions. The council takes issue with the fact that cost assumptions for professional fees and finance have been reduced compared to the original version of the appraisal. The council also express concerns about:

- A profit margin of 18% instead of 20%;
- Apportioning some of the offsite infrastructure costs between the enabling development and the tourism and recreation development;
- House construction rates;
- No provision for abnormal costs including mining legacy issues; and
- Construction costs not taking into account a higher design specification because of the sensitivity of the site.

4.134 We would add to this list. The estimate of costs for offsite infrastructure is not based on a final design and is therefore difficult to verify. The costs for roads and utilities are based on an average cost per dwelling. We would have thought that any such average

cost must fall within a broad range, bearing in mind the variability of different sites and factors that would influence costs in practice. In any event, if anything, the relatively remote location of the site, topography and agricultural use would imply to us a likely higher than average cost. It would be unacceptable for an average cost assumption to limit the quality of the final development by for example, limiting the length of footpaths. We note that to date no water impact assessment has been carried out for Scottish Water and see no reason why it should be assumed that the necessary costs for water supply and sewerage would be an average.

4.135 A key assumption, as pointed out by the council is a relatively high construction rate, every year for 17 years. There is no guarantee that this can be achieved. In our experience there is considerable variation in the actual annual construction rates for large scale residential developments. There appears to be little provision for the impact on construction rates of the various phasing conditions that even the applicant considers would be necessary.

4.136 In addition, no costs are set aside for the overall design and masterplanning (which must be considerable for a development of this scale), the provision for other land uses within the new community (such as shops, community hall or pub as set out in the design statement), the financial bonds suggested by the applicant or for long term maintenance. In chapter 11, we do not consider that the provision for bus support is realistic and also recommend a further analysis to be sure that there are no impacts on services caused by the development (such as schools and health services) where additional financial contributions or phasing restrictions would be appropriate.

4.137 Our criticism is not that any individual assumption is of itself unreasonable. It is that almost all the assumptions favour a more optimistic turn of events. We consider that it is far more likely that costs would be higher, particularly as they are cumulative, than that they would be lower. We accept that it is possible any increase in costs could be offset by an increase in sales revenue. However, we do not think such a situation can be guaranteed and therefore it is unsafe to assume that this would necessarily be the case.

4.138 We therefore find, that even within its own terms, the development appraisal cannot be relied upon to demonstrate that 1025 houses would fund the stabilisation of the castle. In our opinion, it is more likely that in practice, the cost of stabilising the castle would be higher than the anticipated £12.8 million by the applicant and that the residual development value lower than the £12.9 million calculated in the submitted development appraisal.

4.139 We accept that the council's estimated residual value is far lower than our understanding of normally expected site values for housing development. If the council is correct in its assessment, or even just closer than the applicant, then the scheme is unviable and even if planning permission is granted, it would not proceed. Alternatively, if increased costs emerge either during works to the castle or as the proposed housing is being built out, it is reasonable to anticipate a developer seeking to reduce the repair costs to the castle, reducing the costs of constructing the houses or increasing the number of houses, or a combination of all three. Such requests would of course require permission or other approvals, nonetheless, in our opinion, such requests would be difficult to resist if the basic principle of the proposal is accepted and particularly if made in a series of incremental applications.

4.140 The final aspect of enabling development is that the heritage benefits are secured in the long term. We consider this aspect in chapter 3 and also chapters 11 and 12. In summary, whilst we believe that the consolidation of the castle ruins and the restoration of the garden and designed landscape can be secured by a phasing condition (although the applicant disagrees) we do not consider that the applicant's current approach to the long term maintenance of either the castle ruins or the garden and designed landscape is acceptable.

Conclusions

4.141 The main basis for establishing the need for enabling development is demonstrating that an overall conservation deficit exists. We do not consider that an overall conservation deficit has been quantified and we have previously found no policy justification for excluding any financial contribution from the wider tourism and recreation development. In any event, the applicant does rely on funding from the tourism and recreation development for selected aspects of the scheme. This lack of transparency is unhelpful and in our view does not provide an acceptable basis upon which to make a planning decision. We find that it is impossible to be sure that the minimum necessary enabling development has been proposed to fund any conservation deficit. The proposal is therefore contrary to Policy Res 13 and the key principles set out in paragraph 142 of Scottish Planning Policy and in the English Heritage guidance.

4.142 We find that stabilising the castle ruins is technically possible and is likely to be able to be completed for between £13 million - £15 million in 2016 prices. However, by the time repairs could realistically be carried out it is far more likely that costs will increase than that they stay the same or reduce. We note that the applicant's latest budget estimate shows significantly increased costs for stabilising the castle from those available when the planning application was first submitted to the council.

4.143 Even if the applicant is correct and that any contribution from the wider development should not be considered, the scale of proposed residential development constructed over such an extended period makes any development appraisal extremely uncertain to the point where we question whether a development appraisal is an appropriate tool. We do not consider that the finally submitted development appraisal can be relied upon to indicate even an approximate scale of enabling development.

4.144 Even if the development appraisal is accepted as an appropriate tool, we cannot agree that the finally submitted appraisal is based on inherently conservative assumptions. On the contrary, the evidence suggests to us that it is far more likely that even more houses would be required to fund the stabilisation of the castle than the approximate 1000 suggested by the applicant.

4.145 In our opinion the practical effect of the above conclusions is that any decision to grant planning permission in principle would have to be taken in the knowledge that there is a significant risk that:

- The overall development is not viable and would not commence; or
- Circumstances change over the 17 years and that income relative to costs is actually higher than assumed in the development appraisal and more houses than the minimum necessary are constructed; or

- Circumstances change and costs relative to income (including the cost of stabilising the castle) are higher than assumed leading to pressure to amend the stabilisation scheme to reduce costs, reduce costs (and hence quality) of the proposed housing development or increase the number of houses, or
- A combination of all three.

4.146 There is always a risk that large scale development proposals do not proceed. The proposal is no different from any other planning application. The risk that more houses than necessary may be constructed or that there may be pressure for further development is a factor that we consider in our overall planning balance in chapter 13.

CHAPTER 5: LANDSCAPE AND VISUAL IMPACT

Introduction

5.1 This chapter considers the parties' position in relation to landscape and visual impact of the proposal. A hearing session was held on 24 October 2017. The heritage impact of the proposal upon the garden and designed landscape is addressed in chapter 3.

5.2 The applicant's landscape and visual impact assessment is contained in chapter 6 of the environmental statement addendum ([CD1.45](#)). The council carried out an audit prior to considering their position on the proposal and this is contained in [CD2.53](#). The applicant submitted additional documentation with their hearing statement which included additional photomontages ([APP3.12](#)) and a map of the local landscape character types for the site and surrounding area ([APP3.17](#)).

Case for the applicant

Methodology

5.3 The council argues that the submitted landscape and visual impact assessment does not comply with the Guidelines for Landscape and Visual Impact Assessment: Third Edition ([CD5.5](#)) in a number of respects. This is not accepted. The guidelines do not set out a formulaic recipe that has to be followed in every respect. Rather it sets out a set of general principles that should be followed. The key principle is that judgements must be transparent and understandable. The underlying assumptions and reasoning for such judgements must be clear. All the submitted material, including the map of the zone of theoretical visibility, photomontages etc are typical for any landscape and visual impact assessment, are suitable and comply with relevant guidance.

5.4 The submitted landscape and visual impact assessment needs to be seen in the context of a series of assessments prepared by an experienced multi-disciplinary team. The council on the other hand has been inconsistent in its criticisms and has only carried out an audit, as opposed to preparing its own alternative assessment.

5.5 The garden and designed landscape is a heritage designation, not a landscape designation. In such circumstances the guidelines stress the importance of ensuring that a heritage professional assesses the impact on heritage designations. This has been done in chapters 7 and 8 of the environmental statement addendum. It is not accepted that the site is discrete in landscape terms. The site is currently transitional with no one unifying or dominant landscape character type. Landscape receptors do not have to relate to landscape character areas or landscape designations. Landscape divisions rarely follow precise boundaries and it can give a misleading impression if areas are precisely mapped. There is no requirement to map local landscape divisions if that would not assist in the overall assessment. A description of the different areas surrounding the site is appropriate and adequate for the purposes of a landscape and visual impact assessment.

5.6 All the submitted photomontages comply with the relevant guidance. To address the council's concern regarding the colour of the "*block drape*," a set of revised photomontages (see [APP3.12](#)) was submitted with an unrealistic white colour. The illustrative material has been submitted to aid the understanding of the assessment but is not the basis of the

assessment which is set out in the full written narratives. The revised photomontages would not change the conclusions drawn from the assessment.

5.7 It is not accepted that the assessment only considers the individual elements of the proposal and does not assess the overall impact of the development as a whole. Firstly, it is suggested that there is considerable utility in terms of overall site planning in understanding the different impacts of different components of the proposal. Over a large site, with a development comprising various elements it would be surprising if the sensitivity to change and the magnitude of change was constant. It is also useful to understand how different receptors would appreciate these different impacts. In any event, when the detailed commentaries are read properly, the overall development is clearly fully assessed.

5.8 It is perfectly valid to take into account the fact that the detailed design for both the housing and lodges, for example, would be subject to further assessment at the matters specified in conditions stage. There is no reason why a future developer would propose or the council grant permission for an obviously poor design.

5.9 The photomontages show the effect of planting after 10 years from planting which is anticipated to be early on in the development process. The council has misunderstood the clear statement in paragraph 6.445 of the environmental statement addendum, which makes it clear that the assessment does not assess the effects 10 years after construction has finished.

5.10 Mitigation and the benefits from new tree planting should be taken into account in any proper assessment. It is the residual effects after mitigation that need to be assessed and that is the clear focus of the environmental impact assessment regulations. This point is strongly made in the Guidelines for Landscape and Visual Impact Assessment: Third Edition. Offsetting adverse impacts with beneficial changes is perfectly acceptable and appropriate. It should be noted that the council in its strategic environmental appraisal and Historic Environment Scotland in its consultation response also offset adverse impacts with beneficial changes.

5.11 There is no specified threshold of significance. It is not accepted that it is normal that a moderate impact is considered to be significant. Nor is it appropriate to attempt to “add” cumulative impacts, there are too many factors to take into account and such an approach is overly simplistic.

5.12 The council in its evidence and closing submissions has attempted to make much over methodological differences in an attempt to argue that the applicant has understated the landscape and visual impacts of the proposal. Actually, when properly and fairly analysed, these differences are much narrower. Where they do exist they essentially relate to differences in preferences over certain approaches or in professional judgement. These differences should not obscure any fundamental conclusions over the overall acceptability of the proposal in landscape and visual impact terms.

Landscape effects

5.13 The submitted landscape assessment concludes that the proposal would result in some significant landscape effects. The enabling residential development and lake are the main components of change to the existing landscape. However, any significant effects are localised and would diminish over time.

5.14 The council appears to accept that the bulk of the tourism and recreation development can be accommodated and that the extensive planting would ultimately reduce any impacts to acceptable levels. The enabling residential development has been located to minimise the impact on both heritage assets and the landscape. There is no evidence from any party before Scottish Ministers (including from the council) that there is any less sensitive location than the northern fields where the necessary enabling residential development should be located. The council has been inconsistent in its consideration of the impacts of both the lodges and the enabling development, being far more supportive at the early stages of the application. It is important to note that Historic Environment Scotland had no objection to the scale of development.

5.15 The proposal is for planning permission in principle. The details of the enabling development and the rest of the proposal will all be subject to further scrutiny by the council in consultation with Historic Environment Scotland. The final details would have to comply with the design policies of the council and the Scottish Government to obtain approval. It is accepted that the final details will make a big difference to the overall impact but it is unreasonable to assume inappropriate or unacceptable design solutions that may increase landscape impacts would be granted at later stages of the consenting process.

5.16 An illustrative landscape restoration plan has been prepared in consultation with a range of specialists, including heritage specialists. The original quality of the Garden and Designed Landscape can be restored. The planting would, amongst other matters, reinforce the tree belts, restore the northern belvedere and replace the coniferous plantation trees with a mix of broadleaf trees. These are all considered to have positive landscape effects that can offset other adverse landscape changes. All these benefits can be secured and be maintained in the long term by a combination of planning conditions and planning obligations if planning permission in principle is granted. If the development does not progress then the quality of the landscape will continue to degrade. The fact that the existing areas of plantation woodland require to be harvested in any event is an opportunity to create and fund an improved landscape. It is wholly appropriate to consider these landscape benefits as they are an important component of the overall rationale for the development.

5.17 It is intended that tree planting would take place within the initial stages of the development. The photomontages show tree growth after approximately 10 years. It is accepted that tree growth is a dynamic process but unfortunately a photomontage has to fix screening at a particular point in time. The council accepts that tree planting would screen the development as the planting matures, the only disagreement is at what point that becomes acceptable.

5.18 It is accepted that the lake will have localised significant landscape effects. It is not accepted that the lodge development would have any significant landscape effects. The council is incorrect to equate 20% site coverage with the removal of 20% of the woodland. There would be no need for service roads as many similar developments are served using off road buggies. There are a wide range of possible foundation options. The council's concerns all relate to matters of detail that are not necessary to address at the planning permission in principle stage. These concerns can be properly addressed through conditions and the appropriate consideration of subsequent applications for matters specified in conditions.

Visual effects

5.19 The scope of the works assessed is set out in chapter 2 of the environmental statement addendum. This level of detail and the assumptions made is appropriate for an application for planning permission in principle. Both the council and Historic Environment Scotland agreed at the beginning of extensive discussions that the submission of an application for planning permission in principle would be acceptable.

5.20 The zone of theoretical visibility for different elements of the project was included with the submitted assessment. To address a criticism of the council a composite zone of theoretical visibility was also prepared (see [APP3.13](#)). Obviously, the mapped zone of theoretical visibility is a worst case but the visual impact of the proposal is clearly relatively contained and relatively local. The extent of the study area, 5 kilometres, was agreed with the council.

5.21 In assessing a change to a future view it is appropriate to bear in mind that the final details will be assessed by the council. A “*block drape*” to demonstrate the enabling residential development is an accepted approach when design details are not known for simulating housing development and considered to be worst case. In particular, the white “*block drape*” shown in [APP3.12](#) is considered to be unrealistically bright.

5.22 As for visual effects, the council criticises the visual assessment for only considering visual impacts during construction and when operational for individual elements of the proposal. This is not accepted. A fair reading of the detailed commentary shows that the overall visual impact of the development has been assessed. The sensitivities of the receptors and the magnitude of anticipated change are clearly assessed.

5.23 All the viewpoints were agreed as being representative with the council. Despite the criticisms and discussion at the hearing session it is the applicant’s position that the visual assessment during construction (paragraphs 6.365 – 6.409 of [CD1.45](#)) and operational (paragraphs 6.519 – 6.560) are fair, reasonable and transparent. The sensitivities used complies with the Guidelines for Landscape and Visual Impact Assessment: Third Edition. It is not considered appropriate that car drivers are considered high sensitivity receptors.

5.24 The council criticised the photomontage used for viewpoint 10 ([APP3.12](#)). This is obviously a computer generated image and illustrates how close attention to detailed design matters can reduce impacts. However, the actual assessment for viewpoint 10 is contained in paragraphs 6.537 – 6.538 where an on balance moderate impact was found.

5.25 The council also criticised the assessment for not taking into account the cumulative magnitude of impact (particularly in the visual assessment) from several components of the proposal. As set out above, the overall proposal is assessed. In particular it is not considered valid, as the council’s consultant argued at the hearing, that for example, two mediums and a low impact must result in an overall high impact. There are far too many factors to be taken into account and such a formulaic and mathematical approach is inappropriate. Despite the councils many criticisms, the council’s consultant did agree that landscape screening would ultimately reduce visual effects to below the significant level. Overall, it is considered that the visual assessment contained within the submitted landscape and visual impact assessment demonstrates that subject to conditions and a planning obligation, and assuming appropriate consideration of the detailed design

proposals, that the development would not result in many significant changes to views or visual amenity of receptors in the study area.

Acceptability of landscape and visual impacts

5.26 The submitted landscape and visual impact assessment considered the changes to landscape character and views from the current baseline. It should go without having to say that identified significant effects does not necessarily mean that such effects are unacceptable.

5.27 Any assessment as to whether landscape and visual impacts are unacceptable has to take into account that the site is allocated for large scale residential and leisure development with an inevitable element of enabling residential development, which the council was well aware would have to be significant in scale.

5.28 It should be noted that the council's landscape consultant made no comment on the acceptability of the landscape and visual impacts, even though he had some criticisms over the identification of significant effects. The council's Head of Planning, in the committee report ([CD2.49](#)) did conclude that the effects were unacceptable leading to the conclusion that the proposal was contrary to policy Env 8. However, little justification is given for this conclusion.

5.29 The council is incorrect in making this judgement. It is suggested that it cannot logically be sustained that bearing in mind the site allocation under policy Rural Area 4 that the relatively few and localised significant landscape and visual effects could be considered as unacceptable.

Conclusion

5.30 The Guidelines for Landscape and Visual Impact Assessment: Third Edition does not specify set methodologies but a series of general principles. It is considered that the submitted landscape and visual impact assessment complies with these principles. The landscape and visual impact assessment considers changes to the landscape character and views, and concludes that overall there would be no unacceptable harm to the existing landscape character or views.

Case for the council

Methodology

5.31 A proper assessment of the overall landscape and visual impacts of the proposal is important because such impacts would be part of the planning policy test that the proposal would be "*sympathetic*." It is the council's position that the overall landscape and visual impacts are not acceptable and would not be "*sympathetic*".

5.32 It is accepted that the Guidelines for Landscape and Visual Impact Assessment: Third Edition does not set out a prescriptive set approach. However, they do set out a number of basic principles. Any landscape and visual impact assessment obviously contains an element of professional judgement and professional judgements do differ. However, in this case, the assessment carried out on behalf of the applicant has adopted a number of approaches that do not comply with the principles in the guidelines and lead to

an underestimation of the overall landscape and visual effects. The difference between the parties cannot be solely explained by a difference in professional opinion.

5.33 In the submitted assessment, the applicant has carried out a landscape character assessment of the project site and the local area. However, the identified sub types set out in paragraph 6.56 of the assessment have not been mapped. The sub types are only described in the text which leads to a lack of precision as to what areas they cover. The guidelines state that landscape character areas should be mapped. The applicant's later production ([APP3.17](#)) does not correspond to the titles used in the landscape and visual assessment and so does not address this criticism.

5.34 The site specific landscape effects are assessed against 12 sub units of the proposed development. The submitted assessment carries out no assessment of the landscape effect of the overall development. This is considered to be a significant flaw in the approach and leads to an inherent understatement of the effects. In addition, it is not accepted that the site is in an area of transition. It is considered that the designated gardens and designed landscape should have been considered as a discrete unit and separate overall landscape and visual effects assessed, as well as the impact of the proposal on the respective heritage assets.

5.35 A similar criticism can be made for the visual assessment. Whilst it is undoubtedly useful to analyse the visual effects of different parts of the development, it is also essential that there is also an overall assessment.

5.36 It is recognised that the application is for planning permission in principle and many of the details are not known. However, as set out below, the council considers that this has led to an unrealistic depiction of the proposal leading to an underestimation of overall effects.

5.37 The assessment considers the impacts during construction and once the development has been completed and operational. As the intention is to complete the stabilisation of the castle and leisure and tourism development first, there should have been two assessments of impacts during construction, one during the initial 2 year period and another as the enabling development is built out. Paragraph 6.414 states that the operational effects have been assessed when the development has been completed ie year 17. However, at the hearing session, the applicant's landscape witness clarified that the new tree planting had been assumed to be 8.5 metres high having had 10 years growth. If the tree planting took place at the beginning of construction, this would mean that the so called operational assessment is actually undertaken within the construction period. This does not accord with the depictions set out in the submitted assessment.

5.38 In determining the significance of effects, the applicant's assessor has offset what are considered to be beneficial effects against adverse effects. Whether an effect is beneficial or adverse should not determine whether the effect is significant. That is a later judgement concerning acceptability. In any event, as will be discussed below, the council considers that too much weight is attached to so called beneficial effects.

5.39 Finally the threshold of significance is set at an unreasonably high level. Commonly, a medium magnitude impact upon a high sensitive receptor would be considered to be a significant effect. It cannot be correct that the medium magnitude impact set out in table 6.3

can never be significant if experienced by high sensitivity landscape or visual receptors as set out in table 6.4 and 6.5.

Landscape effects

5.40 The council agrees that there would be no significant landscape effects overall for both the regional character areas or the local character areas. However, the council considers that the construction of the lake, the enabling housing development and the initial tree felling would all have a significant and adverse landscape effects. The greatest change to the landscape character would occur due to the construction of the enabling residential development, which the applicant estimates to take 17 years.

5.41 The use of a “*block drape*” to represent the new housing, whilst understandable, is not considered to be a realistic depiction of a residential development of approximately 1000 houses. It is clear from the applicant’s overall evidence that what is proposed is a typical suburban housing layout which would inevitably include district distributor roads, bus stops, sustainable urban drainage ponds, street lighting and considerable topographical changes. In the absence of a masterplan demonstrating otherwise, an adverse significant effect should be assumed. This effect would extend to the garden and designed landscape as a whole, having a medium magnitude acting on a medium/high landscape receptor resulting in a moderate to substantial effect which is significant.

5.42 The parameters plan suggests that lodges would be placed within currently wooded areas at a density of 15 – 20 per hectare. The environmental statement addendum assumed a footprint for each lodge of 100 square metres. This would equate to a site coverage of approximately 15%-20%, inevitably resulting in some tree loss. In addition, there would have to be service roads and services (water, sewage, electricity), all likely to result in further tree loss. Insufficient information has been submitted to demonstrate that such tree loss would have no significant landscape effects.

5.43 There is little detail provided regarding the proposed lake. However, it is inevitable due to the sloping land that very considerable earth works would be necessary. A lake in such a location would be highly uncharacteristic. Other aspects of the development would also have localised landscape effects but probably not significant landscape effects at the scale of the estate as a whole. Nonetheless, these minor effects would add cumulatively to the significant effects identified above.

5.44 The council accepts that the proposal would result in some beneficial landscape changes. Nonetheless, a large scale residential development would now become the dominant landscape characteristic. This would be a notable change from the current woodland and enclosed fields landscape character type and the current settlement pattern which locates settlements along the valley floor.

5.45 It is accepted that the significant landscape effects are relatively localised, predicted to be approximately 1.5 kilometres from the site. It is also accepted that over time, new woodland would reduce the landscape effects, which could be considered as beneficial. However, this does not mean changes to landscape character are not significant.

Visual effects

5.46 The council does not accept that the landscape and visual impact assessment has correctly identified the likely visual effects. This is partly due to the methodological criticisms set out above. It is also due to viewpoint images not accurately depicting the likely visual change brought about by the proposals. The assessment found only one significant visual effect and then only during construction. The council's alternative (see appendix 1 [CD2.53](#)) found significant adverse effects during construction or operation for ten viewpoints.

5.47 In particular, the landscape and visual impact assessment did not assess the cumulative impact of the whole development. Whilst it is accepted that certain aspects of the development, for example, the tourism and recreation complex would not of themselves have a significant visual impact, in conjunction with the overall proposal they must add to the overall magnitude of change. However, this is not recorded in the assessment.

5.48 The assessment for residents found significant adverse visual effects only for those properties within the site. However, the council's consultant found significant and adverse effects at viewpoints 2, 5, 8, 15 and 17 and concluded that residents within 2 kilometres of the site, where open views could be obtained from public open space or local roads to the south, would experience significant changes to their views.

5.49 It is accepted that the visual impact from the core path network would not be widespread. However, the conclusion that the visual change from the footpath that runs through the site is not significant is not realistic. There would be a high level of change to a high sensitivity receptor which would be significant.

5.50 It is also accepted, that particularly for long distance views from the south, visual change may be reduced to below significant level as the new woodland planting matures. However, broadleaf trees can take decades to mature and have a lesser screening effect in winter.

Night time

5.51 The night time assessment sets out effects which range from negligible to major adverse, which is not a useful assessment. However, until screening has matured it is suggested that the proposal would be lit at night in what is currently an unlit landscape.

Conclusions

5.52 In short, the council contends that the landscape and visual impacts are more severe than assessed by the applicant. It is important to have the correct input on effects given the assessment required by the planning policy framework and the need to carry out the planning balance. Generally, the applicant has overstated the derelict nature of the site and the benefits from woodland planting but understated the adverse impacts of the development. It is therefore the view of the council that the threshold established by Policy Env 8 is breached. The cumulative impacts of the proposal but especially the enabling housing development would bring about fundamental change to the pattern of land use within the Irvine Valley near Galston and unacceptably diminish the landscape character of the local area.

Reporters' conclusions

Preliminary matters

5.53 There are a number of disputed matters between the applicant's landscape consultant and the council's. In considering the evidence given to us we think it is important to recognise that the landscape and visual impact assessment is a "tool" to assist the understanding of the impacts of the proposal on a particular element of the environment. What is considered to be a significant effect is a combination of the magnitude of change and the sensitivity of the receptor. A significant effect can be beneficial as well as adverse. Whether a significant effect is acceptable is a different, and in our view, a more complex exercise, taking into account a wide range of factors. In terms of our recommendation, the overall acceptability (in planning terms) of an impact is more important than debates over the significance or otherwise of different elements of the proposal.

5.54 In chapter 3, we considered the impact of the proposal on particular heritage assets, including the designated gardens and designed landscape. There is clearly a considerable overlap between landscape and visual impacts and impacts upon the garden and designed landscape. However, we agree with the advice in the Guidelines for Landscape and Visual Impact Assessment (third edition), that there is a different focus between a heritage impact assessment and a landscape and visual impact assessment and that the two assessments should be considered separately. This chapter only considers impacts of the proposal upon the landscape resource and visual receptors.

5.55 Landscape and visual impact is only one of a number of issues that has to be taken into account when arriving at the overall "planning balance". We carry out our overall assessment of the proposal in chapter 13.

Details of the proposal

5.56 We have considerable sympathy with the difficulties faced by anyone carrying out a landscape and visual impact assessment for the proposal. There is considerable uncertainty over the final form of the design and timing of the development for what is a complex proposal covering a total site area of some 184 hectares. The period of construction is extensive, at least 17 years. Although mitigation measures are proposed, most significantly extensive woodland planting, such proposals are illustrative and not before Scottish Ministers at this stage. Woodland planting is a dynamic process that gradually changes over time but is also reliant on long term maintenance and management. The assumptions made regarding the final form of the development and its programming make a big difference to the degree of landscape and visual effects predicted.

5.57 From the evidence before us we conclude that the applicant's assessor assumed the following:

- A development with the basic physical characteristics as summarised in tables 2.1 and 2.2 of the environmental statement addendum ([CD1.45](#));
- A lake in the location as shown in the previous parameters plan ([CD2.29](#));
- That the development, including the enabling residential development would follow the guidance set out in the design statement ([CD1.4](#));

- That the illustrative landscape restoration plan ([CD1.50](#)) would be implemented with the initial phase of development (ie years 1 -3); and
- That the landscaping would thereafter be actively managed.

5.58 The landscape and visual impact assessment was prepared in 2016 and before the inquiry. As a result of the inquiry process we now know that the intention is to consolidate the castle ruin, construct all the elements of the tourism and recreation development, fell the existing woodland plantations, implement the landscape restoration plan and commence the residential enabling development in years 1 – 3. The remainder of the residential enabling development is predicted to be completed by year 17 after commencement. The applicant’s latest intentions in developing the enabling residential development are set out in the applicant’s final development appraisal ([APP1.51](#)).

5.59 The element of the proposal with the greatest potential for significant landscape and visual effects is the approximately 1000 houses proposed as enabling development on the approximately 44 hectares of land on the northern fields. As the detailed design is currently not known, we note that a “*block drape*” in the photomontage for the housing has been used. As can be seen from the photomontages that include existing houses, a large scale residential development would introduce obvious “lines” with the alignment of the houses and boundary treatment, changes to topography, new roads and vehicle movement. Consequently, we consider that leaving aside the colour, a “block drape” understates the actual landscape and visual impacts that would follow from developing 44 hectares of land with approximately 1000 houses.

5.60 We accept that all the photomontages have followed the relevant published guidance for such material. However, the original dark “*block drape*” had the practical disadvantage that in anything other than strong light, it was difficult to discern from the background of the photographic image. The submitted lighter version ([APP 3.12](#)) addressed this difficulty. We also note that the photomontage assumes that woodland planting, similar to the illustrative landscape restoration plan takes place within the first few years of the development and is thereafter maintained and actively managed.

5.61 It is important to recognise that photomontages are only a “*tool*” to help in any assessment. A printed photographic image can never perfectly replicate how the human eye perceives an actual change. Photomontages have to be interpreted appropriately and in the field. We took both versions of the photomontages on our unaccompanied site visit.

5.62 There was also a debate between the parties as to when the operational assessment had been undertaken. Paragraphs 6.444 and 6.445 of the environmental statement addendum state that the photomontages are “year 10 post construction.” In the council’s comments made before the hearing session, they appeared to assume this meant 10 years after completion (ie year 27). However, our understanding following from the hearing session was that it was 10 years after planting and have assumed this in our assessment.

Methodology

5.63 It is agreed that the Guidelines for Landscape and Visual Impact Assessment: Third Edition do not set out a detailed approach that has to be followed. Rather they set out general principles that overall a landscape and visual impact assessment should

demonstrate. In our experience, different practitioners adopt a variety of approaches. It is also important to acknowledge that it is inevitable that a range of subjective judgements have to be made. Again, in our experience, differences in professional opinion are common.

5.64 One of the most important principles in the guidelines is that where judgements are made they are transparent and understandable. Irrespective of whether we agreed with some of the judgements made in the submitted landscape and visual impact assessment, when read as a whole, we were able to understand how those judgements were made. We note that the judgements were clear enough for the council's consultant to be able to offer a comprehensive critique ([CD2.53](#)).

5.65 Whilst in our opinion, some of the approaches adopted in the landscape and visual impact assessment were more helpful than others, from our perspective in advising Scottish Ministers regarding the overall acceptability, the submitted assessment, in conjunction with the council's critique was adequate.

5.66 One of the main reasons for the differences between the applicant's consultant and the council's was that different thresholds for defining a significant effect were used. We are not aware of any guidance that defines what should constitute a significant effect. In our experience, many practitioners do not consider that moderate effects are significant for environmental impact assessment purposes, however others do. The practical implications of this dispute is that the applicant's assessor identifies a limited distribution of significant effects. The disadvantage of this approach is that solely relying on the distribution of significant effects does not help in understanding the detailed impacts of the proposal. As there is no right or wrong approach, we have relied upon the distribution of the magnitudes of effects (where there is greater agreement between the two consultants). As we set out above, whilst a significant effect has a particular meaning in terms of an environmental impact assessment, what is an acceptable impact is more important in terms of our recommendation. We consider the acceptability of impacts at the end of this chapter.

5.67 Table 6.3 of the landscape and visual impact assessment sets out the definition of magnitude of impact. We observe, for example, that for visual resources a high magnitude of impact is defined as, "*complete or very substantial change in view involving complete or very substantial obstruction of existing view ...*". Whereas, a medium magnitude of impact is defined as, "*....partial obstruction of existing view or partial change in character and composition of baseline ie pre-development view through the introduction of new elements or removal of existing elements.*" What is a complete or partial change to a view is therefore a matter of degree. There must be a fine line between a "low" high magnitude change and a "high" medium magnitude of change. We consider that understanding the distribution of high and medium magnitude impacts is far more useful in understanding how the proposal is likely to be appreciated.

5.68 We can see that mapping and describing landscape character types would make sure that there was clarity in the area being assessed. However, we are not aware of any definite requirement to do so. In our view it is possible to see the current site as either a discrete landscape character type or as an area in transition. This seems to us to be a matter of opinion. Obviously, the smaller the landscape character subdivisions used the more likely significant landscape changes will occur. This seems to us to have limited utility in the context of a site that is already allocated for development. Ultimately, the key point is that the landscape and visual effects are appropriately assessed.

Landscape effects

5.69 Overall, it seems to us that there actually was considerable agreement over landscape effects. There is agreement that there are no significant landscape effects overall upon either the regional or Ayrshire landscape character areas. There is also agreement that there would be significant localised landscape effects, the disagreement relates to the extent and duration of such significant effects.

5.70 The enabling residential development and the lake would directly change the current landscape baseline. In relation to the residential development, the scale of the proposed development means that there is not a simple construction period leading to a completed development. Construction would occur over 17 years progressing from west to east, which would result in a dynamic mix of completed houses, houses under construction and vacant fields awaiting construction. The extent of any indirect landscape effects would depend on the success of the proposed planting to screen most external views.

5.71 The main mitigation measure proposed is extensive planting that would take place during the initial stages of the development. We can foresee considerable challenges in ensuring that early planting does not conflict with future development, particularly in relation to the residential development. The developable area, line of roads, service routes and any topographical changes would need to be clearly identified before a realistic planting scheme could be developed. The applicant recognises that a detailed landscape masterplan needs to be submitted and this is included in the applicant's recommended conditions. We would add that a meaningful landscape masterplan could only be prepared either in tandem or after an overall masterplan for the development had been prepared. We are not aware that any detailed work has been done to date and as we explained in chapter 3 (paragraphs 3.106 – 108) we do not consider that it is prudent to assume that the illustrative landscape restoration plan would be implemented as currently shown.

5.72 We accept that the main areas of woodland are unlikely to be altered. We would suggest however, that there remains a risk that the proposed reinforced shelter belts and grass rides would be harder to incorporate into a housing layout. We would assume that some form of service roads would be required to access the lodges. The required further technical studies, such as for drainage, could also impact on the final design, particularly where water courses run close to areas of new planting.

5.73 As set out in paragraph 1.9 the proposal is for the castle ruins to be consolidated as they currently stand. We accept that during the repair process there would be localised landscape effects. We recognise that the works to consolidate the existing ruins and the planting shown in the illustrative landscape restoration plan would have beneficial landscape effects if implemented and thereafter maintained.

5.74 We accept that where lodges are located in what are currently open fields woodland planting can take place around the lodges and would therefore take into account practical issues such as road and service access. We accept that once mature, which could take a number of years, this planting could have significant and beneficial landscape effects.

5.75 We consider it is necessary to qualify any conclusion that there would be no significant landscape effects as a result of lodges being located in the areas of established woodland. We accept that a simple site coverage percentage does not necessarily equate to the percentage of tree removal. We appreciate that lodges would not necessarily require

the kind of strip foundations that would be common for a house. Nonetheless, we do not consider that the available information supports none or negligible tree loss. We would have thought a certain amount of tree loss would be inevitable in order to make room for the lodges, have access for machines to construct the lodges, create adequate living conditions, avoid damage to lodges (from rubbing branches) and to provide access and services such as water, sewerage and electricity.

5.76 We accept that appropriate conditions could mitigate the impact on trees. We doubt they could remove the need for any tree loss. The planning permission in principle specifies a particular number of lodges and that number cannot be reduced (accept by agreement) if planning permission is granted. To demonstrate a judgement that there would be limited further tree loss we would have expected illustrative plans overlain on a tree survey. We do not consider that the draft construction management plan ([APP3.14](#)) actually demonstrates minimal tree loss. We consider it merely illustrates sensible principles to be adopted. We cannot therefore accept that minimal tree loss is a worst case and consider that such an assessment risks understating the real impacts.

5.77 There seems to be agreement that the other elements of the leisure and tourism complex, as specified in the environmental statement, can be accommodated with only very localised direct impacts and no significant landscape impacts overall.

5.78 Overall we find that for the first 3 years where construction is at its peak, then landscape effects for the entire development would be significant and adverse and that the direct and indirect effects would extend as least as far as the approximate 1.5 kilometres around the site as suggested by the council's consultant.

5.79 The extent of these effects would gradually reduce as the initial intensive construction period was completed, the residential development was built out and the planting matured over 10 – 20 years (assuming that the planting would be secured and maintained). Over this period adverse effects would reduce and beneficial landscape changes (mainly from the woodland planting) would increase. Upon completion (ie at least 17 years after commencement) we can foresee that it is possible that a new landscape character area could be created – leisure and residential development within an extensive woodland framework.

5.80 We consider (particularly in the context of a site allocated for development) that the 3 year period of peak construction can be considered as temporary and short term. We would not describe the 17 years required to construct the residential development as temporary. The key reason for this extended period of time is the scale of the residential enabling development. We would add that the 17 years construction period is an estimate assuming an average annual construction rate of 60 houses a year. In our experience, that is a high assumed construction rate for an individual site, particularly in an East Ayrshire context where the latest figures from the council indicate an average completion rate of 260 private houses across the whole council area. We also consider there is a risk that the period for construction could be extended.

Visual effects

5.81 The consolidated zone of theoretical visibility diagram ([APP3.13](#)) shows that the theoretical visibility is concentrated within and around the site and on the southern slopes of the Irvine Valley opposite the site within the 5 kilometre study zone. The viewpoints were agreed on that basis. We accept that the zone of theoretical visibility diagram is a worst case and that therefore the overall visual effects are relatively self-contained.

5.82 We consider that it is important to recognise that viewpoints are intended to be representative. It does not mean that the site can only be seen or appreciated from those viewpoints. In particular, local residents are likely to appreciate the development from a number of viewpoints as they generally travel about the local area. In our judgement, it is more important to understand how the development would be appreciated overall than the view from any given viewpoint.

5.83 Of the 21 viewpoints, the submitted landscape and visual impact assessment predicted medium or high magnitude visual effects during construction at 14 viewpoints. We cannot agree with the assessment of a medium magnitude effect at viewpoint 10 during the initial construction period. Viewpoint 10 is representative of views from the track that transects the site. We consider that any viewer would be aware of significant felling, re-planting and construction activity even with no direct view of any machinery. This would become more obvious as people walked to or from the viewpoint along the track.

5.84 Using the council consultant's threshold of significance, a medium magnitude visual effect becomes significant if it is experienced by a high sensitivity receptor. Whether the changes are significant or not, we would suggest that during the first 3 years of construction the level of activity would be such that within the site, close to the site or where views existed to the south, that many local residents could not help but be aware that a very major construction project was being undertaken. We deal with the acceptability of this later in the chapter.

5.85 If the development programme goes ahead as currently intended then by year 10, 600 houses would have been completed with approximately 400 remaining to be constructed. We accept that assuming all structural planting had taken place and had been properly maintained, it would be beginning to mature. The visual effects would vary depending on location along the track and degree of screening. However, we would suggest that from viewpoint 9 and 10 a high magnitude of change would still be experienced compared to the current baseline. Not least, because any viewer at viewpoint 9 would be aware of the lake and substantial changes to topography that would be necessary to accommodate it on a hillside. We also accept that by year 10 some of the significant visual changes, notably the woodland planting, could be considered as beneficial.

5.86 There seems to be agreement that from viewpoints along the A71, in the bottom of the valley there would only be glimpses of the site, which is already screened by a combination of the existing woodland on the site and roadside vegetation. No significant visual effects are predicted during construction or at year 10 and our own site visits confirmed this conclusion.

5.87 For the viewpoints to the south where there is a clear view, such as viewpoints 2, 3, 12 and 15 (see [APP3.24](#)) views of the residential development would change gradually as

the houses were constructed and the planting matured. Until the planting matured, the areas of housing and associated movement from traffic as well as the construction activity would in our opinion be prominent but not dominant. We accept that as the planting matured, screening would reduce the visual impact and this planting would become the most significant element of visual change. We accept that this change would be considered as beneficial.

5.88 As with landscape effects, this assumes the programme as set out above and that extensive woodland planting is undertaken and maintained. If this did not occur we would predict that the extent and/or duration of significant visual effects would be greater than predicted in the submitted landscape and visual impact assessment.

Acceptability

5.89 The landscape and visual impact assessment considered impacts compared to the current baseline. We agree with the applicant that in terms of acceptability, any assessment has to bear in mind the planning policy baseline. In particular, the fact that the site is already allocated in the local development plan for significant development. However, this introduces a further difficulty. The wording of policy Rural Area 4 is general in nature, and certainly is not sufficiently detailed to establish the scale of development nor a clear physical footprint of the proposed development areas against which to compare the proposal.

5.90 In our assessment above, for the peak construction period (ie years 1 – 3), we found that it was likely that local residents near to the site and on the more elevated ground on the southern slopes of the Irvine Valley, would be very aware of a major construction project. Irrespective of the extent of any significant effects, we do not find these impacts to be unacceptable in planning terms. We consider 3 years to be temporary and significant construction activity would in our opinion, be an inevitable consequence of policy Rural Area 4. We also consider that impacts during construction can be further mitigated by appropriate planning conditions.

5.91 The differences between the level of development committed by policy Rural Area 4 and the level of development proposed in the planning application is a key area of dispute between the parties. We have previously found (paragraph 2.120) that policy Rural Area 4 does not set any scale for the enabling residential development. The fact that the local development plan makes no allowance in the housing chapter for any particular figure supports this finding. The scale of residential enabling development has two impacts relevant to landscape and visual impact. Firstly the spatial extent of approximately 1000 houses and secondly the time taken to construct what would amount to a new community. In combination, we are of the view that the scale of the enabling residential development introduces unsympathetic impacts, which would have to be taken into account.

5.92 However, we also found above, that if extensive planting were to take place along the lines shown in the illustrative landscape restoration plan and thereafter maintained, that a new landscape character area would be created which would be considered a visual benefit. We cannot therefore agree with the council that the proposal (assuming planting and maintenance) is contrary to policy Env 8. It is accepted even by the council's landscape consultant that landscape and visual impacts are relatively contained and that ultimately, even using the council's preferred threshold of significance, planting screens the development so that effects are no longer significant.

5.93 However, if planting and long term maintenance are to be assumed they must also be secured. As we discuss in chapter 3 and consider in more detail in chapters 11 and 12, we believe that a phasing condition can secure a landscape planting plan prepared alongside a masterplan (although the applicant disagrees). We do not consider that it is prudent to assume that the illustrative landscape restoration plan is necessarily implemented. The final form would depend upon a number of further technical assessments, costs and the view of the actual final developer.

5.94 Regarding maintenance, for the reasons we set out in chapter 11, we agree with the council and Historic Environment Scotland that the applicant's proposed mechanism for maintenance is not appropriate and does not in our view guarantee adequate long term management. Without appropriate maintenance we do not consider that it is sensible to assume the beneficial long term landscape and visual effects that are fundamental to the applicant's conclusion that the proposal has acceptable overall effects.

5.95 As we discussed in chapter 3, it may be that further discussions could resolve the issue of long term maintenance. However, as the proposal currently stands there is a risk that the landscape benefits assumed could deteriorate through lack of proper management. We consider that such a risk is unacceptable in the context of the scale and complexity of the proposal. For the purposes of the overall planning balance we consider that the proposal risks introducing unsympathetic landscape and visual impacts and therefore would be contrary to policy Env 8.

Conclusions

5.96 We find that when read as a whole the submitted landscape and visual impact assessment, in conjunction with the council's critique is an adequate basis for understanding the predicted distribution of landscape and visual effects.

5.97 There seems to be general agreement that landscape and visual changes would not be extensive and generally contained well within the 5 kilometre study area. The most severe landscape and visual effects would occur during the peak construction phase, envisaged to be within the first 3 years. These effects would be readily appreciated from within the site, within the vicinity of the site and locations on the southern side of the Irvine Valley.

5.98 Gradually, over time, as the residential development was built out and the extensive woodland planting matured (assuming that such planting could be secured and that it was properly maintained), adverse significant landscape effects would reduce and significant beneficial landscape effects would increase. This would be appreciated from the same locations until a point was reached where screening would mean that any visual change would be reduced below a significant level. This would occur over a period of between at least 10 – 17 years which we do not consider to be temporary or short term.

5.99 The main component of any adverse landscape and visual effects is from the residential enabling development. This is due to a combination of the scale of the development, its location on elevated open fields and the time taken to construct the development.

5.100 As we explain in more detail in chapters 11 and 12 we consider a phasing condition would ensure an approved landscaping plan could be secured. However, as the proposal currently stands there is no acceptable long term maintenance arrangement. Without an acceptable management arrangement, there is an unacceptable risk that any planting would deteriorate which would introduce unsympathetic landscape and visual impacts, which would be contrary to policy Env 8.

CHAPTER 6: ECONOMIC AND SOCIAL BENEFITS

Introduction

6.1 This chapter considers the parties' position in relation to the economic and social benefits of the proposal. A hearing session to consider these matters was held on 25 October 2017.

Case for the applicant

6.2 Chapter 13 of the environmental statement and addendum assess the socio-economic effects arising from the proposal. The Economic Impact Analysis ([CD1.49](#)) provides further detail on the potential economic impacts of the proposed development.

6.3 The environmental statement considers the direct and indirect employment impacts of both the construction and operational phase of the proposed development. It also provides an assessment of impacts on the tourist industry, demographic profile and local services.

6.4 The construction of the project would have direct employment effects through the employment of construction workers from the local area and throughout the region. It would also have indirect employment effects arising from workers using local suppliers, services and facilities.

6.5 Once operational, it is anticipated that the tourism and leisure element of the project would create between 675 and 1,000 new jobs. There would be indirect effects on employment through multiplier effects. The increased population from the new community also has the potential to provide a labour supply for the tourism development and the project would make a significant improvement to the overall housing stock.

6.6 The project would be the largest inward economic investment in Ayrshire for decades and provide a significant boost to the Scottish tourism industry. At a national level, the tourism development would increase the supply of high quality short-break provision, provide a major new visitor attraction, produce a product of national significance and profile and contribute to sustainable tourism by increasing seasonal spread. At a local level, the project would stimulate new marketing opportunities and strategic partnerships, enable and encourage infrastructure improvements, enhance the tourism offer, become a major employer and use local supply chains. The number of jobs created would increase economic inactivity and reduce unemployment.

6.7 The economic impact analysis provides more detail on specific economic and social impacts of the proposal. The applicant's witness confirmed in evidence at the hearing that the analysis was based on detailed discussion with industry experts. The analysis provides a detailed methodology for calculating potential jobs and Gross Value Added (GVA) which is the economic measure of the value of goods and services produced in an area, industry or sector of an economy. The report is not an assessment of the financial viability of the project.

6.8 The analysis is primarily a desk top exercise looking forward a number of years, taking a prudent approach to the range of job forecasts. Although there is not an operator for the leisure and tourism element of the proposal, conversations have taken place with

experts in the sector. There are uncertainties around predictions in terms of numbers of jobs for a development of this scale over such a long period of time. There will be changing construction practices and multipliers which can change on an annual basis. There is also some uncertainty in predicting jobs given the potential seasonal and part time nature of some jobs. It is an iterative process but a robust and well researched approach using industry and market indicators shows that even at the lower end of the forecast range the proposal still represents a significant number of jobs. In the event of planning permission being granted, the analysis will serve as basis for the project's economic strategy going forward and would address unemployment issues in the area, and include engagement with local stakeholders.

6.9 The estimated employment figures for the 'holiday resort' related element of the proposal range from 675 – 1000 operational jobs; 562 – 832 additional jobs for Ayrshire during operation; 614 - 910 additional jobs for Scotland during operation; £17.7 million - £22.9 million annual GVA for Ayrshire and £25.3 million - £31.5 million annual GVA for Scotland.

6.10 The annual turnover of the fully operational leisure element of the proposal is estimated at just over £44 million. These figures are based on all three phases of construction of the 'holiday resort' being delivered in 2 - 3 years.

6.11 At the hearing, the applicant's witness confirmed that the proposed distillery and visitor centre would be a small scale facility. Based on a fully operational facility, the estimated operational turnover would be £4.52 million. The estimated employment forecast figures for the distillery facility range from 20 - 54 operational jobs, and 50 - 60 jobs for the construction phase, depending on the build period.

6.12 As assessment has also been undertaken of the potential economic benefits of the proposed new housing. Based on the sale of 1,025 units over a 14 - 16 year sale period the total sales value is estimated at around £200 million, with a total of 2,141 jobs nationally for Scotland and 1,332 jobs locally for Ayrshire. The housing development will also result in significant Land and Buildings Transaction Tax and council tax receipts for national and local government. The estimated total amount of economic activity generated would be in the range of £335 million to £375 million.

6.13 In relation to the castle restoration, it is acknowledged that while the restoration works in themselves are not revenue generating, the castle is central to the vision of the proposal and key to the regeneration of the site. The conversion to a hotel is seen as a subsequent phase of development. The restoration works will create a number of jobs, some of which will be highly skilled and can be created through working closely with providers of skills, training and vocational education in the region.

6.14 In summary, the estimated range of jobs and annual GVA from the proposed development is as follows:

- 1,023 - 2,047 total construction jobs
- 695 - 1,020 total operational jobs
- 699 - 969 additional jobs for Ayrshire during operation (including house building)
- 818 - 1,114 additional jobs for Scotland during operation
- £21 million - £26 million annual GVA for Ayrshire
- £29 million - £35 million annual GVA for Scotland

6.15 Overall, the appellant’s estimated project financial summary is set out below:

	<i>Capital (£million)</i>	<i>Revenue (£million - 20 years)</i>
Castle	12.9 ¹	
Leisure ²	167.4	880.5
Hotel ³	4.3	32.1
Distillery	5.1	144.9
Homes ⁴	167.0	
Total	356.7	1,057.5

6.16 The project is not seeking any public funding and has the potential to be a game-changer from an economic perspective, with an estimated capital investment of around £345 million (excluding the costs of consolidation and stabilisation of the castle) and aggregate turnover over a 20 year period in excess of £1 billion. The revenue figures represent 20 years of operation assuming the development is fully operational in each sector.

6.17 The economic analysis also looked at the social benefits of the proposal. The proposal could enhance its impact in the local and regional economy by leveraging the leisure jobs to support courses and programmes in the local education sector through the creation of vocational and employability programmes. It could ensure the construction supply chain is proactive in sourcing materials and labour from the surrounding area, whilst establishing training and apprenticeships. A “buy local” strategy could be established, together with an innovation hub to support the development of businesses connected with the leisure and retail sectors.

6.18 Initiatives to deliver added value to local communities could also include hosting or support for a CoHub Community Incubator; working to help regenerate Galston town centre, green spaces and public realm; allowing use of some of the sports facilities or donating staff time to support local health and wellbeing programmes; and offering “taster days” to local school pupils. The applicant would work with the council to develop and deliver a comprehensive social value programme to maximise community benefits and to ensure jobs are sourced locally, through supply chains and community engagement.

6.19 A legal agreement and conditions could lock in the social and economic benefits in the long term, including a local procurement strategy and a training and employment plan.

6.20 Overall, the proposals would make a significant positive economic impact locally, regionally and nationally, and align with key public sector policies by creating a new, high quality tourist destination for East Ayrshire.

¹ Does not include around £0.5 million for costs of restoring the designed landscape and excluding costs of conversion to a hotel

² Sales of properties not included in revenue figures

³ Estimate based on industry benchmark

⁴ Sales of properties not included in revenue figures

Case for the council

6.21 In broad terms, the economic impact analysis is compatible with government advice. However, many of the assumptions are very high level and the figures and predictions are ambitious. There are a significant number of uncertainties and unknowns in respect of the proposal as a whole that undermine the figures quoted.

6.22 The council are fairly content with the construction forecasts in the appellant's analysis, however there are concerns about the variance in the range of employment forecasts. Because of lack of a business plan it is difficult to be certain about where jobs are coming from for each specific element of the proposal.

6.23 There are also concerns about the claimed 'knock on' effects and whether future residents would remain a 'captive' market on site and whether they would benefit businesses in the wider area. Nevertheless, the proposal could, if completed, provide a good opportunity to provide tourism accommodation which is not currently available in East Ayrshire.

6.24 The number of houses required can only be treated as indicative and the resultant job creation and GVA figures cannot be fully relied upon. The wide variance in relation to the projected number of jobs to be created and the resulting impact on growth and employment is therefore difficult to quantify with any degree of certainty.

6.25 Given the scale of the proposed residential element the displacement of jobs may be greater than the analysis suggests and the development of around 60 houses per year at Loudoun (based on the 1,025 units being evenly developed over the 17 years), represents a significant addition, and will likely have a knock on effect on house building rates elsewhere within East Ayrshire, and the construction jobs market. No breakdown is given as to the type and quality of the projected new jobs and no detail is given on how recruitment will be undertaken and what initiatives will be undertaken to ensure that local people are able to benefit from the job opportunities.

6.26 No analysis is given in relation to the economic impact of the conservation works to the castle and restoration of the castle to a hotel. This element of the construction phase is likely to require specialist, highly skilled tradespeople, which could have requirements for additional training and up skilling for local people and businesses.

6.27 There are concerns about the revenue figures for the hotel being included in the tables in the economic analysis, given that the planning application is for stabilisation of the castle only. The economic impact analysis indicates only an additional £4.3 million capital investment for the creation of the hotel itself, which is very low for the standard of facility indicated by the applicant.

6.28 The applicant's supporting information promotes significant economic benefit to East Ayrshire and the local and national economy, however a business plan as required by the local development plan has not been submitted. A business plan would be an appropriate way to demonstrate the economic implications of the proposal, endorse the revenue figures in the analysis, and provide the council with the required degree of comfort needed for a site and development of this importance.

6.29 The successful delivery of the leisure and tourism element of the development is key to securing the potential benefits of the scheme. The development of new houses and the restoration of the castle alone, would not deliver significant social and economic benefits, particularly in the long term. It is therefore critical that the tourism and leisure development is taken forward in tandem to the residential development and conservation and restoration works to the castle as a comprehensive package. The potential social and economic benefits can only be secured if the leisure and tourism element of the development is delivered as proposed.

6.30 To ensure that East Ayrshire and the wider area achieves the economic benefits of the leisure and tourism elements, a comprehensive masterplan as required by local development plan policy Rural Area 4, together with a phasing plan and infrastructure delivery plan, should be secured by planning conditions and/or obligations.

6.31 The council would in principal be willing to work in partnership with the applicant through employability programmes, job brokerage schemes and securing modern apprenticeships. A partnership agreement which could combine a financial contribution and in-kind expertise and skills should be put in place, to provide a framework for joint working between the council, the applicant and the local community. A planning obligation could also be entered into to secure the commitment from the applicant to the regeneration of Galston. The council consider a sum of around £500,000 to be appropriate. Galston Community Trust could act as a delivery vehicle for allocating and spending funds on behalf of the community.

6.32 Overall, the development will bring investment and jobs into the area, and enhance the tourism offering in East Ayrshire and the wider area. A development of this scale could create substantial long term economic benefits which would need to be secured through planning conditions or obligations. The projected level of jobs to be created is highly significant, particularly given that unemployment in the local area is above the national average. The anticipated substantial economic benefits of the scheme however will only be secured and maximised should the leisure and tourism element of the proposal be fully implemented.

Moscow and Waterside Community Council ([CD2.21](#))

6.33 Outlines concerns about the absence of any consideration being given to the rejuvenation of Galston. The development has the potential to bring short and long term economic benefit associated with expensive houses, however despite all the projected advantages the original theme park did not bring material economic improvement to the Irvine Valley.

Reporters' conclusions

6.34 In chapter 2 we found that the overall objective of the development plan was to support sustainable economic development, that East Ayrshire was in need of economic support and tourism was a key opportunity for economic development. An important element of the whole rationale for policy Rural Area 4 is also to support sustainable economic development. We therefore find that there is policy support for appropriate economic development. We note that this overall policy objective is consistent with a similar approach adopted in Scottish Planning Policy and the National Planning Framework.

6.35 We also note the advice contained in the Scottish Government's Draft Advice on Net Economic Benefit ([EAC1.17](#)) that advises against 'optimism bias', particularly in large scale complex projects. Although this is still draft advice we consider it to be useful in our consideration of such matters.

6.36 As we set out in paragraph 1.9, although the development description refers to the conversion of the castle to a hotel and the economic analysis also assumes such a conversion, it is not our understanding that that is the proposal before Scottish Ministers, although we accept that such a conversion might be a future project. The revenue figures should be adjusted accordingly.

6.37 We also noted at the hearing that the applicant does not envisage the scope of the proposed development changing and it was likely to go forward based on the same component parts of development. It seems to us that the likelihood of no changes being made to the proposal are not certain and as we found in chapter 4, for such a large scale and complex development over a 17 year period, circumstances may change and costs relative to income may also consequently change. We therefore hesitate to assume that the projections in the applicant's analysis would not change in this case.

6.38 We note that there are also differences in the capital investment predictions of £167 million in table (v) of the impact analysis ([CD1.49](#)) but in figure 3.1 of the development appraisal ([APP1.51](#)) the figure is just over £173 million. We accept however that the publication date of both differs, and different finance costs may be included, but again this reflects the uncertainties in making accurate predictions. The predicted benefits are also predicated on a fully operational proposal representing 20 years of operation, assuming the development is fully operational in each sector.

6.39 In terms of the economic benefits of the proposed housing, the council confirmed that current housing completions in East Ayrshire, based on 2015/16 figures, are running at 260 houses per year. The proposal, projected at 60 completions per year would comprise, as the council suggest, a significant addition in East Ayrshire. We share the concerns of the council, particularly taking account of displacement factors, what impact that would have on house building rates elsewhere in East Ayrshire and whether the completions as proposed would be achievable.

6.40 The council is concerned about potential displacement factors and what proportion of the predicted jobs would be full-time or seasonal. The appellant does acknowledge that the predictions outlined in the economic analysis may be subject to "stretch testing" in due course to check their validity and that the final figures may change once further, more detailed data or information is produced. We agree that there is an inherent level of uncertainty in making such long term predictions, and a range of factors can have an impact on the final figures. We also note that the figures are based on a fully operational proposal. However, the employment forecasts included in the applicant's analysis are based on industry standards and on the whole, we accept that even if the lower end of the forecast range was assumed, that would still represent a significant number of jobs.

6.41 In closing submissions, the applicant claimed that the proposal was a unique opportunity. In our experience this is a claim frequently made by promoters and obviously every individual piece of land and property is unique. However, we do not consider that this is an accurate description in the economic sense. It is likely that there are other locations across Scotland where a tourist and recreation development of a similar scale could take

place. If planning permission was refused, we see no reason why an alternative, and more acceptable proposal could not be developed.

6.42 In terms of the appropriate mechanisms to secure any economic and social benefits arising from the proposal, parties agree that there is a clear need to build in local capacity. We agree that partnership working between any future developer and the council would be necessary to maximise training opportunities and ensure job opportunities are sourced locally. We discuss the need for conditions and obligations in chapters 11 and 12.

6.43 The council also suggest that a business plan to provide more detail on the specific projections, financial aspects and viability of the proposal is necessary. We have previously found in chapter 2 that adequate financial information is necessary in relation to the scale of enabling development. The council's concerns regarding a business plan seemed to us to extend the purpose to include an assessment of the viability of the project. In our view, the requirement for a business plan for such a purpose would not be appropriate. As a matter of general principle, it is not for the planning system to determine the viability of a development project.

6.44 Notwithstanding the issues we highlight, there is general agreement from all parties that in principle, the proposal promotes tourism development, including facilities and accommodation. The proposals would improve and expand on the range and quality of visitor accommodation and recreation facilities, not only in East Ayrshire but in the wider regional context. On the whole, and based on a fully operational development, the proposal has the potential to bring significant positive economic benefits to East Ayrshire and the wider area, in line with government and council policy objectives. The recreation facilities and holiday accommodation in particular would give a significant boost to employment and tourism in the area and the potential economic and social benefits of this aspect of the proposal are important factors in its favour.

6.45 We also accept that the development of the site would bring other social benefits aside from job creation, and the wider community may well benefit through, for instance, provision of access to the facilities, training opportunities and wider employment opportunities.

6.46 We accept in general terms that the granting of planning permission in principal is an important milestone in securing formal commitment from potential investors. The precise terms of any planning permission is therefore important and the economic and social benefits would only occur if the proposed development actually takes place.

6.47 Consequently, in our judgement, even taking account of the lower end projections in the economic impact analysis, the predicted economic and social benefits of a fully operational and completed proposal are material factors in weighing the overall planning balance, which we address in chapter 13.

CHAPTER 7: IMPACT ON NATURAL HERITAGE

Introduction

7.1 This chapter considers the parties' position in relation to the impacts of the proposal on the natural heritage of the site. In addition to further written submissions, some matters related to natural heritage impacts were discussed at the planning conditions hearing session on 22nd January. Matters related to planning conditions are addressed in more detail in chapter 12.

Case for the applicant

7.2 Chapter 5 of the environmental statement addendum ([CD1.45](#)) addresses the likely ecology and nature conservation effects of the proposal.

7.3 There is a Provisional Wildlife Site within Loudoun Castle Estate, of which there are approximately 74 hectares within the project site boundary. A number of woodland areas in the northern half of the site are outside the wildlife site. The wildlife site is assessed to be of low to medium value. Much of the site (particularly the wildlife area) was an active theme park for a number of years. Approximately 54 hectares of the wildlife site would be affected by some development infrastructure (lodges, car parking, glamping). This includes areas of woodland lodges (which would lead to some partial loss of woodland) and areas of existing hardstanding around the former theme park infrastructure. The exact location and detailed design of the lodges will be finalised at the detailed design stage once all updated ecology surveys have been completed (proposed as mitigation in conditions) in consultation with the council and Scottish Natural Heritage. This will ensure that any removal of trees is kept to a minimum.

7.4 Significant ecological effects to woodland, bats, badgers and birds would occur during construction. Impacts on other habitats during construction and operational phases, and on woodland habitats during the operational phase were assessed to be not significant.

7.5 Although some development is proposed in areas of long established ancient woodland, these areas would not be fully cleared. Many of the areas of ancient woodland on the site are currently coniferous plantation. The removal of non-native conifers and rhododendron, and new native broad-leaved planting would enhance the areas of the ancient woodland in the long-term. Of the areas of semi-natural broadleaved woodland on site, none are proposed for removal. The woodland clearance and landscape planting would also take place as a priority to limit the extent and duration of the impact to wildlife.

7.6 Overall, there would be moderate significant effects as a result of woodland loss. Although there would be compensatory planting for woodland loss, it is not considered that compensatory planting would fully replace the ancient woodland and ancient trees lost, but would help offset the loss in the longer term.

7.7 The effects on both roosting and foraging bats are also assessed. The effect on bats is assessed to be moderate and therefore significant. Initial hibernation visits were undertaken in March 2015 and a full suite of bat surveys will be undertaken on all of the buildings across the site, prior to any works taking place. Specific mitigation measures also include pre-works checks of all stonework in the castle and gatehouse and installation of approximately 100 bat boxes in woodland on the site, all under the supervision of a licenced bat worker.

7.8 It is also proposed that the woodland avenue running north-south to the north of the castle is not permanently lit. Where lighting is required on site for security and/or health and safety reasons, it is proposed that it would be of a low lux-level, downward facing and directed away from any foraging/commuting features such as hedgerows, treelines and woodland. These measures are intended to avoid fragmentation of foraging and commuting opportunities for bats.

7.9 Construction impacts on birds are assessed as not significant to significant as they vary according to different species. In the longer term there would be a change to species on the site, with some species increasing in abundance and others reducing. There would be a number of enhancements across the site through the provision of bird boxes, the creation of additional woodland and wetland habitats, and the management and enhancement of existing habitats through the habitat management plan. Operational impacts on birds are therefore assessed to be not significant.

7.10 A further survey extending up to 1 kilometre from the site boundary will be undertaken prior to any works starting on site to identify any badger setts in the surrounding area. This will include walkover surveys, camera monitoring and bait marking. A mitigation and compensation scheme will be agreed with Scottish Natural Heritage prior to any works taking place.

7.11 In summary, robust mitigation and compensation measures proposed to form part of the draft planning conditions (see appendix 2) include a habitat management plan with proposals for the protection, enhancement and management of existing habitats, and creation of new habitats; a tree survey to include reporting on the root protection zones and tree protection measures; a full suite of badger surveys with protection and mitigation measures; a report of survey for water vole, otter and bat roost potential of trees with associated mitigation and enhancement measures; and the appointment of an independent ecological clerk of works at each phase of the development with a duty to monitor compliance with ecological commitments and report any incidences of non-compliance.

Case for the council

7.12 A significant proportion of the application site is covered by a Provisional Wildlife Site designation although the information used to designate the area is now considerably out of date. The data submitted with the application has enabled this information to be substantially updated for all areas within the application site. There is little doubt that there will be adverse impacts on the wildlife site. These will be substantially greater during the construction phase rather than when the site is operational and open to visitors.

7.13 The ancient woodland to the east centred on 'Big Wood' remains untouched as will various other woodland areas. This is to be welcomed. A commitment has been given to prepare a detailed habitat management plan for a 20 year period and this is similarly welcomed.

7.14 Tree Preservation Orders cover some individual and areas of trees within the site. If planning permission in principle was granted then any future applications would be required by planning conditions to incorporate wholesale surveys in relation to protected trees and obtain consent with regards to woodland management.

7.15 The proposal could result in the disturbance of protected species and appropriate licences may have to be obtained. Overall, the council accepts that such licences may be obtained and considers that the proposals meet the requirements of relevant criteria in local development plan policy Env 6.

Scottish Natural Heritage ([CD2.14](#) & [CD2.40](#))

7.16 The buildings on site provide roosting sites for 5 species of bats throughout the year, and numerous mature trees on site have been identified as having bat roost potential and are likely to hold roosting bats. It is unlikely the development can proceed without causing some degree of disturbance or damage to existing bat roosts. The applicant provides a reasonable outline species protection plan and mitigation and compensation plan.

7.17 There is also significant badger activity on site with numerous setts present with high quality foraging habitat. The development cannot proceed without some degree of disturbance or damage to setts and displacement of foraging animals. A full badger survey beyond the development boundary has not been completed, preventing an assessment of the potential effects on neighbouring social groups. All surveys must therefore be completed and a detailed badger protection plan drawn up to support any species licence application.

7.18 In summary, the proposal is likely to require a species licence under protected species legislation for potential disturbance and damage to bat roosts and badger setts. It is essential that the applicant demonstrates that they have the ability to fully implement the mitigation/compensation scheme. The applicant should complete all required surveys and provide a detailed mitigation/compensation plan prior to applying for full planning permission. Based on the information currently available, it is likely that a licence would be granted.

Woodland Trust ([CD2.23](#))

7.19 A significant area of the development site at Loudoun Castle is listed in Scottish Natural Heritage's Ancient Woodland Inventory. As Scotland only has 2% of its land area covered by ancient woodland, and as much of this is highly fragmented, the ancient woodland at Loudoun Castle is of huge local and national importance. Removal of woodland is also contrary to Scottish Planning Policy and the Control of Woodland Removal Policy.

7.20 Although the implementation of buffer zones around the areas of ancient woodland in close proximity to development would generally be satisfactory protection, the loss of ancient woodland in other areas of the development site is totally unacceptable. The loss of ancient woodland cannot be mitigated, it can only be compensated for, and once the ancient woodland has been lost it cannot be replaced. The trust objects to the application as it results in loss and damage to ancient woodland.

Scottish Wildlife Trust (North Ayrshire Members Group) ([CD2.33](#))

7.21 Loudoun Castle and estate is a designed landscape with extensive areas of woodland listed on the Ancient Woodlands Inventory. It is widely recognised that such woodland cannot be replicated by new planting. Consequently any damage to, or loss of such woodland means that its intrinsic interest is lost.

7.22 There are around 13 ancient and over 60 notable trees on the estate although not all would be affected by the development. Such trees have merit in their own individual right and by definition no tree can be ancient or notable until it is old, so any loss of such trees would be irreplaceable.

7.23 There will be some loss of bat foraging area as a result of the development and the impact of this on the bat populations does not appear to have been assessed. There are also concerns about the impact on badgers and bird species.

7.24 The overall effects on the listed wildlife site are likely to be deleterious and significant and the scale and nature of the impacts of the development have been understated in the application, while the mitigation measures do not justify the claims made. Consequently the trust objects to the proposals.

Architectural Heritage Society of Scotland ([CD2.20](#))

7.25 Disturbance to relatively wild areas within the estate where there is a wildlife site will reduce its habitats for deer, squirrel, bats, badgers, rare plants, and birds. The current proposals, which contravene local and government policies, would swamp the estate, diminish its historic, environmental and ecological importance, so should be rejected in principle at this stage.

Reporters' conclusions

7.26 Policy Env 6 (Nature Conservation) of the local development plan affords protection to Provisional Wildlife Sites, and requires mitigation of any adverse impacts. Similar policy guidance supporting the protection and enhancement of ancient semi-natural woodland, native or long-established woods, hedgerows and individual trees is provided in Scottish Planning Policy.

7.27 As a result of the inquiry process we now know that the intention is to consolidate the castle ruin, construct all the elements of the tourism and recreation development, fell the existing woodland plantations, implement the landscape restoration plan and commence the residential enabling development in years 1 – 3. Consequently, we consider that for the first 3 years where construction is at its peak the natural heritage effects for the entire development would be significant and adverse due to a combination of both disturbance and direct habitat loss.

7.28 We note the objections from consultees regarding the ancient woodlands. We cannot agree however that the presence of ancient woodland or particular species should necessarily preclude development. Firstly, because the site has been allocated for development under policy Rural Area 4 and therefore some natural heritage impacts are inevitable. Secondly, as is illustrated in [figure 5.2](#) of the environmental statement addendum, many of the areas of existing woodland shown as long established (plantation origin) in the inventory of ancient woodlands are actually coniferous plantations that are coming to the end of their productive life and would have to be clear felled in any event.

7.29 In addition, various mitigation measures are proposed by the applicant. Areas of existing coniferous woodland and areas of new woodland planting would be planted with broadleaf species, a 20 year habitat management plan would be prepared, further detailed

surveys for protected species would be undertaken and an ecological clerk of works would be appointed. We note, that subject to conditions securing these measures Scottish Natural Heritage has no objection.

7.30 However, a significant element of the proposed mitigation relates to the new planting proposals. As we have discussed in chapters 3 and 5, we do not consider that it would be prudent to assume that the illustrative landscape restoration plan would necessarily be the actual scheme to be implemented. Any meaningful landscape plan would have to be informed by the overall masterplan and further survey work, including further species surveys and any habitat management plan. The final form of any planting is therefore not known at this stage with any certainty.

7.31 As we discussed in chapters 3 and 5 and consider in detail in chapter 11, we believe that any approved landscaping scheme could be secured by a phasing condition (although the applicant disagrees). However, again, as discussed in these same chapters, we cannot agree that the applicant's suggested owner manager model is acceptable. We can foresee particular difficulties in the owner manager model undertaking habitat management which is likely to be of limited interest to either future residents or commercial operators. We are unaware of the level of resources the applicant is prepared to commit to implement a 20 year habitat management plan.

7.32 Again as considered in the same chapters, we accept that it may be possible, following further discussions for an appropriate long term management arrangement to be agreed. However, as the proposal currently stands, planting could take place, a habitat management plan could be agreed but none of the measures might be implemented or may be properly resourced. In our judgement, without effective long term management little weight can be attached to a key element of necessary mitigation measures.

7.33 There is also some doubt over the scope of any habitat management plan and in particular, whether it would extend into Big Wood. We note that Big Wood is outwith the red line application site, although within the blue line and therefore within the control of the applicant. The currently submitted illustrative landscape restoration plan extends tree avenues and grass rides into Big Wood. If changes to planting and therefore management were being made to Big Wood, we would have thought that it would be necessary to include the area of Big Wood in any approved habitat management.

7.34 The submitted environmental information shows that bat activity is concentrated around the existing buildings within the site. However, bat and particularly badger activity does also occur in other areas. We note in chapter 4 that the development appraisal assumes that there would be no physical, timing or cost implications following from the further surveys necessary to obtain the species licences under protected species legislation.

Conclusions

7.35 We accept that subject to appropriate planning obligations and conditions that the impact of natural heritage matters need not preclude the development in principle, or result in a breach of policy Env 6. However, in our view, it is essential for satisfactory long term management arrangements to be in place to secure the proposed new planting and habitat enhancement measures. As it currently stands, for the reasons we explain in chapter 11, we do not consider that the model proposed by the applicant is acceptable. Without

adequate long term management there is a risk that the proposal would not have sympathetic impacts upon the natural heritage of the site and its surroundings.

CHAPTER 8: IMPACT ON TRANSPORT

Introduction

8.1 This chapter considers the parties' position in relation to the transport impacts of the proposal. In addition to further written submissions on the transport impacts, some transport related matters were discussed at the planning conditions and planning obligations hearing sessions on 22nd January. Matters related to conditions and planning obligations are addressed in more detail in chapters 11 and 12.

8.2 A transport assessment was submitted with the planning application ([CD1.12](#)). However, a revised assessment ([CD1.46](#)) and associated technical appendices was submitted as a result of the changes which led to the environmental statement addendum.

Case for the applicant

8.3 The scope of the revised transport assessment was agreed with the Ayrshire Roads Alliance and Transport Scotland. It was produced in accordance with the relevant local and national guidance, using recognised databases and assessment software.

8.4 The roads within the vicinity of the site are rural and relatively lightly-trafficked, and could provide a pedestrian and cycle friendly environment. The nearest bus stop is situated approximately 140 metres from the proposed tourism site access on the A719, with additional bus services available from bus stops on the A71.

8.5 A road casualty study has not revealed any identifiable existing collision issues associated with the expected movements of the project, therefore there are no existing road safety issues pertinent to the development of the site. If the proposed access junction and internal roads of the project are designed with due consideration to road safety, then the assessment concludes that the proposals should not have a detrimental road safety impact on the local transport network, nor adversely affect the safety of pedestrians and cyclists.

8.6 The vehicle trip generation of the proposed development has been projected using a nationally recognised database method, with the distribution of development traffic based on separate detailed gravity models for the residential and tourism elements of the proposals. The traffic flow impact of the proposed development has been projected using traffic growth forecasts, with baseline traffic flow information obtained at a number of key junctions.

8.7 The results of junction capacity assessments indicate that the key local junctions would be expected to operate within capacity at 2035 during the worst-case peak hours (subject to the implementation of the proposed mitigation at Bellfield Interchange), with the project fully occupied. The assessments demonstrate that the project would not be expected to have a significant detrimental impact on road safety, traffic and highway terms.

8.8 Chapter 10 of the environmental statement addendum also indicates that the construction and operational phases of the project would be expected to have either a negligible or minor adverse effect in terms of the potential traffic impacts, such as severance, driver delay, pedestrian/cyclist delay and amenity, accidents and safety. It concludes that the predicted effects would not be significant.

8.9 In terms of footpaths and pedestrian access, the development site is situated in a relatively rural location with an existing footway linking the site to the existing pedestrian network, with all areas of Galston within a reasonable walking distance of the site. A number of pedestrian routes would be provided within the site in order to enhance pedestrian connectivity.

8.10 In the revised framework travel plan ([CD1.45](#) Appendix R10.13), it is acknowledged that at this stage, the operators of the tourist elements and the end users of the residential units are unknown. The document is intended to provide a structure for future developers of the development and to provide guidance so that they can develop specific and targeted travel plans that are customised to individual circumstances. The responsibility for developing and implementing individual travel plans will lie with the travel plan co-ordinator in combination with individual occupiers/developers.

8.11 The document also outlines measures to be implemented with respect to each mode of transport. In terms of walking, measures to be employed to promote walking trips to/from the site include ensuring the proposed pedestrian routes within the development are safe, convenient, accessible and well lit, providing access to all dwellings and external pedestrian network.

8.12 Measures to promote cycling include publicity packs providing cycle maps; information on 'cycle to work' salary sacrifice schemes; and locating cycle parking in convenient, secure and well lit locations.

8.13 In terms of public transport, the framework travel plan identifies measures such as bus maps, timetable information, taxi firm numbers, cycle maps and wider publicity. There is also a suggestion that permanent residents and staff could be provided with a form of public transport travel card. Car sharing is also suggested, with possible provision of preferential parking spaces.

8.14 It is accepted that the development and particularly the residential development must be designed to permit access for public transport and that this would involve a financial contribution to support a bus service initially before it could be provided on a commercial basis. These matters are all addressed in the recommended planning obligations and conditions.

8.15 There is no objection in principle to the proposal in transport terms from any of the respective consultees. Subject to a planning obligation and planning conditions and an appropriate assessment of the detailed design there are no unacceptable transport impacts identified.

Case for the council

8.16 The scope of the submitted transport assessment was agreed in general terms with Ayrshire Roads Alliance and Transport Scotland. There is no objection in principle subject to conditions and/or obligations relating to internal road layouts to be agreed in a proposed masterplan before construction starts; offsite footway, crossing and bus stop improvements; internal layout to accommodate circumferential bus routes with additional bus stops; initial financial support for a bus service; provision for electric vehicle charging points; access details for the northern and southern access; preparation of a travel plan and the appointment of a travel plan co-ordinator.

8.17 The Ayrshire Roads Alliance ([CD2.22](#) & [APP1.17](#)) also confirm that in terms of external junctions examined in the transport assessment the only junction that was demonstrated to be operating beyond desirable maximum capacity levels was the Bellfield Interchange. This was further tested and shown to operate at an acceptable level for up to 250 residential units. Mitigation, in the form of improvements to the junction would therefore be required before the occupation of the 251st residential unit.

8.18 The Ayrshire Roads Alliance also comment on the potential impacts on the visual amenity and landscape heritage of the site as a result of the main traffic distributor road and related link roads between the residential and tourism elements of the proposal. It highlights that the main distributor road will require to be constructed to a minimum carriageway width of 6 metres with 2 metre footways on both sides, and lit with appropriate street lighting. Additionally bus infrastructure will need to be provided on the traffic distributor road with bus lay-bys likely to be necessary in both directions at various locations.

8.19 Beyond 251 residential units a second main traffic distributor access to the residential development will be required from the A719. When this second access is formed both the northern and southern traffic distributors along with the main tourism distributor access must be capable of circumferential bus penetration which may require further bus turning facilities to be provided, all potentially impacting further on the visual and landscape heritage.

8.20 Further concerns are expressed about the impacts of the internal layout for roads within the residential area. Whilst less onerous than the 6 metres required for a main traffic distributor they will still require to be in general 5.5 metres wide with footway provision on one or both sides dependent on residential access. Appropriate street lighting will also be required.

8.21 The council's access officer also provided comments in response to the planning application ([CD2.5](#)). The officer advises that whilst the application proposes to retain the current linear public right of way (which runs from the castle to the A71 to the south) and core path routes within the development site boundary, it is disappointing that they are detailed within the Transport & Access Plan ([CD1.15](#)), Drawing No (02)005 Rev A as becoming 'major service and access routes' to both the residential development and the leisure development. This will result in the existing public right of way and core path changing in character from being quiet semi-rural routes for walking and cycling to formed roads and footways servicing a sizeable housing and leisure development.

8.22 Concerns are expressed that the proposal fails to identify an indicative network of off road walking and cycling routes. The access officer also points out that paragraph 12.94 of chapter 12 of the environmental statement ([CD1.26](#)), states "*that area wide access rights as contained within the Land Reform (Scotland) 2003 will be gradually reduced during the construction of the project*".

8.23 The access statement in the officer's view however, makes a positive statement in relation to providing improved pedestrian access and connectivity within the site. It is limited in its scope relating to pedestrian and on site connectivity only. In turn it is difficult to see how the applicant's travel plan can be delivered where the current proposed

development access network consists of a commitment to provide on-site connected pedestrian routes only.

8.24 Given the scale of this application the applicant should produce an access action plan for the site. The action plan should detail a network of walking and cycling routes which provide internal linkages between residential, leisure, open space and woodland areas; external linkages between the development site and external nodes such as Galston, Loudoun Academy and Loudoun Golf Club; and, external linkages to wider path networks.

8.25 The access action plan should detail an access network which creates routes which can be used for both active travel journeys and recreation. The plan should also include details of networks, route lay-outs, specifications and construction phasing.

8.26 The delivery of routes within the access action plan should also be on a phased basis attached to development construction phasing, and any consent should be the subject of a planning condition and also include a requirement for a legal agreement covering the delivery of path links to adjacent nodes outwith the development site boundary.

8.27 The council agrees with Strathclyde Partnership for Transport that at this stage there is insufficient information to be definitive regarding the terms of the bus service support. That is why the council's suggested planning obligation (appendix 3), which introduces greater flexibility is to be preferred.

Strathclyde Partnership for Transport ([CD2.30](#))

8.28 Is concerned that the relatively rural location and the nature of the holiday park development are likely to mean that the majority of trips will be by private car. It would therefore be important that the detailed design of the development promotes active travel and the use of public transport.

8.29 Both the A719 and A71 are used by bus services. However, the route using the A719 linking a number of rural communities, is relatively infrequent, would require a long walk from residents in the later (eastern) phases of the enabling development and is therefore unlikely to be an attractive service. The service along the A71 is commercially run and represents a good level of provision for communities with the Irvine Valley for trips to Kilmarnock. However, again, the bus stops on the A71 would be a considerable walking distance from much of the development. Diverting the A71 services into the new development could add up to an additional 16 minutes and is unlikely to be favoured by the bus company. There are no powers available to Strathclyde Partnership for Transport to direct that a commercial service be diverted.

8.30 A new service linking the development with Galston and Kilmarnock would therefore be necessary. Strathclyde Partnership for Transport has guidelines (appendix 1 of [hearing statement](#)) for the minimum acceptable provision which for a 1000 house development would require a one hourly service during week days. Strathclyde Partnership for Transport (in September 2017) has market tested the cost of providing this level of service if it was not commercially provided and consider that an annual contribution of £150,000 would be necessary.

8.31 For a bus service to be realistically provided there has to be a viable level of patronage and appropriate infrastructure such as adopted roads suitable for bus use, bus

stops, safe walking routes to bus stops and turning facilities etc. At the present time there is insufficient information regarding both the phasing of houses or the provision of necessary infrastructure to be able to predict with any certainty when a bus service could realistically be provided.

8.32 Whilst Strathclyde Partnership for Transport supports the early introduction of a bus service it cannot agree to the applicant's fixed 4 year period from the 60th house to 300th house. Firstly, it is not known at this stage whether the necessary infrastructure would be available. Secondly, it is unlikely that the period would be sufficient to ensure a commercial service. There is a risk that if a service starts and ends too soon that there is no service at all as the size of the new community grows and the need increases. It cannot support the applicant's suggested planning obligation and prefers the council's alternative wording which permits flexibility and allows the period for support to increase if necessary. It should also be noted that the estimated sum of £150,000 was established from testing in 2017. It does not follow that this would be the actual cost of supporting a bus service at a future date.

8.33 If permission is to be granted conditions/obligations should cover the hierarchy of the internal road network, including bus turning facilities; the detailed design of the circumferential route between the leisure and tourism developments; upgrading of bus stops on the A719; walking and cycling connections; a public transport strategy, including service provision, infrastructure, phasing and funding; information provision and a travel plan.

Transport Scotland ([CD2.6](#), [CD2.7](#) and [CD2.36](#))

8.34 Transport Scotland does not object to the application subject to the provision of a travel plan and that no more than 250 residential units are occupied until improvements are made to the Bellfield Interchange.

Moscow and Waterside Community Council ([CD2.21](#))

8.35 Concerns relate to the inadequate assessment of the impact the proposal would have on the A719; the new accesses onto the A719 will require new junctions on a fast stretch of the A719; the new northern access is over land that has been the subject of previous mining; the private road to Howletburn being a right of way; and the minor public road to Alton is unsuitable for any traffic to the proposed distillery.

8.36 The community council is also concerned that the A719 which passes through Moscow and Waterside has been ignored in traffic modelling. The modelling in the transport assessment they say, extends only one mile north of the application site. The community council contend that the A719 is one of the main routes used by commuters from the Irvine Valley heading north, accessing the A77 and M77. This route is used as it avoids negotiating Hurlford and traffic congestion at the Bellfield roundabout.

Reporters' conclusions

8.37 Policies T1 and T2 of the local development plan aim to ensure that new development meets appropriate standards and encourages active travel, including public transport. Policy Rural Area 4 requires the submission of a transport assessment and we note under Policy OP2 that one of the mitigation measures identified for the allocation of the site was improved bus services.

8.38 The local development plan policies are consistent with the policy principles in Scottish Planning Policy which include reducing the need to travel; providing safe and convenient opportunities for walking and cycling for both active travel and recreation; facilitating travel by public transport; and enabling the integration of transport modes. Planning permission should not be granted for significant travel generating uses at locations which would increase reliance on the car and new development areas should be well served by public transport providing access to a range of destinations. Overall, the aim is to promote development which maximises the extent to which its travel demands are met first through walking, then cycling, then public transport and finally through use of private cars.

8.39 The applicant has provided a revised transport assessment and this has been assessed by the Ayrshire Road Alliance and Transport Scotland. We note that it assumes that the proposed tourism element of the scheme could potentially be constructed and operational by 2020, with the full development complete by 2035. Bearing in mind all the matters that would have to be resolved we consider it unlikely that the development would commence before 2021. It could be later. Construction of the houses over a 17 year period is a prediction and that timescale could also be extended. However, we are not aware that there is any concern that this would alter the main conclusions of the submitted assessment.

8.40 We also note the concerns of the community council. We accept that traffic would increase compared to the current situation and that particularly during the peak construction period there would be more construction traffic on local roads. However, all this has been assessed in the updated transport assessment. The previous use as a theme park also generated traffic and with the exception of Bellfield Interchange no highway network capacity issues have been identified. These conclusions are accepted by the relevant consultees. In any event, significant construction traffic is an inevitable consequence of policy Rural Area 4 and is not considered to have any unacceptable impacts. Such impacts can be further mitigated with appropriate conditions.

8.41 There is no dispute that as a result of the development, capacity needs to be increased at the Bellfield Interchange. There is a debate as to whether a condition or planning obligation is the most appropriate mechanism to secure such an improvement and different views as to how straightforward the changes would be to undertake. Nevertheless, there is agreement that before the 251st house is occupied that the scheme ([appendix 12 of CD1.46](#)) must be completed. We consider this matter in more detail in chapters 11 and 12.

8.42 No road or footpath layout has been submitted by the applicant. On behalf of the council, the Ayrshire Road Alliance has specified a number of offsite measures as well as onsite design requirements, including the provision of a second access and a circumferential bus route. We note that the applicant considers that these requirements are reasonable and can all be addressed in the detailed design of the proposal.

8.43 We agree with the council that these requirements would have a number of physical, timing and cost implications that would have to be recognised as consequences of the proposal. For example, a road designed as a bus route would inevitably have to be of a certain width and have restrictions regarding alignment and gradients. In relation to a sloping site, cut by small water courses, this would in turn have consequences for likely changes to the topography. We have taken such likely consequences into account in considering the heritage impact assessments in chapter 3 and landscape and visual impact assessment in chapter 5. We consider the timing and cost implications in chapter 4.

8.44 There is no dispute that because of the pattern of existing bus services a new service, connecting the development to Galston and Kilmarnock, would be necessary. It is also agreed that it is reasonable for the service to be financially supported by contributions from the development during an initial period pending the service becoming commercially sustainable.

8.45 There is also agreement that the timing of such support requires a difficult judgement. On the one hand, experience shows that early provision can influence travel choices before they become embedded into residents' established routine. On the other hand, the necessary infrastructure must be in place and the population high enough for a service to be realistic, otherwise the service would have insufficient patronage and would be bound to fail.

8.46 The applicant proposes in its draft planning obligation (appendix 2) a contribution of £150,000 a year from the occupation of the 60th house up to the 300th house or 4 years whichever is soonest. We consider this in more detail in chapter 11 but cannot agree that this necessarily adequately addresses bus provision.

8.47 The applicant's proposal would only be acceptable if it is assumed that a) adequate infrastructure is in place by the 60th house (ie the first year) and b) after the 300th house (year 4), the service is commercially viable. It is our understanding of Strathclyde Partnership for Transport's position that insufficient information is available to know whether this is acceptable at this stage. There currently is no detail of a bus route or location of bus stops. There is no phasing information as to when roads would be completed and adopted and how that would roll out over the completion of the rest of the residential development. We note for example that the second access is not required until occupation of the 251st house, meaning bus turning facilities would be required in the meantime.

8.48 It is possible that the first 4 years may not be the optimum time period to support the service. We see no reason why, for a development expected to take at least 17 years to complete, that support should only be for 4 years. In the context of a proposal for a new community in a rural location, support might need to continue for longer or start later to be effective. It does not seem satisfactory to us to end a service after 300 houses have been constructed when there are a further 700 houses remaining unless there was a good prospect of the service becoming commercially sustainable.

8.49 We accept that this issue may be capable of agreement if further discussions were held. As we discuss in chapter 11, we do not see how a second obligation can be required. However, it seems to us that without a clear understanding of the likely road network and phasing, a commitment made at the point of granting planning permission in principle (and before a masterplan had been prepared) would very quickly be overtaken by events and risk failing to achieve an important planning objective. We consider that this demonstrates

the lack of a masterplanned approach and highlights a significant disadvantage of the applicant's assumption that all matters of detail can easily be resolved after the grant of planning permission in principle.

8.50 As it stands, we do not consider that the applicant's proposed planning obligation addresses the need for public transport provision as there is no guarantee the provisions are either technically or commercially realistic. It appears to us that, before any agreement could be reached between the parties, at least some masterplanning must take place if there is to be any understanding of the transport needs of a new community of around 2000 people. We therefore conclude, that as it stands the proposal would be contrary to policies T1, T2 and OP 2 of the local development plan and would not comply with the policy objectives set out in Scottish Planning Policy.

8.51 There is no dispute that a network of footpaths and cycle paths would be necessary to encourage active travel. There would appear to be scope to provide for active travel in any overall masterplan, although no network has been developed to date. In chapter 4, we note that in the development appraisal a standard sum of £4,100 per house had been assumed for roads, pavements, lighting and landscaping. We express concern that the site may require higher levels of expenditure on footpaths than the average because of the scale of the development and its location. It would be wrong for an assumed average cost for footpath provision to unnecessarily constrain the proper planning of a new community.

Conclusions

8.52 Overall we conclude that there is no reason for transport matters to preclude the development in principle, in the sense that unsolvable problems would occur. However, as the proposal currently stands the arrangements for public transport provision are unacceptable. By not adopting a masterplanned approach the applicant is unable to address the visual, timing and cost implications of providing a realistic bus service. To grant planning permission as argued by the applicant would risk the provision of a bus service that was bound to fail thus undermining the purpose of the relevant planning policies. This would also introduce a further element of the proposal that we consider would not be sympathetic as it currently stands and that we consider in the overall planning balance in chapter 13.

CHAPTER 9: FLOODING AND DRAINAGE MATTERS

Introduction

9.1 This chapter considers the parties' position on matters relating to flooding and drainage. In addition to further written submissions, some matters related to flooding and drainage were discussed at the planning conditions hearing session on 22nd January. Matters related to planning conditions are addressed in more detail in chapter 12.

Case for the applicant

9.2 A flood risk assessment ([CD1.6](#)) looks at potential sources of flooding such as fluvial, surface water and from other sources such as springs in the north of the site. The assessment notes the site levels and the location of the River Irvine and other watercourses through the site. Conclusions include recommending that lakeside lodges are set at 600 millimetres above the bank top of the lake to take account of unprecedented rainfall, and finished floor levels generally being 150 millimetres above surrounding ground.

9.3 A drainage impact assessment ([CD1.5](#)) sets out the strategy for the sustainable management of surface water within the site. Appendix G R9.2 of the document provides detail of an indicative strategy for a sustainable urban drainage system for the site. In summary, surface water will be collected and discharged via sustainable urban drainage system which will be put up for adoption by Scottish Water where possible, or managed locally within the site. A range of measures will be used to collect, convey, treat, attenuate and manage rainfall runoff. Foul water will be collected and discharged via a separate sewer system and discharged to the local Scottish Water sewers under a formal agreement. Scottish Water will adopt the sewers where possible, and these will be designed to meet its requirements.

9.4 Chapter 9 of the environmental statement addendum ([CD1.45](#)) assesses the impacts of the proposal on hydrology and flood risk. The assessment has been informed by baseline data from the flood risk assessment, drainage impact assessment and chapter 11 of the environmental statement relating to geology, hydrogeology, and ground conditions matters. The conclusion is that subject to appropriate mitigation, the construction and operational phases of the project would be expected to have either a negligible or minor adverse effect in terms of potential flood risk and hydrology impacts.

9.5 There are currently no objections from any of the relevant consultees in relation to the flooding and drainage issues. A number of planning conditions and obligations to address the comments from consultees are proposed. These include further detailed flood and drainage assessments; a site specific construction environmental management plan; water management plan; sewage disposal and treatment; full details of the layout and siting of location and extent of all waterbodies; detailed levels survey of the site and cross sections showing proposed finished ground and floor levels; and full details of the proposed means of disposal of foul and surface water

Case for the council

9.6 The council's environmental health service ([email of 26 April 2016](#)) advise that the Howletburn supply and Loudoun Lodge supply are two private water supplies serving 6 properties which are likely to be directly affected by the development. There are also a

number of private water supplies to the north of the development boundary. The developer should ensure that all private water supplies (including associated infrastructure) in the area are identified and risk assessed prior to development. A water safety/protection plan should also be submitted to, and accepted by the council's environmental health service before commencement of the development. The preferred option is for all private water supplies, which could be affected by the development, to be connected to the public supply by the developer. Similarly for the proposed distillery, the water source should be identified and any impact on the private water supplies should be addressed.

Ayrshire Roads Alliance (Flooding) ([CD2.4](#) and [APP1.16](#))

9.7 The flood risk assessment is a desk study and does not establish fluvial inundation maps and levels which should be used to set finished floor levels. However, there are no objections subject to conditions requiring submission of a full flood risk assessment and full drainage impact assessment. Conditions will require provision of sufficient green space to allow the required attenuation (1:200 year + climate change level) to be sited outwith the established fluvial flood plain. The vertical and horizontal alignments of (roads, swales and landscaping) will be required to ensure that the flood route to the attenuation causes no unintended flooding issues.

9.8 Consequently, proposed roads and housing layouts may have to be modified. Similarly, any increase in hardstanding proposed will have to be accommodated with increased attenuation and flood routing, so that discharge rates to the River Irvine remain at 6.95 litres per second per hectare.

Scottish Environment Protection Agency ([CD2.16](#), [CD2.17](#) and [CD2.38](#))

9.9 Initial concerns related to the proposed location of the sports building and that it could be at potential flood risk from an adjacent minor watercourse. The sports building would require to be relocated so that it is set back and above the watercourse. In general, there is a need to ensure that the new townships, lodges and glamping site are all located so that the flood risk posed by small watercourses on site is effectively mitigated. These matters however, could be satisfactorily resolved by the submission of additional information at the next stage of the planning process. Subject to a condition requiring a detailed flood risk assessment to inform a finalised site layout, the agency has no objections.

Scottish Water ([CD2.31](#) and [CD2.34](#))

9.10 The developer contacted Scottish Water regarding the proposed development in November 2014 but to date no further correspondence has been received from the developer. A drainage impact assessment and a water impact assessment would be necessary to understand the impact on the existing network. There are existing Scottish Water assets on site that should be identified and any sustainable drainage systems that would be adopted by Scottish Water should comply with the relevant guidance.

Moscow and Waterside Community Council ([CD2.21](#))

9.11 The community council express concerns about demands on drainage and water supply. There is no recognition, nor assessment of the impact on local private water supplies.

Reporters' conclusions

9.12 Policy principles in Scottish Planning Policy confirm the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Flood risk assessments should be required for development where there is a medium to high category of flood risk (1:200 years). Proposed arrangements for sustainable urban drainage systems should be adequate for the development and appropriate long-term maintenance arrangements should be put in place.

9.13 Note 3 of local development policy Rural Area 4 highlights that the site is at flood risk from a 1:200 year flood event, requiring a detailed flood risk assessment to demonstrate that any new development proposal complies with Scottish Planning Policy and relevant local development plan policy. Policies Env 11 and Env 12 provide further policy guidance on flooding, drainage and water pollution.

9.14 We accept that the site is unlikely to be subject of flooding from the River Irvine. We have no doubt that it is technically feasible to design an acceptable drainage system that does not increase water run off rates compared to the current situation. Whilst further studies are required, Scottish Water has not objected to the proposal. The development on the site may have an impact on private water supplies but there is no suggestion that this would preclude development across the whole site. Indeed, the proposal may allow some or all properties to connect to a mains water supply.

9.15 However, we note that both the preliminary flood risk assessment and drainage impact assessment were based on the illustrative layout set out in the design statement. This layout preceded the comments from Ayrshire Roads Alliance. The suggested siting of the sustainable urban drainage ponds was prepared in ignorance of the illustrative landscape restoration plan or any intrusive site investigations. It assumes no particular measures are necessary in relation to existing private water supplies.

9.16 It is obvious from the indicative sustainable urban drainage layout in the preliminary drainage impact assessment that new and existing minor water courses would be necessary to convey surface water. These channels would have to be sized to accommodate not just normal conditions, but extreme rainfall events to ensure flooding does not occur. We note the concerns of the Scottish Environment Protection Agency as to the relationship with one of the proposed buildings and an existing water course. Ayrshire Roads Alliance comments also referred to the implications of properly sizing water channels. We are aware of no assessment that shows the implications of sizing likely water channels to accommodate an extreme rainfall event.

9.17 Without such an assessment it is impossible to appreciate the likely impact of a properly designed drainage assessment. It is not just the implications for the channels themselves but also for areas of land nearby where planting or development might be restricted. This in turn is inter-related with the road layout, landscape planting plan and the identification of the extent of developable areas.

9.18 We accept that it is possible that when such an assessment is prepared any impacts would have limited implications and our concerns might be misplaced. However, it is

equally possible that this is not the case, especially bearing in mind the scale of the proposed development and the sensitivity of the site.

9.19 We accept that the necessary information can be required by condition as suggested by the applicant. However, this approach has a disadvantage. If the required further studies and detailed design work identifies further constraints it would not be possible to revisit the scale of development set out in the planning permission. This may mean that unfortunate design compromises have to be accepted in order to implement the planning permission. It also means that at the point of signing any planning obligation (ie before planning permission in principle is issued) the applicant would have no certainty over the extent of the developable land or the areas of open space that would be subject to management.

9.20 We do not consider that such an approach is acceptable and to our mind illustrates the difficulties created by not adopting a masterplanned approach.

9.21 In addition, as we noted in chapter 4, the applicant's final development appraisal assumed that sewerage and water supply costs would equate to an average rate of £5,125 per house. This figure might be adequate. However, it is equally likely that the further studies required could show that the development site requires a higher than average cost to address the particular issues identified.

Conclusions

9.22 Overall, we conclude that there is no reason for flooding and drainage matters to preclude the development of the site in principle. However, there are a number of detailed matters that remain to be investigated and designed. The applicant is reliant on this further work having no significant implications on the overall proposal, including maintenance. This might be the case. However, it is equally likely that issues may be discovered that actually have significant design implications. We do not consider that it is prudent for a development of this scale and complexity to assume that there would be no implications and could not describe this as an adequate masterplanned approach.

CHAPTER 10: OTHER MATTERS

Introduction

10.1 This chapter considers the parties' position on matters relating to the impact on community services and residential amenity. Other matters, including ground conditions, air quality and energy are also assessed in the environmental statement and addendum. In addition to further written submissions on the impact on community services and residential amenity, some of these matters were discussed at the planning conditions and planning obligations hearing sessions on 22nd January. Matters related to conditions and planning obligations are addressed in more detail in chapters 11 and 12.

Community services

Case for the applicant

10.2 The impacts of the development on local services are considered in chapter 13 of the environmental statement addendum ([CD1.45](#)). The proposed development is estimated to have a population of 2,245, and includes 3 townships of 290 to 350 dwellings, each with community facilities such as a small shop, community hall and public house which would help create balanced and mixed communities. Each township would individually and collectively be designed to have its own distinct character.

10.3 The project would make a significant improvement to the overall stock of housing units, and has been designed to create an integrated and viable community. It will be subject to appropriate controls to mitigate any potential impact on the existing community services. Consequently, both separately, and cumulatively in combination with other developments the effects of any increased demand for services are considered to be negligible.

10.4 The new community would look to Galston for the balance of any services and facilities, including those relating to healthcare and education. The existing surgeries and schools within Galston have the capacity to absorb the projected increase in population. The council's education and social services team had no objection to the application and no additional mitigation measures in relation to education, social services or health provision have been sought by the council. Draft planning conditions and a draft section 75 (appendix 2) address the requirement for phasing of the development which will allow for appropriate management of the community services. Other reasonable conditions in relation to the impacts on community services would be considered.

Case for the council

10.5 The education service ([CD2.26](#)) advise that existing and planned early years provision in Galston Primary School and Newmilns Primary School could not accommodate the additional children and would have to be extended. Galston Primary School could not accommodate the increase in pupils from this development, however, if the site was re-zoned to Newmilns Primary School the additional pupils could be accommodated. It is likely that Loudoun Academy could accommodate the additional pupils from the development.

NHS Ayrshire and Arran ([CD2.25](#) and [APP1.20](#))

10.6 Express concerns with regard to future primary care provision in the area. Since the process began, there has been a material change in circumstance in relation to general medical services which are experiencing difficulties in recruiting new general practitioners. The proposed development is adjacent to 3 general practices based in Galston, Newmilns and Fenwick. Since the start of the process the Fenwick surgery has closed and the practice has tendered its resignation. While the Newmilns and Galston practices are currently stable, any significant increase on patient lists as a result of approximately 300 new homes would be detrimental. The estimated 450 lodges would also create a variable demand for services, specifically during the summer, increasing demand on locum services. As well as recruitment issues, there would be issues over accommodating increased staff, as Galston clinic and surgery are constrained. If the appeal is successful, the board would seek a developer contribution to cover the increased costs of developing a new health centre.

Reporters' conclusions

10.7 As the environmental statement acknowledges, the proposed development has the potential to provide homes for approximately 2,000 people. The proposed site, at approximately 2 miles to the north of Galston and in a countryside location is also physically remote and detached from the nearest towns and villages. As we found in chapter 2, it would therefore be important that the submitted information demonstrated that the design and function of a new community would provide for an acceptable living environment and the significant additional housing development over and above what is considered to be a generous supply has no adverse consequences for other developments. In our judgement a new community must be acceptable in its own right irrespective of any financial justification.

10.8 It is therefore important that the implications of what would, in effect, be a new community on the wider area is considered, and that sufficient thought at this stage of the development process has taken place to be sure the new community would function as an acceptable new community in its own right and work for the number of potential residents.

10.9 We cannot agree with the applicant's claim that the impacts of the development on local services would be negligible. We do not read the response from the council's education department as endorsing the applicant's position. On the contrary, it states that more detailed information is required. It expresses concerns about early years provision. It suggests that primary school catchments might need to be changed. Our understanding is that changes to school catchments requires to follow a statutory process which cannot be prejudged. Re-zoning the development site to Newmilns Primary School could have implications for routes to school or school transport provision.

10.10 We also cannot read the response from NHS Ayrshire and Arran as support for the applicant's position. The final response actually states that should the appeal be successful then a developer contribution should be sought. We note that the applicant considers that no update is required in the environmental statement addendum and therefore relies on the 2014 assessment. At that time, the construction programme was assumed to take 9 years commencing in 2016.

10.11 As stated previously in this report, we doubt that any construction could commence much before 2021. The programme is now envisaged to last at least 17 years. In our experience, impact upon schools and health services is a dynamic process relying on a number of inter-related factors. Predicting impacts up to 2038 would be no easy task and would require considerable input from the relevant stakeholders. We are not satisfied that sufficient analysis has been carried out to obtain an up to date understanding of the likely impacts of a new community and it is clear to us, that as it currently stands the applicant's position is not verified by either the council's education department or NHS Ayrshire and Arran.

10.12 We accept that further analysis might show that there is ultimately adequate capacity. We recognise that phasing conditions may be an appropriate mechanism. Although we note that the development appraisal assumed 60 houses would be constructed each year, every year for 17 years, and that delays in that assumed programme would have had implications for the final conclusions. If impacts on capacity were to be found, we accept that there are a number of potential mechanisms that could be employed to address the matter. We accept that the education department and NHS Ayrshire and Arran are not suggesting that the potential lack of capacity in existing community services should preclude the proposal. Nonetheless, without positive assurance from the education department and NHS Ayrshire and Arran we do not consider that it is appropriate to grant planning permission in principle without a thorough understanding of the likely impacts. We consider this matter again when discussing planning obligations in chapter 11.

10.13 We also note that there is little detail regarding the provision of community services within the site. Although the design statement suggests shop, community hall and pub in each of the 3 proposed townships, provision of such facilities would have to be carefully phased. The development appraisal assumed no phasing restrictions and did not refer to the provision of any on site community facilities in its assessment of likely costs.

10.14 In previous chapters we have expressed our concerns about the consequences of a lack of a masterplanned approach. These concerns are reinforced by what we consider to be an inadequate analysis of the potential impact upon key services. Whilst we have no doubt that a new community could be planned to function effectively, this must be demonstrated before, not after the grant of planning permission in principle. To simply assume that the planning of a new community is just a matter of detail runs the risk of having to accept unnecessary design compromises or a less than adequate service provision if matters do not turn out as the applicant currently hopes.

10.15 Overall, we consider that there has been inadequate detailed assessment of the impact of the proposal on local services and consequently there is insufficient information to demonstrate that there would be acceptable provision of community facilities to meet the needs of a new community. In our view, the reliance on providing masterplanning and phasing information after the grant of planning permission in principle holds significant risks and does not demonstrate a masterplanned approach. As it currently stands, we do not consider that the applicant has demonstrated that a new community could function in its own right, irrespective of the financial arguments regarding the need for enabling residential development.

Residential amenity

Case for the applicant

10.16 Chapter 15 of the environmental statement addendum considered noise and vibration. This included an assessment of the likely effects of noise from off-site traffic generation and the operation of the proposed distillery and energy centre. The results of the assessment indicate that noise effects arising from changes in off-site road traffic sound during the operation of the project would largely be of minor adverse or negligible significance during the daytime (with one moderate adverse effect at Haltriggs adjacent to the A719) and negligible significance during the night-time. With further mitigation in place (the installation of a noise barrier adjacent to the stretch of road closest to Haltriggs), no significant effects are predicted to occur.

10.17 Overall the assessment concludes that with appropriate mitigation, significant adverse noise and vibration effects are unlikely to occur during either the construction or operational phases of the development.

10.18 The council's environmental health officer also stated that noise levels, dust emission levels and noise and air quality impacts during both construction and operational phases of the development did not give rise to concerns.

10.19 Draft planning conditions and section 75 agreement includes restrictions on construction hours and HGV movements.

10.20 The operation of the proposed distillery is also recognised by the applicant as providing the potential for some impact on residential amenity through noise. It is proposed that a condition restricting noise levels be added to any planning permission granted for the development.

10.21 An air quality assessment has also been undertaken in Chapter 14 of the environmental statement. The assessment considered dust effects during the construction phase and the air quality impacts due to the operation of the project. Overall, the resulting air quality effect of the development is considered to be 'not significant' and there are no constraints to the development in the context of air quality. East Ayrshire Council has not designated any air quality management areas and air quality in the general area remains very good.

10.22 A lighting strategy also aims to ensure adequate safety and security for residents while minimising energy use and light pollution and creating an attractive environment. Lighting would incorporate low level pathway lighting where possible and be directed in order to avoid light spillage.

Case for the council

10.23 The council's environmental health officer ([CD2.3](#)) advises that controls on the hours of construction work should be imposed. Reference is also made to the control of odour and noise from any commercial kitchen operating on site and the disposal of waste, potential smells and noise from the operation of the proposed distillery. The applicant has not provided any information on the level of noise, potential smells that may impact on air quality, and potential levels of light pollution as part of the proposed development. It is

acknowledged however that sufficient control could be provided through the imposition of conditions and/or planning obligations.

Transport Scotland ([CD2.7](#))

10.24 In terms of potential impacts on air quality levels, Transport Scotland are satisfied that any air quality impacts are likely to be negligible on the trunk road network.

Health and Safety Executive ([CD2.1](#) and [email 1 August 2016](#))

10.25 A distillery may hold sufficient flammable liquids that hazardous substance consent would be required. If consent was required an assessment would be carried out to determine whether the storage of flammable liquids would be compatible with the proposed surrounding uses.

Reporters' conclusions

10.26 The estate accommodates residential properties which are not connected with this application and are outwith the application site. They are located in the north western sector of the estate and are known collectively as Howletburn. There are also a number of residential properties, located approximately 200 metres to the east of the application site boundary.

10.27 Notwithstanding the local development plan allocation, we consider that such a large scale, mixed use development in this relatively rural location would inevitably result in the closest properties experiencing significant change to their local environment as a result of the proposal. The most noticeable impacts would occur during the peak construction period (ie the first 3 years). Although construction of the housing is predicted to last 17 years, it is presumed that the actual area of construction would move from west to east and therefore would move away from the existing houses within the site over time. It is likely that residents of the proposed new housing would experience disturbance from what would be an on-going construction site over such a significant period of time.

10.28 However, we do not consider such impacts to be unacceptable. Firstly, policy Rural Area 4 allocates the site as a major development opportunity where some impacts during construction and operation would be inevitable for adjacent houses. Secondly, there is agreement that conditions should be attached that would manage the construction process in order to mitigate impacts wherever possible.

10.29 We agree that the issue raised by the Health and Safety Executive could be included in a planning condition attached to any subsequent planning consent.

10.30 Overall, whilst we accept impacts on residential amenity would occur, we consider that with appropriate assessment of detailed design matters and planning conditions, the proposal would comply with policies RES 11, ENV 12 and ENV 25 of the local development plan.

Ground conditions

Case for the applicant

10.31 Chapter 11 of the environmental statement and addendum provide an assessment of likely geology, hydrogeology and ground condition effects of the proposed development.

10.32 A Phase 1 Geo-Environmental Assessment (appendix R11.2. of [CD1.45](#)) was undertaken and historic ordnance survey plans and Coal Authority data indicate the presence of significant mining heritage at the site. A number of old quarries, air shafts and former surface workings for coal and limestone, with large areas of underground coal mining to 170 metres depth present.

10.33 Mitigation measures are proposed to address the potential impacts during construction. These include the use of best practice construction methods. Where required, a remediation strategy would be produced to ensure that any potential pollutants are addressed. Monitoring of ground gas levels would also be carried out prior to excavation activities or any hazardous operations. An intrusive investigation in accordance with a methodology to be agreed with the Coal Authority is proposed in order to identify the nature and extent of features more fully. The detailed design of the residential and lodge development would avoid areas over, or in the area of influence of coal mine entries or former open cast workings. Design measures would also be undertaken to ensure the stability of all new and existing structures. With this mitigation in place, it is considered that there would be no significant effects on geology, hydrogeology or groundwater during the construction and operational phases of the project.

Case for the council

10.34 The council's contaminated land officer ([CD2.2](#)) confirms that parts of the site have previously been used for limekilns, quarry and coal pits. Due to the sensitive nature of the development (residential, leisure etc), it is recommended that a site investigation is required by planning condition.

Coal authority ([CD2.8](#))

10.35 The site is likely to be influenced by previous coal mining activity and this is confirmed in the phase 1 Geo-Environmental Assessment Report. Prior to the approval of matters specified in conditions, a scheme of intrusive site investigations should be submitted for approval. Matters specified in conditions should include details of how any issues identified by the intrusive site investigation have been addressed.

Reporters' conclusions

10.36 It is clear from the written submissions and from discussions at the inquiry that mining and other activity has occurred in the past. It is unclear at this stage however, what impact these would have on the future design and layout of the proposed development. From initial investigations, the applicant concludes that it is likely that this would be spatially concentrated and therefore could be addressed in the detailed design. We accept that this may be the case. However, there is no dispute that a condition requiring intrusive site investigations is necessary and that this should occur before development commences.

10.37 It is therefore equally possible that intrusive site investigations result in discovering ground conditions that may act as a constraint or dictate particular design solutions. In chapter 4, we noted the council's criticism that assuming that there would be no abnormal costs as a result of further site investigations was not a conservative assumption.

10.38 The information available does not suggest that adverse ground conditions are so extensive that development of the whole site would be precluded. We accept that even if adverse conditions were to be found, it is likely that design solutions would be available. Therefore, subject to appropriate planning conditions requiring intrusive investigations we agree that the proposal would comply with policy Env 13 of the local development plan.

Energy

Case for the applicant

10.39 An energy statement has been prepared (appendix R2.1 of [CD1.45](#)). It presents a range of options for minimising carbon emissions associated with the use of energy within the project. These include minimising energy demand through improvements in the building fabric, and maximising the opportunity for natural daylight and natural ventilation, to be incorporated into the detailed design of the proposed housing and leisure facilities. Low energy lighting and the potential for heat recovery will also be considered at the detailed design stage.

10.40 The proposal also includes a community heat plant/energy centre. It is proposed to be located within the leisure development zone and the design and technologies will be developed further as the detailed design of the project evolves.

Case for the council

10.41 The provision of a community heat plant is, in principle, supported by the council. There are concerns that the applicant has not provided any information as to whether the plant is to be powered by renewable or non-renewable sources, if carbon capture and storage will be utilised, if the plant will be converted for renewable or low carbon sources of heat in the future if it is to be powered initially by non-renewable sources, what it will heat and how it will store heat from other compatible heat generating developments and how the network will be built (i.e. where the pipes will be located). Without further details on the source for heat generation and how the infrastructure will be built and what it will heat, it is difficult to determine what the level of impact on the environment will be.

10.42 Overall, the proposed facility can be effectively controlled through appropriately worded conditions.

Reporters' conclusions

10.43 A number of local development plan policies provide guidance on energy matters. Policies RE1 and RE2 in particular, support developments associated with the renewable energy, energy efficiency and generation of heat.

10.44 The proposed energy centre is described as one of the key components of the proposal in the environmental statement. We share the council's concerns about the lack of detail and there are no guarantees that it would be built. However noting the council's

policy support for such centres and the policy requirement for an energy assessment to be carried out, we agree that subject to appropriate conditions we do not consider that energy matters need be a constraint to development.

CHAPTER 11: PLANNING OBLIGATIONS

Introduction

11.1 A hearing session to consider proposed planning obligations took place on 22 January 2018. Following discussions at the hearing, and at our request, the council and the applicant submitted their respective final draft section 75 agreements in February 2018 (appendices 2 and 3 of our report). Both were then circulated to Historic Environment Scotland, Transport Scotland and Strathclyde Partnership for Transport for comment. Their respective positions are provided below.

11.2 In reaching our conclusions on the proposed planning obligations, we also take account of the consultation responses from the Ayrshire Roads Alliance (Roads and Flooding), Coal Authority, Scottish Environment Protection Agency, Scottish Water, Scottish Natural Heritage, West of Scotland Archaeology Service, NHS Ayrshire and Arran, Health and Safety Executive, the council's economic development team, environmental health team, education service, and contaminated land and access officers (all previously summarised in chapter 1 of our report).

11.3 We also consider these matters in the context of guidance in Circular 3/2012 which sets out the Scottish Government's policy on the use of planning obligations. In summary, a planning obligation needs to meet a number of tests, namely that it is necessary to make the development acceptable, achieve a planning purpose, related to the proposed development, fairly related in scale to the proposed development and reasonable in all other respects.

Case for the applicant

Castle works

11.4 Clause 3 of the section 75 agreement includes obligations requiring submission of a scheme of stabilisation and restoration to reflect the terms of the budget estimate. The obligation requires the submission and approval of a programme and timetable for phased implementation of the scheme to be delivered under a continuous single contract i.e. a continuous work stream. It also requires the council to determine the scheme within two months of submission. The applicant considers this to be reasonable bearing in mind the level of detail already available in the budget estimate and two months is the same period which the council would have to determine the scheme were it a planning condition. The obligation also requires the council to process all applications for consents for the implementation of the scheme as expeditiously as possible. This reflects the applicant's desire to proceed with the implementation of the scheme as soon as possible in view of the perilous condition of the castle.

11.5 Clause 3 also includes provisions which will ultimately allow the council to issue a rectification notice on the developer should the scheme of stabilisation and restoration not be implemented as approved. A failure on the part of the developer to comply with the notice would allow the council to call up the castle bond to allow it to implement the scheme.

Financial bonds

11.6 Clause 4 requires the provision by the developer of a bond (castle) in favour of the council as security for a failure to implement the scheme of stabilisation and restoration. The value of the castle bond will reflect the budget estimate and maintained initially for a period of 4 years. This is longer than the anticipated programme for implementing the scheme of stabilisation but ensures some flexibility and avoids the council having to require a replacement castle bond as a precaution.

11.7 Clause 4 also includes provision for a replacement castle bond where the initial bond is to expire and the scheme of stabilisation and restoration has not been implemented. The obligation also sets out the steps to be followed to permit the castle bond to be called upon.

11.8 Clause 6 requires the provision by the developer of a landscape masterplan bond in favour of the council as security for a failure to implement the landscape masterplan (below). The bond is to be in an amount to meet the costs of undertaking the landscape masterplan (defined as the landscape restoration amount). The bond is to be maintained for a period of 4 years to ensure that it remains in place for a period in excess of the likely duration of the implementation of the landscape masterplan. This is longer than the anticipated programme for implementing the landscape masterplan (3 years) but ensures some flexibility and to avoid the council having to require a replacement bond as a precaution. In addition there is a provision for a replacement bond where the initial bond is to expire and the landscape masterplan has not been implemented. The obligation sets out the steps to be followed to permit the bond to be called upon.

Phasing

11.9 Clauses 7 and 8 prevent the commencement of development of any housing or leisure phase in advance of a housing/leisure strategy being approved by the council in consultation with Historic Environment Scotland. The implementation of the scheme of stabilisation and restoration and the landscape masterplan are to be commenced prior the development of any housing phase or a leisure phase.

Landscape Masterplan

11.10 Clause 5 requires the implementation of the landscape masterplan and a process for the council to pursue a breach of the obligation to implement the landscape masterplan through a rectification notice. Failure to comply with the rectification notice would permit the council to call upon the bond.

Bellfield Interchange

11.11 Clause 9 prevents the occupation of any more than 250 dwellings prior to the completion of the Bellfield Interchange improvement works. The applicant proposes a similar planning condition, however the section 75 also imposes obligations on the council in terms of making land available. Implementation of the Bellfield Interchange improvement works (within the boundaries of the trunk road) would be subject to a separate agreement with Transport Scotland and the provision of a road bond.

Bus provision

11.12 Clause 10 provides an obligation to subsidise bus services as well as the extension of bus routes to serve the development. The subsidy would be paid for a period of 4 years from the occupation of the 60th residential unit until the earlier of either 4 years or the occupation of the 300th residential unit. A trigger of the 60th residential unit is seen as meeting the balance between encouraging behavioural change towards the use of public transport and achieving value from money from the subsidy. The applicant considers that it would be unreasonable to require that the subsidy (which is based on the costs of only one operator of the 16 approached) be paid on an indefinite basis irrespective of market conditions or the viability of the bus service.

Future maintenance

11.13 Clause 11 requires that a deed of conditions (schedule 5 of the draft section 75) be put in place to secure the on-going maintenance of the woodlands, landscaping and common areas. The deed is based upon an 'owner manager model' which places the burden of maintenance on a suitably qualified and responsible person (who would own the common areas) while the proprietors of the residential and leisure units will contribute to the costs of the operation and maintenance. There would be a burden in the title deeds for the proprietors to contribute to the costs of maintenance.

Community obligations

11.14 Clause 12 provides for the establishment and operation of a community liaison group, to ensure that the local community has a full understanding of the development as it is built out; and the developer is aware of any concerns which the local community may have.

Arbitration

11.15 Clause 13 provides that any dispute arising as to the effect or meaning of, or the implementation of the provisions contained in the agreement shall be referred for the purpose of arbitration, to an arbiter to be mutually chosen and appointed by the parties.

11.16 The draft agreement also includes heads of terms relating to *Definitions and interpretation* (clause 1); *Conditionality and effect* (clause 2); *Other powers* (clause 14); *Notices* (clause 15); *Expenses* (clause 16); *Planning permission in principle* (clause 17); *Jurisdiction* (clause 18); and *Recording* (clause 19).

Other

11.17 There is no policy justification to require the tourism and recreation development in advance of the enabling residential development as policy Rural Area 4 allocates the site for development. It is the intention to commence the tourism and recreation development within the first phase of construction and the council's fears are misplaced. In any event, the council's suggested triggers are inflexible and arbitrary.

11.18 The council has established no linkage between the development and the need to carry out regeneration projects in Galston. The council were unable to justify the figure of £500,000. Such a requirement is unnecessary and would not comply with circular 3/2012.

A woodlands officer may be desirable but it is not necessary to make the development acceptable. The proposed long term management of the garden and designed landscape is addressed by the proposed deed of conditions.

Case for the council

Financial bonds

11.19 Clause 3 includes requirements for a financial bond or guarantee, subject to a mechanism for review, to ensure that the works to (1) the castle and required maintenance are undertaken in the event that the applicant is unable to do so; (2) the designed landscape and its maintenance are undertaken in the event that the applicant is unable to do so; (3) the lagoon/lake is completed; and (4) the Bellfield Interchange road works are completed. The council also states that such bonds should ensure professional fees are included and that they be reviewed on an annual basis.

Phasing

11.20 Clause 4 as proposed by the council requires submission of a programme of works. It would provide details of each phase and the inter-relationship of each phase of the development in relation to the leisure, commercial and tourism, the castle consolidation, residential development, landscaping, planting, the designed landscape, its wider setting and all transport and infrastructure provision. The scheme of consolidation and repair of the castle should commence prior to any housing and leisure phases and leisure strategy. The consolidation of the castle shall also be developed and completed in tandem with the programming of the first 180 completed residential units, or within 3 years of the commencement of development, whichever is soonest.

11.21 It limits the total number of houses that may be constructed within the development as the minimum enabling development required to ensure consolidation of the castle, but in any case, no more than 1025 units. It also specifies that 50% of the leisure, commercial and tourism elements shall be completed prior to occupation of the first 60 residential units. Thereafter the remaining leisure, commercial and tourism facilities shall be completed prior to completion of 120 residential units.

11.22 Notwithstanding the statutory powers of entry, part of clause 4 also provides that the council will be permitted accompanied entry to the castle, to inspect the progress of the scheme of consolidation.

Bellfield Interchange

11.23 Clause 5 prevents the occupation of any more than 250 dwellings prior to the completion of the Bellfield Interchange improvement works. The council will also make all land and/or rights reasonably required within its ownership or its control available to the developer at nil consideration. In the event that Transport Scotland seek contribution for any land required within its ownership or control, the developer will bear the costs.

Bus provision

11.24 Clause 6 provides an obligation to provide a bus service. It is to be fully financed by the developer until one year after the occupation of the 300th residential unit, unless otherwise agreed with Strathclyde Partnership for Transport. A sum of £150,000 per annum (based on 2017 estimates) and subject to annual revision and adjustment is specified. The obligation also provides that after occupation of the 300th residential unit the obligation shall be reviewed and any revised contribution shall be payable by the developer.

11.25 Clause 6 also requires that there shall be no commencement of development in respect of any housing phase beyond the 60th residential unit until a bus service phasing plan has been submitted and approved by the council in consultation with Strathclyde Partnership for Transport. After occupation is taken to the 60th residential unit the bus service phasing plan will require to be fully implemented and brought into operation.

Future maintenance

11.26 The council would wish to ensure the ownership of the common areas within Loudoun, including the designed landscape, should not be transferred to a maintenance company. The council is concerned, from experience, about common areas being transferred to a maintenance company which transfers some of that land on for development. Given the designed landscape designation and historic significance of the castle and its surroundings, the council submit that the common and open areas within Loudoun remain within the ownership of individual residential units, and the tourism and leisure development, and that they be given the opportunity to appoint a factor to manage those areas, if required.

11.27 Clause 7 therefore requires that the landowner shall put in place and submit a deed of conditions (part 5 of the council's draft agreement). It requires common areas of land within the development to be transferred in perpetuity to owners of the residential estate, and other landowners within the site, including the owners of the leisure, tourism and commercial element of the development so that the ownership of those common areas shall not be disposed of to any factoring or other company to manage and maintain. Instead, the common areas shall be managed by a factoring company on behalf of the owners.

11.28 Clause 7 also restricts the felling of any trees unless in accordance with a landscape management plan and general landscape management plan approved by conditions.

Community obligations

11.29 Clause 8 requires the developer, in consultation with the council to appoint and pay the costs and salary of a woodland officer. The officer would manage visits and educate visitors, residents and guests on how to look after the open or common parts of Loudoun as well as consider how best to develop and protect the undeveloped parts and monitor the quality of the natural environment within the estate.

11.30 The council also noted that the applicant's economic impact analysis suggested a number of initiatives that the development could take forward to deliver added value to local communities. Clause 9 therefore requires the submission of a local procurement strategy which would ensure local businesses are given the opportunity to bid for contracts.

11.31 Clause 9 also provides for the establishment by the developer of a local community liaison group comprising local representatives. Its primary purpose would be to communicate to local communities information relevant to the development and to provide an open forum for discussion.

11.32 It was also suggested by the council at the hearing that the applicant works to regenerate the town of Galston including tackling vacant properties and sites; improving the streetscape of the town centre; maximising and improving active travel routes and providing good quality housing. The council contend that a sum of £500,000 identified as a regeneration contribution, is considered to be a reasonable estimate of the contribution that this development could make to the regeneration of Galston. Clause 10 of the council's draft agreement includes such a requirement, to be payable within 14 days of planning permission in principle being issued.

Other matters

11.33 Clause 13 sets out remedies to address a breach of the agreement or any notice issued by the council. Clause 11 requires that the existing 30 miles per hour traffic regulation order on the A719 be extended northwards to cover the northernmost proposed residential access and the developer shall bear all associated costs.

11.34 Clauses 1, 2, 12, 14, 15, 16, 17, 18 and 19 replicate, with some additions, the applicant's clauses 13, 14, 15, 16, 17, 18 and 19 outlined above. All references to the 'applicant' in the applicant's draft agreement have also been changed by the council and replaced by 'developer'.

11.35 If Scottish Ministers are minded to grant planning permission in principle for the development, it is vitally important that planning conditions and obligations secure the delivery of the development as a whole. It is the securing of benefits beyond historical or conservation benefits related to the castle that is a significant issue. The potential social and economic benefits can only be secured if the development is delivered in its entirety.

Historic Environment Scotland

11.36 Historic Environment Scotland submitted a [hearing statement](#) setting out its position on the proposed draft obligations. It also participated in the hearing session on 22 January. As noted above, Historic Environment Scotland also provided [written comments](#) in response the updated section 75 agreements of February 2018 from the applicant and the council.

11.37 If Scottish Ministers are minded to grant consent, robust conditions and/or legal agreements are essential to secure delivery of the positive outcomes for the historic environment at the appropriate time.

Financial bonds

11.38 The extension of the definition of the castle and designed landscape bonds to include on-going maintenance of both the castle and the designed landscape, as proposed by the council is welcomed. It expects the periods for on-going maintenance to be identified when the specification of the castle and designed landscape works are determined under

the relevant conditions and the cost of implementing such works to be fixed in the section 75 agreement. The bonds would remain in place for the duration of the periods determined as appropriate for on-going maintenance but would step down to the amounts required for maintenance under paragraph 3.7 of the draft section 75.

11.39 Specifically in respect of the council's draft agreement, Historic Environment Scotland comment that a plan should clarify that the extent of the inventory garden and designed landscape which extends beyond both the red line and the blue line. The garden and designed landscape bond definition should also cross refer to the relevant condition of the permission under which the relevant works to the designed landscape are to be defined.

Phasing

11.40 The preferred outcome is for the stabilisation and consolidation works to the castle and the restoration of the designed landscape to be complete before the housing or leisure developments commence. The phasing of the housing and leisure developments should allow for the least harmful aspects to be carried out in the earlier phases. If it is found that it would be appropriate for development to commence at an earlier stage, providing that bonding or other financial arrangements are put in place before commencement of development to ensure that the castle and designed landscape works are carried out, Historic Environment Scotland would be content with an approach where some new development commences at an early stage.

11.41 It also considers that the final number of houses needs to be informed by the revised scheme of consolidation required in conditions, and that there needs to be a clear mechanism for agreeing that number.

Future maintenance

11.42 It would not be appropriate to rely on a deed of conditions to ensure funding is available for the long term maintenance of the designed landscape. Funding for maintenance should be ensured through the bond.

11.43 It also considers that there is not sufficient provision in the applicant's approach for the longer-term maintenance of the castle and designed landscape and suggests that this is addressed in line with the approach by the council.

11.44 Overall, Historic Environment Scotland considers that its concerns around the on-going maintenance of the castle and designed landscape, once the developments have been completed are best addressed through planning obligations. It wants to see that at an appropriate time there will be financial provision put in place for the maintenance of the heritage assets in the long term future and that they will not be allowed to deteriorate again once the development work on the site has been completed. Consequently it wants to ensure that there is adequate provision for long-term maintenance of the consolidated castle and the designed landscape and that it is involved in the agreement of details of the scheme.

11.45 Subject to detailed comments above, Historic Environment Scotland are content that both the applicant's and the council's approach broadly address its requirements in

terms of future consultation with Historic Environment Scotland in the details of the development, should consent be granted.

Transport Scotland

11.46 Transport Scotland submitted a [hearing statement](#) setting out its position on conditions and obligations. However, following a meeting with the applicant, council, Historic Environment Scotland and Transport Scotland, it did not feel it necessary to attend the hearing sessions.

11.47 In response to the updated draft section 75 agreements from the council and applicant, Transport Scotland subsequently confirmed by [email](#) that in relation to the Bellfield Interchange, this matter be covered a planning condition and not in a section 75 agreement.

Strathclyde Partnership for Transport

11.48 The principle of supporting a bus service at the early stages of the residential development is supported. However, with the information currently available it is not known whether sufficient transport infrastructure would be available to make a service practical. It is unlikely that a service would be commercially viable by the 300th house and therefore the council's suggestion of a review at this stage is supported.

11.49 It should be noted that £150,000 is an estimate derived in 2017 and this might not represent the cost when the service is actually provided. Any contribution should be index linked over whatever period the support lasts.

11.50 The applicant's suggested clause 10.4, to ensure public transport provision is considered for each phase of the housing development is supported. However, this clause and the obligation as a whole does not ensure that any necessary provision is actually provided.

Reporters' conclusions

11.51 There is no dispute that in the event that Scottish Ministers are minded to grant planning permission in principle a planning obligation would be necessary to make the proposal acceptable. We have based our assessment on the applicant's draft planning obligation (appendix 2) and the suggested revisions provided by the council (appendix 3).

11.52 In chapters 3 and 5 we find that it is necessary to secure the consolidation of the castle and the restored gardens and designed landscape and ensure a mechanism for long term maintenance was in place. In chapter 7 we identify the need for long term management to secure the habitat management plan. These matters are identified in the suggested draft agreement.

11.53 In chapter 8 it is also found necessary to provide support for a bus service. Again, a proposed approach has been identified. In addition there were various other matters that one or more of the parties considered should be included in a planning obligation including, phasing, improvements to Bellfield Interchange, arbitration, community liaison, a woodland officer and a financial contribution for improvements to Galston town centre. In chapter 10

we express concerns about satisfactory provision of community services to serve the proposal. We consider these all these matters in turn below.

Financial bond to secure the consolidation of the castle and restoration of the gardens and designed landscape

11.54 As explained in chapter 3, it would be unacceptable if the heritage benefits of consolidating the castle ruins and restoring the garden and designed landscape were not carried out but the enabling residential development was. The proposed mechanism to address this issue is for a financial bond to be made available by the applicant, which in the event of the works to the castle or gardens not being completed for any reason could be called upon by the council for them to fund completion of the works themselves.

11.55 For the castle, the draft planning obligation provides for a scheme for the consolidation of the castle to be agreed, for a bond to be lodged for a period of 4 years, setting out the process as to how the council would go about calling in the bond and a mechanism for topping up the bond value in the event that works had not be completed within 4 years. Similar mechanisms are proposed for the restoration of the garden and designed landscape.

11.56 Financial bonds are a mechanism that are used in the planning system. We are aware, for example, that they are often a requirement to ensure the proper restoration of a site after mineral workings or when a wind farm is to be dismantled. However, the use of bonds has not been universally successful. In our view, the detailed wording of the bond agreement and the amount of money lodged are critical success factors.

11.57 As it stands there is no agreed detailed scheme available for the consolidation of the castle. The applicant's suggested clauses require such a scheme to be determined within 2 months. There may be very good reasons why a scheme of such complexity could take more than 2 months to assess. There is a methodology set out in the budget estimates but that was devised for the purpose of producing the budget estimate. That is not the same as a finalised scheme based on more detailed surveys. As we concluded in chapter 4, by the time works actually start on consolidating the castle, in accordance with a scheme that has also received listed building consent, costs are likely to have increased and this must be reflected in the bond value.

11.58 The value of the bond would need to be reviewed to take into account possible changes to the methodology following more detailed surveys, any delay to actually starting the works and any changes to costs that may occur during the lifetime of the bond. We cannot see how this can be achieved in the wording of a planning obligation that would have to be agreed, potentially several years before an agreed scheme is finalised and costed. It also would require the parties to agree the final cost of the bond. It is not clear to us what the mechanism would be if there is no agreement over costs.

11.59 It appears to us that the applicant's approach assumes that the budget estimate would not change, that the works would be implemented quickly and that over the 4 year lifetime of the bond there would be no further changes in costs. It also requires an arbitration arrangement to ensure ultimate agreement. We do not consider that it is prudent to rely on these assumptions. In addition, as set out below, we do not consider it appropriate for an arbitrator to be able to set aside the planning judgement of the council or

the advice of Historic Environment Scotland, no matter how unlikely it may be that this would occur in practice.

11.60 We have similar concerns in relation to the implementation of the illustrative landscape restoration plan. As the title suggests, this sets out a design concept. It is not a detailed plan. It has been prepared in ignorance of the final development and phasing that has not been determined yet. The cost estimates prepared by the applicant's advisors ([APP1.21](#)) can only be considered as providing a general indication at this stage. The bond value should be based on a detailed landscape masterplan that is in turn informed by the masterplan for the wider development. To rely on the general cost estimates prepared to date would be to accept a "cap" on the value of the landscape improvements without any understanding of the consequences.

11.61 All in all, we consider that in the circumstances of the development proposed to date, that the reliance on the use of financial bonds introduces unnecessary risks to a matter fundamental to the acceptability of the scheme. In particular, costs cannot be established with any certainty until detailed proposals have been prepared. Detailed proposals are not to be prepared until after the grant of planning permission in principle. This, to us, highlights the difficulty faced when a masterplanned approach is not followed. We cannot therefore recommend the draft planning obligations proposed by the applicant.

11.62 We consider that a superior approach to making sure that the consolidation of the castle and landscape restoration takes place would be to use a phasing condition. This planning condition would prevent the construction of the residential enabling development until the castle ruin had been consolidated and the landscape planting completed. Under this approach there would be no need to calculate the size of the bond or agree the wording of an agreement. It would be straightforward to enforce and provide an incentive for the developer to complete both timeously. We note that this was also Historic Environment Scotland's preferred approach.

11.63 The applicant could not agree to this approach as they argued that it would render the entire development commercially unviable. We accept that requiring a significant upfront expenditure would have implications for the commercial viability of the project. However, we have been provided with no evidence to justify this assertion. Providing a financial bond also has cost implications. Constructing the leisure and recreation development would also mean significant upfront expenditure. The applicant has accepted other unquantified costs. In any event, the purpose of a planning permission should be to set out what is necessary to make a proposal acceptable in planning terms. Whether an acceptable scheme is viable is a separate matter.

11.64 The council also considered that bonds were necessary for the improvements to Bellfield Interchange and the construction of the lake. We consider Bellfield Interchange below. We agree that it would be undesirable for the lake to be started but not completed. However, we cannot conceive of a set of circumstances where the tourism and recreation development went ahead but the lake was left unfinished. If the lake was unfinished other parts of the development would be as well. With any proposal there is always a risk that a development commences but for one reason or another construction stalls. It is rare and does not necessarily mean that the development is never completed. In any event, for the reasons set out above we consider phasing conditions would be a better means of control than financial bonds.

Long term maintenance of the castle and gardens and designed landscape

11.65 In chapters 3 and 5 we found that it was essential for there to be long term maintenance arrangements in place for the consolidated castle ruin and the restored gardens and designed landscape. In chapter 7 we also identified the need for long term management to secure the habitat management plan. It would be unacceptable for there to be no sustainable arrangements in place as otherwise the improvements would merely postpone but not address the deterioration of both historic assets or mean that the measures identified in the habitat management plan were not implemented.

11.66 We are not aware of any arrangements for the maintenance of the consolidated castle ruins. The applicant's position appears to be that the consolidated ruins would require no maintenance for a period of 20 years and the long term intention is for the castle to be converted into a hotel.

11.67 As there is no detailed scheme available for the castle as yet it is not possible to identify the likely maintenance arrangements with any certainty. We would be surprised that a structure without a roof would require no maintenance at all during a 20 year period. In any event, even if the applicant is correct, that does not address what would become of the castle after 20 years (ie just after the overall development had finished). Whilst the applicant may aspire to the ultimate restoration of the castle to a hotel, we do not consider that it is prudent to assume that this would occur. The matter of the long term maintenance of the castle has not therefore been addressed.

11.68 For the maintenance of the restored gardens and designed landscape the applicant proposes an "owner manager model." We presume the same arrangement would apply for any measures identified in the habitat management plan. A management company would own the common areas while the owners of the houses and commercial premises would be obliged to make an annual contribution to fund the maintenance.

11.69 We are aware that an "owner manager model" is often used in new residential housing estates. However, like the council, we are also aware of occasions where such a mechanism has proven not to be successful. If many residents refuse to pay the contribution funding can collapse, notwithstanding the legal right to sue for payment. With responsibility shared between many parties, it can be difficult to address any problems if the management company performs unsatisfactorily.

11.70 We have a number of other concerns. We do not consider that managing a garden and designed landscape or implementing a habitat management plan can be directly compared with managing public open space in a housing development. Whilst we accept that local residents and the commercial operators are important stakeholders there is no reason to assume that they would have any interest in maintaining the garden and designed landscape as a whole. We would suggest that residents are more likely to be interested in the amenity of their local area and the size of the annual charge. The management company would have an interest in keeping management costs low. Gardens and designed landscapes are designated in the public interest for their overall heritage contribution. The same would apply to measures to enhance habitats. The suggested arrangement does not appear to us to ensure that this is given sufficient consideration.

11.71 As it currently stands there is only an illustrative landscape restoration plan. This sets out an interesting design concept but it is not a detailed plan and it has been prepared

in ignorance of the final form of the development and its phasing. In chapter 7, we note the uncertainty as to whether Big Wood was included or not. We would have thought that the development areas and common areas could only be identified after the masterplan has been approved. This can only take place after the planning obligation has been registered and planning permission in principal granted.

11.72 Without knowing the precise areas, it is not possible at this stage to know what the annual management charge would be and whether this is realistic for householders to pay. We could understand a house owner being prepared to contribute to the maintenance of open space within their own localised area. Depending on the amount however, they may be reluctant to contribute to the upkeep of the avenues and woodlands which are of no immediate benefit to themselves. As currently written, costs are to be shared equitably. It is not obvious to us why a householder would agree to pay the same amount as the commercial operator of the indoor water park. It is not obvious whether there would be sufficient contributions at the beginning of the development when the number of householders would be comparatively low but when the early planting would still need to be maintained. It would be unacceptable in our view for concerns about funding of the maintenance, particularly in the early years of the development, to determine the quality of the approved landscape masterplan.

11.73 As explained in chapter 3, the castle is central to the garden and designed landscape. It is not obvious to us how management of the castle and grounds would be coordinated if the castle was considered to be development land (ie not in common ownership). As currently written, each individual owner within the development would have a vote, it is not obvious to us how potential different interests between the house owners and commercial businesses could be resolved.

11.74 In addition, it is not obvious how either the individual owners or the council could address a situation where maintenance was not carried out at all, or is of poor quality. At the hearing, the applicant suggested the council would be able to enforce the provisions of a planning condition requiring the approval of a landscape management plan. Leaving aside whether it is realistic for a single management plan to be able to address the needs for what would be a dynamic landscape, we consider that formal planning enforcement powers are a suboptimal mechanism to address localised management failings. In any event, if enforcement was pursued, and if for some reason the management company ceased to exist it would be difficult for the council to reclaim the costs of any action carried out in default. We can foresee the same difficulties in enforcing any failures to implement the habitat management plan.

11.75 The council's alternative of making all residents and commercial businesses the owners does not resolve our concerns. Historic Environment Scotland suggested some kind of performance bond, which could be called upon by the council if landscape maintenance was not carried out to an acceptable standard. However, no detailed wording was provided as to how this might be achieved.

11.76 We can foresee how the owner manager model might form part of the solution. However, an acceptable mechanism in our view needs to be able to demonstrate that the restored gardens and designed landscape would be managed as a whole (including habitat enhancement), that management objectives could be altered and adapted as the new landscape matures, that there are appropriate governance arrangements to ensure

appropriate quality and that there is a sustainable funding arrangement that would be sufficiently resourced to ensure the necessary quality of maintenance.

11.77 It may be that our concerns can be addressed by changes to the drafting of the deed of conditions. However, as submitted, we do not consider that adequate long term maintenance arrangements would be in place. We consider that as it currently stands there is an unacceptable risk that the management arrangements would not be sufficiently robust to guarantee a sustainable long term management arrangement for the restored garden and designed landscape or implementation of the habitat management plan.

Bus provision

11.78 As we discussed in chapter 8, there is agreement that initial support for a bus service is necessary to make the proposal acceptable in planning terms. However, we cannot at this stage agree with specifying the terms between the 60th – 300th house and 4 years.

11.79 Without a masterplan or phasing plan it is not possible to specify with any certainty when the support period should be. For example, when the 60th house is occupied there is currently no guarantee that infrastructure to support a bus service is available. Construction of houses may be slower than the applicant currently expects and 4 years could expire before a critical mass of population has established. As Strathclyde Partnership for Transport argued, there is no information before us to demonstrate that the 300th house is the point when a service could operate commercially. Indeed, Strathclyde Partnership for Transport doubted that such a service would be viable by the 300th house.

11.80 In addition we cannot accept that the contribution should be limited to £150,000 per year. The figure needs to be recalculated to represent the likely cost at whatever period the bus service is expected to operate and thereafter be indexed linked.

11.81 The council and Strathclyde Partnership for Transport suggested a requirement for a review after the 300th house and an option for a new planning obligation. Leaving aside whether the 300th house is the correct point for a review (see above), we cannot see how a section 75 obligation could be drafted requiring a further agreement for an unspecified sum for an unspecified period of time. If such a requirement could be drafted, we are doubtful that the applicant would be able to agree to it.

11.82 In our view, for this matter to be resolved further discussions are required between the parties. We would have thought that any agreement would need an understanding of the likely bus route and infrastructure to be provided within the development, an understanding of the likely build-up of population and an analysis of the optimum time when support would be required until it is likely that the service would be commercially viable.

Bellfield Interchange

11.83 There is no dispute that Bellfield Interchange needs to be improved by the 250th house. A plan exists for this improvement (appendix 12 of [CD1.46](#)). The works appear to mainly relate to land already within the highway. The applicant's draft planning obligation would require the council to make available any land. It is not clear to us why the council needs to make available land which is already in the highway for a scheme that is supported by the council and Transport Scotland. We note that Transport Scotland is

strongly of the view that a planning obligation is not necessary and that a suspensive planning condition is adequate.

11.84 As a general principle, planning conditions should always be used wherever possible. A suspensive planning condition would make the development acceptable. There would be an incentive upon the developer to work with the council and Transport Scotland to ensure that the improvement was carried out in time and it would be readily enforceable. A suspensive condition would protect the public interest, if, for whatever reason there was a delay in achieving the improvement. We therefore agree with Transport Scotland that the clauses in the draft planning obligations are not necessary to complete the improvement works to Bellfield Interchange.

Phasing

11.85 We agree that phasing of the development needs to be controlled. This is necessary so that the sequence of the development is acceptable and also that the provision of infrastructure and services is co-ordinated with the needs of the tourism and recreation development and that of the residents of the new community. However we see no reason why this has to be done in a planning obligation and would more appropriately be achieved by a planning condition.

11.86 The council is concerned that the residential enabling development may be built but that the tourism and recreation development may never commence. We agree that it would be undesirable for 1000 houses to be built and the leisure and recreation development to be left undeveloped.

11.87 The applicant's position is that the council's fears are misplaced and there is no intention for this to happen. In practice, we cannot foresee how a masterplan or phasing plan could be devised to disguise any intention not to build the leisure and tourism development, if that was a future developer's real intention. If it was obvious that there was no intention to construct the leisure and recreation development the council need not discharge the relevant conditions. In any event, the council's suggested trigger points were imprecise and not based on any understanding of the likely phasing, which has of yet not been devised.

Arbitration

11.88 Clause 13 of the applicant's draft planning obligation provides for arbitration. We are aware that an arbitration clause is common practice in many commercial agreements. We can see the utility of such a clause to resolve potential disputes over definitions or technical requirements. However, we agree with the council that it is unacceptable in principle for an arbitration clause to be used to substitute the planning judgement of the planning authority.

11.89 We accept that arbitration is a fall-back position and would only be a mechanism of last resort. Nonetheless, in the applicant's draft, an arbitrator could take a different position to the council, as advised by Historic Environment Scotland. That does not seem to us to be appropriate and we could not advise Scottish Ministers to accept an obligation with an arbitration clause as extensive as proposed by the applicant.

Other matters

11.90 Clause 12 of the applicant's planning obligation provides for the establishment of a community liaison group. This seems to us to be a sensible suggestion that has successfully occurred for other large scale developments.

11.91 In chapter 10, we express our concerns that there is insufficient assessment of the impact of the proposal upon schools, health services or the provision of services within the new community itself. We do not agree that the comments from the education department or NHS Ayrshire and Arran suggest that there would be no impact. We consider that their advice suggests that more analysis is required.

11.92 Once planning permission in principle was granted there would be no further opportunity to seek financial contributions if the development had an impact on local community services. We therefore recommend that if Scottish Ministers are minded to grant planning permission this is subject to a further analysis of the impact of the proposal taking into account an updated view on construction rates and the likely build-up of population.

11.93 The council sought a financial contribution of £500,000 for the regeneration of Galston and the funding of a woodlands officer. There is no policy link between the site allocation and Galston. Such a financial contribution is not necessary to make the development acceptable. We are aware of no evidence that relates the development to Galston, apart from general proximity or how the need for £500,000 has been calculated. We do not consider that such a contribution would comply with the tests set out in circular 3/2012. We can see that a woodlands officer may be desirable but we are aware of no evidence that such a post is essential to make the development acceptable. Again, we do not consider that such a requirement meets the terms of the circular.

Conclusions

11.94 If Scottish Ministers are minded to grant planning permission in principle the decision should be subject to a planning obligation. However, for the reasons set out above we cannot agree to the draft planning obligation suggested by the applicant or the revisions suggested by the council.

11.95 Under the circumstances we are only able to set out some general heads of terms that would require the parties to consider in more detail, namely:

- A mechanism or mechanisms to ensure the long term maintenance of the castle (pending a future use) and the restored gardens and designed landscape;
- Financial support for a bus service in the initial years of the development taking into account the provision of necessary infrastructure and the likelihood of a bus service becoming commercially viable;
- A further assessment of the impact of the proposal on community services and the needs of the future occupiers of the new community and either confirmation that no financial or other contributions are required, or measures identified to address any deficiency; and

- The establishment of a community liaison group.

11.96 A section 75 agreement requires the agreement of the council and applicant to any detailed wording. On the basis of the evidence we heard it is by no means guaranteed that the parties would be able to agree the detailed wording of our recommended heads of terms. It would therefore be important for Scottish Ministers to monitor the progress of any discussions. If after a reasonable period it is clear that agreement would not be possible then the applicant should be invited to prepare a unilateral undertaking addressing the above points for further consideration by Scottish Ministers.

CHAPTER 12: PLANNING CONDITIONS

Introduction

12.1 A hearing session to consider proposed planning conditions took place on 22 January 2018. Following discussions at the hearing and at our request, the council and the applicant submitted their respective final proposed planning conditions in February 2018 (appendices 2 and 3 of our report). Both were then circulated to Historic Environment Scotland, Transport Scotland and Strathclyde Partnership for Transport for comment. Their respective positions are provided below.

12.2 In reaching our conclusions on the proposed planning conditions, we also take account of the consultation responses from the Ayrshire Roads Alliance (Roads and Flooding), Coal Authority, Scottish Environment Protection Agency, Scottish Water, Scottish Natural Heritage, West of Scotland Archaeology Service, NHS Ayrshire and Arran, Health and Safety Executive, the council's economic development team, environmental health team, education service, and contaminated land and access officers (all previously summarised in chapter 1 of our report).

12.3 We also consider these matters in the context of guidance in Circular 4/1998 which sets out the government's policy on the use of conditions. Essentially conditions should meet a number of tests, namely that they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise, and be reasonable in all other respects.

Case for the applicant

12.4 The applicant recognises that site wide or whole development issues such as phasing and the public transport strategy should be addressed prior to any development taking place. However, a proportionate approach is required to address matters which are genuinely pre start in nature and where the details will be known at the outset. Many of the details addressed in the council's draft conditions will not be known prior to work commencing.

Masterplan

12.5 The applicant's position is that a detailed masterplan tied to a phasing plan is neither appropriate nor necessary at this stage of the project. The council's erroneous approach in this regard is highlighted. The conditions as proposed by the applicant adequately provide for a masterplan process. Conditions 1 to 4 (see appendix 2) include the parameters plan, the environmental statement addendum mitigation measures, and site wide pre-commencement conditions, including a) phasing scheme, l) landscape masterplan, m) landscape management plan, and p) strategic design code. Condition 4 addresses specified matters dealing with the requirements for each phase of development. These conditions provide certainty in relation to the overall coherence of the development, and protection of the garden and designed landscape, whilst retaining an appropriate degree of flexibility for each phase of development.

Phasing

12.6 Proposed condition 3(a) requiring submission of a phasing scheme, adequately sets out an approach which will ensure the development is informed by, and carried out in accordance with the (i) parameters plan, (ii) scheme of stabilisation and restoration, (iii) landscape masterplan, which in condition 3(l) shall take account of the principles set out in the conservation plan, illustrative landscape restoration plan and the landscape management plan. By contrast, the council's pre-commencement conditions are unrealistically restrictive. For example, condition 55 requires that prior to any development commencing on site full details of all buildings (sizes, heights, design and external appearance) are to be submitted for approval. The site and floor levels of all buildings are also required prior to development commencing. This fails to take account of the phased nature of development or the evidence regarding the build out/completion rates. The details will not be known pre-commencement, and requiring the details is not necessary for the whole site prior to any development commencing.

Planning Monitoring Officer

12.7 In response to the council's proposed condition 29(a), the applicant submits that this is the role of the authority and the requirement is not warranted. It is an uncertain and onerous obligation for a development which will span 17 years. It is important for the success of the proposal that there is a degree of certainty about cost, and requiring the applicant to provide a Planning Monitoring Officer would undermine it.

Galston regeneration

12.8 In response to the council's proposed obligation for a contribution to Galston regeneration, the applicant contends that such an obligation does not relate to the development, fairly and reasonably, or at all. It does not therefore comply with the terms of the circular, and is an irrelevant consideration. The applicant instead includes conditions relating to a Local Procurement Strategy (Condition 3(n)) and Training and Employment Management Plan (Condition 3(o)).

Case for the council

Masterplan

12.9 A masterplan is an imperative. It requires to be informed by the conditions suggested by the council (see appendix 3), including the strategic design code, and the conservation management plan. The masterplan process is fundamental to shaping the project positively at a strategic level, whilst protecting the existing historic assets, via the design code and conservation management plan. The applicant's parameters plan is not a masterplan. A well-informed masterplan is required to use as a basis for all future development affecting the application site.

12.10 The conservation management plan is a basis for the protection and enhancement of the garden and designed landscape, the setting of the listed buildings and the general protection of the landscape of the Irvine Valley (albeit it does not deal with the leisure and tourism elements in any significant detail).

12.11 The design code is also a key element in achieving good quality places, shaping the design process as appropriate to the historic assets on site. The council wish to avoid stereotypical suburban design which has little bearing to the local vernacular.

Phasing

12.12 Draft condition 4 requires submission of a strategic phasing plan and programme of works. This is fundamental to ensure that there is inter-linkage between works to the castle and numbers of houses; the works to the designed landscape and the leisure/tourism element; and progression of the development as a whole, but in particular the enabling housing, in tandem with the leisure and tourism proposals. The phasing plan should lay out how the development would be delivered in order to ensure it achieves the economic benefits of the leisure and tourism elements for the future economic development of the Irvine Valley and the wider area, rather than merely 1025 houses in the countryside with no related economic asset for future generations.

12.13 The condition stipulates that the phasing plan shall provide the mechanism(s) for the delivery of the consolidation works and adhere to the masterplan.

Planning and Monitoring Officer

12.14 Both a Planning Monitoring Officer and Ecological Clerk of Works (draft conditions 28 and 29) are necessary to ensure that the environmental responsibilities of the developer are, as a minimum, met. The non-renewable historic assets of the site require to be protected and managed positively. Some works will be highly disruptive and potentially damaging (quarry/lagoon excavation, possible blasting; ground disturbance; removal of habitats). The council acknowledge it has a duty to monitor planning conditions, however this duty is to every applicant and not to this applicant in particular. Given the scale and complexity of the development, and should the applicant wish to progress the development timeously, it is to the developers' advantage to fund these posts. There are many recent examples of such appointments in other permissions, including large wind farms.

Galston regeneration

12.15 The economic and social benefits suggested at the hearing session will be vital in ensuring that the development is not progressed in isolation to Galston as a settlement. The training and employment management plan, and local procurement strategy (in conjunction with the financial obligations suggested by the council for improvement works to the town centre and Woodland Officer), would be vital in achieving a long term meaningful and productive relationship with the residents and users of Galston.

12.16 Overall, the council consider it is vitally important that through the use of conditions and obligations appropriate mechanisms secure the delivery of the development as a whole. It is the securing of benefits beyond historical or conservation benefits related to the castle that is a significant issue. The potential social and economic benefits can only be secured if the development is delivered in its entirety.

Historic Environment Scotland

12.17 Historic Environment Scotland submitted a [hearing statement](#), setting out its position on conditions and obligations, and participated in the hearing session on 22 January. As noted above, Historic Environment Scotland also provided [written comments](#) in response to the updated recommended planning conditions of February 2018 from the applicant and the council.

12.18 If Scottish Ministers are minded to grant consent, robust conditions and/or legal agreements are essential to secure delivery of the positive outcomes for the historic environment at the appropriate time.

Masterplan

12.19 In respect of the council's proposed conditions, Historic Environment Scotland comments that a requirement to consult with Historic Environment Scotland should be added to condition 1 (masterplan).

Phasing

12.20 The preferred outcome is for the stabilisation and consolidation works to the castle and the restoration of the designed landscape to be complete before the housing or leisure developments commence. The phasing of the housing and leisure developments should allow for the least harmful aspects to be carried out in the earlier phases. If it is found that it would be appropriate for development to commence at an earlier stage, providing that bonding or other financial arrangements are put in place before commencement of development to ensure that the castle and designed landscape works are carried out, Historic Environment Scotland would be content with an approach where some new development commences at an early stage.

12.21 The final number of houses also needs to be informed by the revised scheme of consolidation required in conditions, and there needs to be a clear mechanism for agreeing that number.

12.22 In respect of the council's proposed condition 4a, Historic Environment Scotland considers that the lake is a key element of the proposal, and condition 4a should be amended to include reference to the lake at 4a iii (13).

12.23 It also welcomes the clear criteria for the consolidation of the castle in condition 4c and this should be replicated for the restoration of the designed landscape.

Long term maintenance

12.24 There should be adequate provision for long-term maintenance of the consolidated castle and the designed landscape and that Historic Environment Scotland is involved in the agreement of details of the scheme.

12.25 In terms of the applicant's proposed conditions, Historic Environment Scotland comments that there is not sufficient provision in the applicant's approach for the longer-term maintenance of the castle and designed landscape. It suggests that this is addressed in line with the approach by the council.

Other matters

12.26 In terms of the applicant's condition 1(parameters plan), Historic Environment Scotland's view is that 'substantial accordance' is not sufficiently precise, and this should be reworded to ensure that the development is in accordance with the parameters plan.

12.27 All of the application site is within the designed landscape. The reference to "areas with the application site not directly impacting on the designed landscape" in council's condition 53a (general landscape management) should be replaced by 'areas not directly related to the designed landscape restoration works'.

12.28 There is no specific requirement in regulations to consult Historic Environment Scotland on the applications in condition 55 (detailed design matters), therefore adding a requirement to consult with Historic Environment Scotland on these matters is suggested.

12.29 Subject to detailed comments above, Historic Environment Scotland are content that both the applicant's and the council's approach broadly address its requirements in terms of its future involvement in the details of the development should consent be granted. It welcomes the commitment to provide bonds for both the works to the castle and the designed landscape.

Transport Scotland

12.30 Transport Scotland submitted a [hearing statement](#), setting out its position on conditions and obligations. However, following a meeting with the applicant, council, Historic Environment Scotland and Transport Scotland, it did not feel it necessary to attend the hearing session.

12.31 Transport Scotland subsequently provided [comments](#) in response the updated recommended planning conditions from the council and the applicant.

Bellfield Interchange

12.32 In relation to the Bellfield Interchange, Transport Scotland request that this matter be covered a planning condition and not in terms of a section 75 agreement. It suggests that the condition should be along the lines of "no more than 250 residential units shall be occupied until the alterations to Bellfield Interchange roundabout, generally as illustrated in Local Transport Projects' Drawing No. LTP/1820/T1/03.01, are implemented to the satisfaction of the Planning Authority, after consultation with Transport Scotland".

12.33 It also questions why the council's proposed conditions (54a and 54b Bellfield Interchange works) need to be in two parts and considers the wording of 54b to be imprecise as it refers to non-specific works.

12.34 In terms of the applicant's draft condition 10 (Bellfield Interchange works), Transport Scotland comments that the condition should also include consultation with the planning authority.

Travel plan

12.35 Transport Scotland is satisfied with the council's draft condition 39 and the applicant's draft condition 5 relating to submission of a travel plan, as both incorporate its earlier recommendation to consult with Transport Scotland.

Strathclyde Partnership for Transport

12.36 Strathclyde Partnership for Transport submitted a [hearing statement](#), setting out its position on conditions and obligations. It participated in the conditions hearing session on 22 January and also provided [comments](#) in response to the updated recommended planning conditions from the council and the applicant.

12.37 It confirms that the council's proposed draft conditions 1 (masterplan); 4 (phasing plan); 5 (infrastructure delivery plan); 36 (bus stop infrastructure), and 37 (public transport strategy), will ensure that the site layout and overall delivery will support the introduction of a bus service in line with the phased delivery of the development. This in turn will encourage sustainable travel behaviour and support the potential for a viable bus service as far as possible.

12.38 There is concern about the applicant's rationale for addressing development phasing and infrastructure provision, and that there will be insufficient information available to support the development of a public transport strategy in the applicant's draft conditions 1 (parameters plan), 3 (preliminary site wide matters), and 4 (specified matters).

12.39 It is essential that information on footway and footpaths, road layout and detailed design are agreed alongside the public transport strategy in order to ensure that the strategy is then deliverable as the phases of the development are delivered. For any bus service that is introduced to have the very best chance at being viable, the route along which it will operate must be well planned, designed, phased and delivered.

12.40 As a minimum, a phasing scheme should be clear on the intended route along which the bus service is to operate, identify the parameters for that in line with Ayrshire Roads Alliance guidance, and identify the mechanisms required if this is likely to change as the site is built out.

12.41 In respect of both the council's and applicant's condition in respect of a travel plan, reference to consultation with Strathclyde Partnership for Transport should be made to reflect its role.

12.42 Strathclyde Partnership for Transport concludes that the conditions proposed by both the council and the applicant, in principle, address the issues it raised in relation to this application, subject to the inclusion of reference to Strathclyde Partnership for Transport in the travel plan condition. However, the drafting of the council's conditions creates a clearer framework to ensure that "the dominoes fall in the correct order" to support the introduction of a bus service and its operation throughout all phases of the development.

Reporters' conclusions

12.43 Following the hearing and the final exchange of suggested conditions, differences remain between the applicant and council. However, we would categorise many of these differences in terms of "style" and amount of information that is appropriate to be included in a planning condition, rather than fundamental differences over scope or intent.

12.44 Our starting point in any assessment is the guidance contained in circular 4/1998. One of the tests is that the condition and wording must be necessary. Both the applicant and council, when expressing conditions that required further information frequently included reference to some of the supporting documents and/or listed in detail the specific requirements that the further details should contain. The guidance states that the question that should be asked is whether, without the condition, planning permission should be refused. Planning conditions should achieve a specific end and not attempt to cover every eventuality. With a development of this scale and complexity we consider that it is reasonable to assume any developer would be supported by a team of professional experts who would be familiar with common requirements.

12.45 We consider that referring in general terms, for example, to the principles of the conservation plan does not aid precision or help future developers. Many of the documents submitted in support of the proposal, including the conservation plan are general in nature. In addition, whilst particular concepts or approaches are advocated, that does not necessarily mean that they represent the only acceptable solution. We are also mindful that due to the scale of development, construction is likely to take at least 17 years to complete. Over that time it is inevitable that standards and recognised good practice would change. In devising our recommended conditions we have avoided such generalised references where possible.

12.46 For similar reasons, when requiring the submission of further details we have avoided long lists of what such details should contain. We recognise that setting out the expectation of what further details should contain may be helpful in some circumstances. However, it has the disadvantage of giving the impression that such lists are exhaustive and again may date over the likely life time of the development. As all further details have to be agreed, we would expect any experienced developer to establish in advance what was required. If relevant and material information is omitted then the condition would not be discharged.

12.47 A number of the consultees advocated a phrase that required the planning authority to consult with them before discharging the respective condition. We can well understand that for a development of this scale and complexity that many consultees would wish to have further involvement. However, we consider that such a phrase is unnecessary. Firstly, we would expect that in practice the planning authority would consult with the relevant organisation. However, if the council failed to do so for any reason the phrase would have no practical effect because only the planning authority has enforcement powers. We have therefore avoided such phrases in our recommended conditions but this should not be interpreted as meaning that we consider future involvement of consultees unimportant or suggesting that it should not happen.

12.48 The council's usual practice in wording planning conditions appears to be to separate matters to be submitted and approved from the requirement to implement the approved details. We consider that this is a matter of style and have generally included the

requirement to implement approved details in the same condition. Wherever possible we have also grouped related matters into a single condition. These style differences largely explains the differences in the total number of conditions recommended by the council, the applicant and ourselves. We consider that our approach results in a set of conditions that focuses upon the essential elements that a future developer must address.

Timescales

12.49 There was general agreement that for a proposal of this scale that the time periods specified in Section 59 of the Town and Country Planning (Scotland) Act 1997 were not appropriate or realistic. Bearing in mind the anticipated construction period, the time to submit matters specified in conditions should be increased from 3 years to 17 years and the time for development to begin should be increased from 2 years to 3 years. As these are periods set out in the legislation, if Scottish Ministers are minded to grant planning permission in principle the periods must be altered by way of a direction when issuing the decision.

Defining the planning permission

12.50 The actual description of the development in the planning application form states that it is for as many houses as is necessary to enable the complete restoration of the castle to a hotel. Unless qualified by a planning condition this would mean an open ended number of houses as enabling development, which we do not consider would be acceptable. In any event, it is now the position of the applicant that 1025 dwellings would fund the consolidation of the castle ruins. As explained in paragraph 1.9, the enabling development would not provide for either a shell or a hotel. This should be made clear in a planning condition to clarify the scope of the permission.

12.51 Historic Environment Scotland argued that the final number of dwellings could only be established after a finally approved scheme of consolidation and that conditions or obligations should provide for a mechanism for agreeing that final number. We cannot see how such a condition could be devised or consider it is acceptable to grant planning permission in principle for an as yet unspecified number of houses. It is clear to us that the applicant is seeking 1025 houses and that should be specified if Scottish Ministers were minded to grant planning permission in principle.

12.52 We do not consider that specifying linkages to the parameters plan or the mitigation measures set out in the environmental statement provides sufficient precision in defining the planning permission. Instead we recommend that the key restrictions regarding the uses, quoted floorspaces and building heights should be specifically stated. To address the [comment](#) from the Health and Safety Executive the distillery should be restricted from storing any notifiable quantities of any hazardous substances.

Phasing

12.53 The timing and phasing of the castle and designed landscape works in relation to the leisure and tourism development as well as the enabling residential were discussed at length at the hearing. We recognise that any phasing provisions would be complex and inter-related, and although indicative phasing is provided in the environmental statement, to date, no detailed phasing plan has been prepared.

12.54 Historic Environment Scotland confirmed that its preferred outcome is for consolidation and restoration works to the castle and the restoration works to the designed landscape to be complete before the housing or leisure development are commenced. The phasing of the overall development should be clearly tied to key milestones for works to the castle and designed landscape.

12.55 In response to our questions at the hearing, Historic Environment Scotland witnesses commented that in an ideal world, the preference is to carry out works to the castle and designed landscape as quickly as possible but recognise that for practical and commercial reasons there needs to be some flexibility. In its view, it may be appropriate to agree a phasing proposal and further discussions are needed to determine what elements need to be prioritised. It also agrees that a planning condition is a more straightforward mechanism to enforce rather than a bond.

12.56 For the reasons we set out in chapter 11, we consider a phasing condition is a superior mechanism for making sure that the castle ruin is consolidated and that the gardens and designed landscape is restored, compared to the use of financial bonds. We recognise that such a condition would have commercial implications but overall carried less risks than the alternative mechanism proposed by the applicant. There was no dispute about the phasing requirements for the improvement to Bellfield Interchange or the provision of the second (northern) access and we have included these in our recommended phasing condition.

12.57 There was agreement that there needed to be a phasing scheme for the overall development in terms of the sequencing of each development area and provision of necessary infrastructure and we have included that in our recommended masterplan condition. The council sought, in the planning obligations and conditions a limitation preventing the enabling residential development to be completed but without the leisure and tourism development being completed. We believe that the phasing requirement in our condition 2 would allow the council to exercise appropriate control without specifying potentially inflexible or unrealistic trigger points.

Preliminary site wide matters

12.58 There is extensive submitted material which describes the current base line condition of the site and surrounding area. There is less information on the form of the development which has not been decided yet. There was general agreement that certain site wide information was essential in order to either formulate a masterplan and/or develop further design details. However, we consider that these matters should be restricted to those that are genuinely site wide and essential to realistically identify the extent of the developable areas. We have therefore included the intrusive investigation for previous coal workings and measures to safeguard the private water supplies. Many of the matters listed by the applicant and council in their equivalent condition we have addressed in separate conditions, and expect them to be addressed in a masterplan or later in the design details for each individual phase.

Masterplan

12.59 The provision of a masterplan is an area of disagreement between the council and applicant. As we previously noted in chapter 2, policy Rural Area 4 refers to masterplanning for the tourism related development. We also noted that policy OP1 refers to masterplans. We concluded, that for all practical purposes the intention of the development plan is that the development of the site, including any enabling development needs to be masterplanned.

12.60 The council confirms that submission of a masterplan is a requirement of policy Rural Area 4 and includes this as draft condition 1. It also requires submission of a business plan to complement the masterplan. The council suggests it may provide more detail on specific projections and whether the project is viable or not. We have concluded in chapter 4 that there is insufficient information to justify the scale of residential enabling development. In our view, the requirement for a business plan would not address our concerns. However, if Scottish Ministers are satisfied that the scale of residential development has been justified there would be no need for any further financial information. As a matter of general principle, it is not for the planning system to determine the viability of a development project.

12.61 The applicant submits that components of a masterplan had been provided in the form of the parameters plan, illustrative layout plan, illustrative landscape restoration plan, design statement and information regarding phasing in the project description contained in the environmental statement. The applicant's condition 1 therefore proposes a standalone condition 1 requiring development to be in substantial accordance with the parameters plan. Condition 3 requires submission of a separate landscape masterplan, landscape management plan and design code.

12.62 We cannot accept that the largely illustrative material submitted with the application or subsequent additional site wide information adequately addresses the need for a comprehensive and co-ordinated framework for the development. We consider that only a masterplan could combine, for example, the road layout with the drainage layout in order to realistically identify the developable areas and areas of open space. We cannot foresee how the design details of individual areas of the site can be meaningfully assessed without a masterplan. We therefore have recommended a condition requiring the submission of a masterplan prior to the consideration of specific design details which should include the road layout, the developable areas, areas of open space, the drainage layout, a phasing plan and a design code.

12.63 There was a long list of potential matters to be considered in formulating a masterplan and matters that should be included in any masterplan. We have reviewed the suggestions of the parties to ensure that only the essential key matters are addressed.

Castle works

12.64 As we are proposing to secure the consolidation of the castle ruin by using a phasing condition there is no need for a mechanism to identify the size of the financial bond. There is a need for an agreed scheme to be approved so that there is a detailed proposal to be completed before the residential enabling development can commence. We would assume that in practice this would be the same scheme as received listed building consent.

12.65 In chapters 3 and 11 we identify the need to ensure the castle ruin is maintained in the long term. Depending on the outcome of the further discussions regarding our recommended heads of terms, the wording of the condition may need to be altered with regard to maintenance provisions.

Landscape masterplan and management plan

12.66 As with the castle ruins, as we are proposing to secure implementation of the restored gardens and designed landscape using a phasing condition there is no need to establish a cost for a financial bond. Nonetheless, a detailed plan needs to be prepared and submitted for approval. To be meaningful, such a plan would need to take into account any site wide matters (for example the location of sustainable urban drainage ponds), the form and the phasing of the development. There is no point in carrying out early planting if at a later stage it had to be altered to allow services to link different parts of the development. For obvious reasons, it would be necessary to make sure that any early planting would not be compromised by subsequent development including the alignment of roads and services. The landscape masterplan must therefore be informed by the overall masterplan.

12.67 In chapters 3, 5, 7 and 11 we identify the need for there to be a sustainable arrangement for the maintenance of the restored gardens. We do not consider that the “owner manager model” is appropriate and recommend that further discussions take place. Depending on the outcome of these discussions the wording of the condition regarding long term maintenance may need to be altered.

Lake and specified matters

12.68 We agree that the proposed lake would be a significant civil engineering project in its own right. The details of such a feature would need to be assessed. However, as we do not consider that a financial bond is necessary, we see no reason why the details for the lake need to be treated any differently from the detailed design and layout of any other part of the development.

12.69 It is normal for planning permission in principle to set out specified matters that would be included in future applications for matters specified in conditions. We have reviewed the suggestions of both parties and identify key matters that relate to the individual phases of the development which should be provided for approval. The individual phases would be identified in the masterplan.

Road improvements

12.70 The matters set out in our recommended condition 8 were all identified as a result of the transport assessment and there is agreement that they are necessary and should be provided before the enabling development is occupied. The only exception is the second northern access, which as set out in condition 2(c)(ii), is required to be in use for the 251st house. For convenience, we have grouped all the requirements into a single condition.

Other matters

12.71 There was no dispute that conditions relating to vehicle charging points, energy efficiency of buildings, construction environmental management plan and travel plan were necessary. As set out above, we have edited the versions provided by the parties to remove what we consider to be unnecessary detail.

12.72 We cannot agree that requiring a planning monitoring officer is necessary or reasonable. We accept a development of this scale would have significant resource implications for East Ayrshire Council planning department. However, the council is the statutory planning authority with, amongst others, specific enforcement powers. We are aware of no policy guidance that suggests that developers of major developments should fund or contribute to the planning enforcement service of a planning authority. We consider that such a condition would fail the policy tests of being necessary and reasonable.

12.73 We accept that an ecological clerk of works, a transport co-ordinator, a local procurement strategy and an employment training plan would all be desirable. We recognise that the applicant is agreeable to these conditions. There would be nothing to prevent the developer carrying out these roles and strategies if they wanted to do so. However, we do not consider that they are necessary to make the development acceptable. We consider that the necessary safeguards regarding habitats, species and a travel plan are provided in our recommended conditions. A specialist post might assist but it is not in our view essential. How a developer procures materials or trains its staff or contractors is a matter for themselves and not directly related to planning matters. Irrespective of the planning conditions, there would be nothing preventing the council and developer reaching their own separate agreements to maximise the local economic benefits of the proposal. Had the current applicant not agreed to these conditions we do not consider that this would have justified the refusal of planning permission.

12.74 We also do not consider a water impact assessment or a restriction on bringing in materials are necessary. Separate legislation relates to the connection of new development to water supplies, sewerage and other utilities. If the developer cannot secure these, the development would simply not happen. Importing new material into the site to change levels would represent a cost and is likely to be controlled by other legislation. In any event, if imported material was necessary it would be a matter that could be addressed in the preparation and approval of the construction environmental management plan.

Conclusions

12.75 For the foregoing reasons, we conclude that if Ministers are minded to grant planning permission in principle for the proposed development, it should be subject to the conditions listed in appendix 4 of our report. However, bearing in mind our recommendations in chapter 11, regarding further discussions over the heads of terms, some of these conditions may need to be reviewed in the event that a planning obligation was prepared.

CHAPTER 13: OVERALL CONCLUSIONS AND RECOMMENDATIONS

Statutory framework

13.1 The planning application is for planning permission in principle and therefore Section 25 of the Town and Country Planning Act (Scotland) 1997 applies. Section 25 requires Scottish Ministers to make a decision in accordance with the provisions of the development plan unless material considerations indicate otherwise.

13.2 The site contains two listed buildings, the category A listed castle and the category B listed cottage. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 applies when considering whether to grant planning permission for a proposal which affects a listed building or its setting. Section 59 requires Scottish Ministers to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Preliminary matters

13.3 The planning application before Scottish Ministers is for the area of land shown red in [\(CD1.28\)](#) and as described in the planning application form as:

“Leisure and tourism development including: 450 holiday lodges; 12 glamping pitches; restoration of castle to shell conversion to hotel; new leisure facilities including lake, indoor water park with retail plaza and restaurants (6,500 square metres), water sports building (600 square metres), indoor sports (5,000 square metres), spa (2,000 square metres) and cycle store. Erection of distillery (1,552 square metres) and community heat plant (476 square metres). Erection of phased enabling development, with a first phase of 300 residential dwellings, and additional phases of residential dwellings that will enable the complete restoration of the castle to a hotel; community facilities and infrastructure.”

13.4 The above description refers to an option to convert the castle to a hotel (subject to viability). Our understanding of the applicant’s position is that the proposed enabling development (1025 houses) is only sufficient to consolidate the existing castle ruins and our assessment of the proposal is undertaken on that basis. The application included a large number of supporting documents. However, this material is illustrative, indicating how the development could proceed. This material is not before Scottish Ministers to determine.

13.5 The submitted environmental statement and the environmental statement addendum made certain assumptions for the purposes of carrying out the assessment of environmental impacts, including the height of buildings and the amount of residential development. However, these assumptions would only be part of the planning permission if they were specified in the planning conditions attached to any planning permission.

13.6 On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning Environmental Impact Assessment (Scotland) Regulations 2011 and introduced changes to the processes and requirements. However, in the transitional arrangements, the 2011 Regulations continue to have effect for an application for planning permission where the application and environmental statement in connection with the application was received before 16 May 2017. This was the case for this

application. We have therefore followed the 2011 regulations as they applied before 16 May 2017.

13.7 The environmental statement and later addendum were prepared after consultation with the appropriate organisations and were subject to further consultation when submitted, as required by the relevant regulations. Below we set out our conclusions on the main areas of dispute, including matters assessed in the addendum. As set out below, we did find some significant environmental effects which in our opinion would be unacceptable.

Determining issues

13.8 The proposal is large scale and complex involving 3 inter-related elements. The impacts and considerations are in turn, inevitably inter-related. Based upon the evidence before us, and bearing in mind the provisions of the development plan we consider that the determining issues are:

- Whether the principle of the development complies with policy Rural Area 4 and policy Res 13 of the East Ayrshire Local Development Plan;
- Whether the impacts on the various heritage assets within the site are acceptable;
- Whether the scale of enabling residential development is the minimum necessary;
- Whether the landscape and visual impacts are acceptable;
- The scale of the predicted economic and social benefits and the weight to be attached to such benefits;
- Whether the impacts on natural heritage are acceptable;
- Whether the impacts on transport, including the provision for buses is acceptable;
- Whether the appropriate flooding and drainage measures could be incorporated into the development;
- Whether the impacts on community services, the planning of a new community, land stability and residential amenity are acceptable; and
- Whether planning conditions and planning obligations can be proposed to mitigate any residual impacts and make the proposal acceptable.

The provisions of the development plan

13.9 To be technically accurate the development plan consists of the East Ayrshire Local Development Plan (adopted April 2017), those parts of the Ayrshire Joint Structure Plan that remain in force (relating to mineral development) and any formally adopted statutory supplementary guidance. However, there was agreement that for practical purposes the

key provisions of the development plan are contained in the East Ayrshire Local Development Plan.

13.10 In chapter 2 we found that one of the planning objectives of the local development plan is to support the sustainable economic development of East Ayrshire and tourism has been identified as a key opportunity. The application site under policy Rural Area 4 has been allocated for tourism and recreation development, to see the castle and grounds restored with a recognition that to achieve this, some enabling residential development would be necessary. In general terms, this is what is proposed in the submitted planning application.

13.11 We also found that policy Rural Area 4 (the site specific policy) and policy Res 13 (enabling development) were the key relevant policies. The general policies OP 1 and OP 2 were also relevant, although they duplicated many matters set out in policies Rural Area 4 and Res 13. There are a number of technical and environmental policies that we list in paragraphs 2.149 – 2.154 that are potentially relevant, although many would become more relevant when detailed proposals have been prepared. We accepted that these other policies had to be considered in the context of the site specific policy Rural Area 4.

13.12 We also found, bearing mind the policies of the development plan as whole, that the residential enabling development had to function as an acceptable new community in its own right, irrespective of considerations of the scale of enabling development.

13.13 There are many other Scottish Government and others' policies and guidance that are relevant. However, these other policies and guidance do not add a different policy dimension and in our view can be seen to complement and support the local development plan.

13.14 In closing submissions, it was argued on behalf of the applicant that the council's approach to the interpretation of policies Rural Area 4 and Res 13 was wrong in law. We do not agree.

13.15 Taking policies Rural Area 4 and Res 13 together, in summary, we found that the key policy tests that had to be met were that:

- The development in general, and the enabling residential development in particular, had to be sympathetic overall, taking into account all elements, balancing any adverse impacts against benefits and in the context of a site specific allocation;
- The submitted information should demonstrate that an adequate masterplan approach has been followed; and
- There should be sufficient financial information to demonstrate that the minimum level of residential enabling development is proposed.

13.16 In particular we do not agree that policies Rural Area 4 and Res 13 have been drafted to prevent the consideration of any contribution from the wider tourism and recreation development in determining the scale of residential enabling development. This is because it would be illogical to ignore returns from the tourism and recreation development if the objective is to minimise the number of houses to be built. We did accept

that how such information was interpreted had to take into account the different commercial nature of such uses. In any event, the applicant's submitted information does include contributions to elements of the renovation of the castle and its grounds from the tourism and recreation development.

13.17 Finally, the proposal and any planning permission must secure any conservation and other benefits if they are to be taken into account and provide an adequate framework for the sustainable long term management of the castle and its grounds.

Impact on heritage assets

13.18 The identified heritage assets are the A listed castle, the associated curtilage buildings, the B listed cottage, the settings of the castle and cottage, the designated gardens and designed landscape and any archaeological assets that there may be.

13.19 In chapter 3 we find that there would be no unacceptable impacts on the B listed cottage or its setting. We find that there is general agreement that the ruined castle is currently unstable and continues to deteriorate. Whilst a challenging project, there is no disagreement that the ruin can be stabilised and consolidated as a ruin. The precise details and method would need to be agreed later but there is no reason to assume that an appropriate proposal would not receive listed building consent. We consider that the consolidation of the ruin would be an important conservation benefit.

13.20 The stabilisation and consolidation of the castle as a ruin is proposed to be secured by a financial bond. As we set out below, we have concerns about how effective a financial bond would be in securing the stabilisation compared to a phasing programme.

13.21 We also find that the long term maintenance arrangements are uncertain. There can be no guarantee that the castle would ultimately be converted into a hotel. We are not aware of any proposal for the long term maintenance of the castle if it remains as a ruin. Only limited weight can be attached to the benefit of consolidating the ruins if, thereafter, there are no mechanisms to ensure long term maintenance.

13.22 We carry out a separate analysis of the impact of the proposal on the setting of the castle and the garden and designed landscape, although in our view the spatial extents are similar. We conclude that there would be significant impacts, principally from the scale of the enabling residential development, when all the physical changes that are likely for approximately 1000 houses are considered, overwhelming the current landscape framework and creating a wholly new place. In our view, this would be detrimental to the setting of the castle and to the qualities of the garden and designed landscape.

13.23 We accept that new planting along the lines indicated in the illustrative landscape restoration plan would have important benefits and could help mitigate the impacts. However, the final form of the woodland planting is uncertain at this stage and for the reasons we explain below, we do not consider that the proposed management arrangements would be acceptable.

13.24 We therefore find that there is an unacceptable risk, in the context of a proposal of this scale and complexity that:

- There would be no long term provision for the maintenance of the consolidated castle ruin;
- There would be adverse impacts on the setting of the castle due to the uncertainty over the provision and maintenance of the assumed heritage benefits; and
- There would be adverse impacts on the designated garden and designed landscape due to the lack of certainty over the assumed restoration of the gardens and their long term maintenance.

13.25 Overall, we conclude that the impact of the scale of the proposed residential enabling development would not be sympathetic and would be contrary to policy Env 4.

13.26 There was agreement that archaeological assets fell into two categories. Those relating to the castle and those within the wider site. Significant provision was made in the budget estimate for archaeological work resulting from the stabilisation and repair of the castle. There was also agreement that any archaeological assets within the wider site could be safeguarded by an appropriate condition. We therefore conclude that there was no reason to assume that impact on archaeology would preclude the development.

Scale of enabling development

13.27 In chapter 4 we conclude that the basis for establishing the need for enabling development is demonstrating that an overall conservation deficit exists. We find that no overall deficit has been quantified. We note that selected elements of the project are intended to be funded from income derived from tourism and recreation development. The lack of transparency is unhelpful and leads us to conclude that inadequate financial information has been provided. We find that the proposal is contrary to policy Res 13 and the key principles set out in paragraph 142 of Scottish Planning Policy and in the English Heritage guidance.

13.28 We find that stabilising the castle ruins is technically possible and could be completed for a likely cost of between £13 million - £15 million in 2016 prices. However, by the time the works could actually take place, it is far more likely that these costs would have increased because of likely further deterioration and possible changes to methodology.

13.29 We also find that even if the applicant is correct and any contribution from the wider development should not be considered, the scale of the proposed residential development over such an extended period makes any development appraisal so uncertain that it is a doubtful tool to indicate even an approximate scale of enabling development.

13.30 Even if the development appraisal is considered an appropriate tool, we do not consider that inherently conservative assumptions have been made. In our assessment of the evidence, it is likely that more than 1000 houses will be needed to fund the stabilisation of the castle.

13.31 In our opinion, the financial information submitted is so uncertain that any decision to grant planning permission in principle would have to be taken in the knowledge that there is a significant risk that:

- The overall development is not viable and would not commence; or
- More houses than were strictly necessary were constructed; or
- Costs relative to income are higher than assumed leading to pressure to amend the stabilisation scheme, reduce costs (and hence quality) of the proposed housing development or increase the number of houses, or
- A combination of all three.

Landscape and visual impact

13.32 In chapter 5, we find that despite the disputes over methodology, when read as a whole and in conjunction with the council's critique, the submitted landscape and visual impact assessment is an adequate basis for understanding the likely landscape and visual effects.

13.33 There is general agreement that the landscape and visual effects would not be extensive and generally contained well within the 5 kilometre study area. The most severe landscape and visual effects would occur during the peak construction phase, which would include extensive felling of existing woodlands. It is currently envisaged that these would occur in the first 3 years of the development. These effects would be readily appreciated from within the site, within the vicinity of the site and from locations on the southern side of the Irvine Valley. However, in the context of a site allocation and where extensive felling of commercial woodlands would occur in any event, we do not find these effects to be unacceptable.

13.34 Gradually, over time, as the residential development is built out and the extensive woodland planting matures (assuming that such planting could be secured and that it was properly maintained), adverse landscape effects would reduce and significant beneficial landscape effects would increase. This would be appreciated from the same locations until a point was reached where screening would mean that any visual change would be reduced below a significant level. This would occur over a period of 10 – 17 years. We do not consider that this could be considered as temporary or short term.

13.35 The main component of any adverse landscape and visual effects is from the residential enabling development. This is due to a combination of the scale of the development, its location on the elevated northern fields and the time taken to construct the development.

13.36 There is uncertainty over the detailed form of new woodland planting, although as we explain below we believe an approved scheme could be secured by a phasing condition (although the applicant does not agree). However, again as we explain below, we believe that as the proposal currently stands there is no acceptable long term maintenance arrangement. Without an acceptable management arrangement, there is an unacceptable risk that any planting would deteriorate which would introduce unsympathetic landscape and visual impacts, which would be contrary to policy Env 8.

Economic and social benefits

13.37 In chapter 6 we note that an important element of the whole rationale for policy Rural Area 4 is to support sustainable economic development and that providing an opportunity for a large scale tourism and recreation development is an important component of that strategy. This is consistent with a range of national and economic policies.

13.38 There is no dispute that the economic analysis provided by the applicant has followed a recognised methodology for such an analysis. We note that any such predictions at this stage have to be treated with a degree of caution. Circumstances would inevitably change over a 17 year period, including for example, the final form of the development, changes in work practices or government multipliers.

13.39 There is also general agreement that the proposal would have other social benefits aside from job creation, such as increased training opportunities, the creation of new facilities for local use and greater support for local services and facilities.

13.40 However, notwithstanding the caveats noted above, there is general agreement that in principle the proposal would promote tourism development, including facilities and accommodation. The proposal would improve and expand on the range and quality of visitor accommodation and leisure facilities, not only in East Ayrshire but in the wider regional context. On the whole, and based on a fully operational development, the proposal has the potential to bring significant positive economic benefits to East Ayrshire and the wider area, in line with Scottish Government and council policy objectives. The leisure facilities and holiday accommodation in particular would give a significant boost to employment and tourism in the area.

13.41 In closing submissions, the applicant claimed that the proposal was a unique opportunity. In our experience this is a claim frequently made by promoters and obviously every individual piece of land and property is unique. However, we do not consider that this is an accurate description in the economic sense. It is likely that there are other locations across Scotland where a tourist and leisure development of a similar scale could take place. We are unaware of any reason why, if planning permission was refused that an alternative proposal addressing any concerns could not be developed.

Impacts on natural heritage

13.42 In chapter 7 we note that the site contains a provisional wildlife site where policy Env 6 applied. The submitted environmental statement addendum identified significant impacts during construction on woodland habitats, badgers, bats and some bird species. The Woodland Trust, Scottish Wildlife Trust (North Ayrshire Members Group) and the Architectural Heritage Society of Scotland objected to the proposal regarding impacts on natural heritage.

13.43 We agree with the conclusions of the environmental statement addendum that the most severe impacts would occur during the peak construction period, which includes extensive felling, intended to take place during the first 3 years. The extent of these impacts would gradually reduce as the initial intensive construction period was completed, the residential development was built out and planting matured over 10 – 20 years (assuming the planting is secured and thereafter maintained). We accept that the new

broadleaf planting, once mature, which could take a number of years, would have beneficial natural heritage impacts.

13.44 A range of mitigation measures is proposed, which include extensive new planting, further surveys, the need for further licences, habitat management plans and the appointment of an ecological clerk of works. In the context of a site allocated for development under policy Rural Area 4 and assuming appropriate conditions and obligations that secure the planting and its long term maintenance, we consider that the proposal could comply with policy Env 6. In the particular circumstances of the development site, we cannot agree with the objectors that the extent of recorded ancient woodland or particular species should preclude development.

13.45 However, in our view, it is essential for satisfactory long term management arrangements to be in place to secure the proposed new planting and habitat enhancement measures. For the reasons we explain below, we do not consider that the model proposed by the applicant is acceptable. Without adequate long term management there is a risk that the proposal would not have sympathetic impacts upon the natural heritage of the site or its surroundings or comply with the objectives of policy Env 6.

Impact on transport

13.46 In chapter 8 we set out the policy requirements for acceptable transport provision which included: adequate capacity for the traffic generated; safety considerations; design considerations; bus provision and the provision for active travel. We note that Policy OP2 highlights the provision of a bus service as a necessary mitigation measure for the proposal to be acceptable.

13.47 The conclusions of the updated transport assessment state that there was adequate highway capacity within the surrounding network, subject to some relatively minor alterations to the Bellfield Interchange. We note that, subject to conditions, neither Transport Scotland nor Ayrshire Roads Alliance have any objections. We observe that the submitted transport assessment assumes that the proposed tourism element of the scheme could potentially be constructed and operational by 2020, with the full development complete by 2035. Bearing in mind all the matters that would have to be resolved, we consider 2021 would be the earliest in practical terms when a start could be made. It is possible this could slip further. There is no guarantee that the development would be finished in the 17 years predicted by the applicant. Nonetheless, we have no reason to believe that this would alter any of the key conclusions.

13.48 The conditions and planning obligations that would be necessary to make the proposal acceptable in transport terms have a number of physical, timing and cost implications. In reaching our overall conclusions, we have taken into account the likely physical impact of requirements for road design, second access and bus provision in our assessment of the heritage impact and landscape and visual impact. In assessing the development appraisal we note its assumptions regarding off site transport works and bus provision costs and conclude that they are not inherently conservative or based on a worked scheme. In our view such cost estimates could increase.

13.49 The applicant's draft planning obligation makes provision for subsidising a bus service from the 60th to 300th house or for 4 years. The assumed cost is £600,000. This provision is only acceptable if it is presumed that a realistic bus route is available by the 60th

house and by the 300th house (or less if construction is slower than 60 houses each year) a commercial bus service is viable. We have seen no evidence to demonstrate that this would be the case. Strathclyde Partnership for Transport stated that it was impossible to know with the information currently available when the service may become commercially viable and a longer time period may be necessary.

13.50 The difficulty we foresee, is that without even a provisional masterplan or phasing plan it is impossible to predict how a bus service could operate both in terms of financial support and practically in terms of a safe route through a development under construction. Based on the information before us and the approach advocated by the applicant this information can only be known following the signing of the obligation. This does not seem satisfactory to us, highlights the difficulty of not adopting a masterplanned approach and presents a risk that the sum of £600,000 may not be adequate, if, as seems likely, support needs to be extended. We do not consider that it is satisfactory to end a bus service after 300 dwellings have been constructed when there is a further 700 remaining.

13.51 We accept that this issue may be capable of agreement if further discussions were held over the detail of a planning obligation. Our recommended planning obligation sets out a head of term which is not restricted to the 300th house. However, any increased costs cannot be known by the applicant at this stage. This may mean that an agreement is not possible.

13.52 Overall, we conclude that the impact on transport matters is unlikely to preclude the development in principle. However, there are a number of implications that the applicant does not appear to have addressed. Unless these can be addressed and resolved, we do not consider that the proposal can be considered acceptable in transport terms and that it would conflict with the objectives of policies OP2, T1 and T2.

Flooding and drainage

13.53 In chapter 9 we note the policy context set out in the local development plan and Scottish Government guidance regarding flooding and drainage matters. Note 3 of policy Rural Area 4 also requires a flood risk assessment in relation to potential risks from the River Irvine and smaller watercourses that cross the site. The original environmental statement considers the impact of flooding and drainage in chapter 9 and associated appendices.

13.54 We note that the preliminary flood risk assessment and drainage impact assessment shows an indicative sustainable urban drainage layout which would achieve a similar greenfield surface water runoff rate. However, this layout does not show any implications of potentially having to resize the necessary drainage channels including existing minor watercourses. We also note the concerns raised about the possible design implications necessary to avoid flooding from the existing water courses in an extreme rainfall event. We accept that this matter might be capable of being addressed without any significant design implications but as it stands this could not be guaranteed.

13.55 Overall, we conclude that there is no reason for flooding and drainage matters to preclude the development of the site in principle. However, there are a number of detailed matters that remain to be investigated and designed. The applicant is reliant on this further work having no significant implications on the overall proposal, including maintenance. We do not consider that it is prudent for a development of this scale and complexity to assume

that there would be no implications and could not describe this as an adequate masterplanned approach.

Other matters (*including community services, residential amenity, ground stability and energy*)

13.56 Regarding the provision of community services, we do not agree with the applicant's claim that the impacts of the development on local services would be negligible. We do not consider that the detailed responses from the council's education department and NHS Ayrshire and Arran endorse this assertion. On the contrary, we consider that they indicate that further information is necessary.

13.57 We are mindful that the development would take at least 17 years to complete and that a more thorough assessment than provided is necessary. If financial provision is needed, then it has to be identified at the planning permission in principle stage. The suggested condition over phasing of the development could potentially be used to ensure adequate provision. However, restrictions in the rate of residential development have not been factored into the development appraisal.

13.58 Overall, we consider that there has been inadequate detailed assessment of the impact of the proposal on local services. Consequently, there is insufficient information to demonstrate that there would be acceptable provision of community facilities to meet the needs of a new community. In our view, the reliance on providing masterplanning and phasing information after the grant of planning permission in principle holds significant risks and does not demonstrate a masterplanned approach. As it currently stands, we do not consider that the applicant has demonstrated that a new community could function in its own right, irrespective of the financial arguments regarding the need for enabling residential development.

13.59 In relation to residential amenity, we consider the impact on nearby residential properties in terms of visual change, noise, air quality and light pollution. The closest properties would experience significant change to their local environment as a result of the proposal. The most noticeable impacts would occur during the peak construction period (ie the first 3 years). Although construction of the housing is predicted to last 17 years, it is presumed that the actual area of construction will move from west to east and therefore would move away from the existing houses within the site over time.

13.60 In the context of a site that has been allocated for significant development and subject to conditions and appropriate assessment of detailed design matters we do not consider that the impact on nearby residential properties would be unacceptable or be contrary to the relevant planning policies designed to protect residential amenity.

13.61 The consultation response from the Health and Safety Executive was discussed during the hearing session with the parties. The applicant has no intention for the distillery to be of such a scale that storage of hazardous substances is likely to be an issue. We agree that this can be controlled by a condition restricting the storage of hazardous substances.

13.62 In relation to ground stability, it is clear that mining and other activity has occurred in the past. The applicant has carried out a risk assessment and concluded that it is likely that this will be spatially concentrated and therefore need not be considered an abnormal

cost in relation to the development appraisal. We consider this to be another example where assumptions could not be considered as inherently conservative. However, the information available does not suggest that adverse ground conditions are so extensive that development of the whole site would be precluded. We accept that even if adverse conditions were to be found, it is likely that design solutions would be available. Therefore, subject to appropriate planning conditions requiring intrusive investigations, we agree that the proposal would comply with policy Env 13 of the local development plan.

13.63 There is policy support for the centralised provision of energy for the development. There was no dispute that subject to appropriate conditions that energy matters would not be a constraint upon the development.

Planning obligations and conditions

13.64 Chapter 11 considers planning obligations and chapter 12 planning conditions in the event that Scottish Ministers decided that planning permission in principle should be granted. It is agreed that a planning obligation would be necessary to make the proposal acceptable in planning terms. However, we do not agree with either the applicant's suggested obligations or the council's revisions.

13.65 We have previously found that any conservation benefits must be secured if these benefits are to be taken into account in the planning balance. There also must be sustainable long term management arrangements in place for both the castle and the restored gardens and designed landscape. We consider that both these matters are fundamental.

13.66 In chapter 11 we do not consider that the use of financial bonds are an acceptable mechanism for securing the stabilisation of the castle or the restoration of the gardens and designed landscape. We accept that financial bonds are used to ensure the restoration of sites, for example for mineral development and wind farms. However, experience in Scotland has not always been successful. The detailed wording of any bond agreement and the amount of funds actually available are critical success factors in the event that the bond needs to be called upon. The value of the bond would need to be reviewed to take into account possible changes to the methodology following more detailed surveys, any delay to actually starting the works and any changes to costs that may occur during the lifetime of the bond. We cannot see how this can be achieved in the wording of a planning obligation that would have to be agreed before any scheme is finalised. There could potentially be several years before an agreed scheme is finalised and costed. It also would require the parties to agree the final cost of the bond. It is not clear to us what the mechanism would be if there is no agreement over costs.

13.67 We therefore consider that a phasing condition ensures that the enabling residential development does not commence until the castle has been stabilised and the gardens and designed landscape restored is a superior mechanism which removes any difficulties in establishing the size of a financial bond. We accept that such a condition has financial implications for the overall project. However, there are also financial costs associated with a properly resourced bond. We also note from the applicant's economic impact analysis report that the initial up front capital expenditure for the leisure and tourism development was estimated to be £167.4 million and the applicant has accepted other unspecified costs.

13.68 In any event, whilst commercial viability is an important consideration, in our judgement the over-riding consideration is that the proposal is acceptable in planning terms and that any planning permission and associated obligation is sufficiently robust to address eventualities such as bankruptcy, change of ownership or site fragmentation.

13.69 We also do not consider that a deed of condition was a sustainable or appropriate mechanism for ensuring the long term maintenance of the restored gardens and designed landscape. We are not aware of any proposals for the long term maintenance of the castle as a ruin. Without a sustainable maintenance arrangement in place the proposal would only be postponing the ultimate deterioration of the castle and the gardens and designed landscape.

13.70 We accept that a planning condition (or obligation) could require the submission and implementation of a maintenance plan. However, in practice, planning conditions are not an effective mechanism to ensure that necessary maintenance actually takes place to the required quality standard. It is unclear to us who, for example, the council could serve an enforcement notice or breach of conditions notice upon in the event that maintenance did not occur in accordance with the approved maintenance plan, even setting aside the practical difficulties of the council being able to monitor the situation. In our view, sustainable long term maintenance could only be satisfactorily achieved if there was a body with sufficient focus and resources to carry out this responsibility.

13.71 We have other concerns over the suggested planning obligations. Transport Scotland does not consider an obligation to be appropriate for the improvements to Bellfield Interchange. As set out in chapter 8, we do not consider 4 years is a sufficient period to support the bus service. We do not consider that an arbitration clause is appropriate where a planning authority has to exercise its own planning judgement. We do not consider that the council has demonstrated a sufficient link for a contribution to regenerate Galston to be justified.

13.72 In chapter 12, we note that there is much closer agreement over the scope of necessary and appropriate conditions. Many of the differences between the council and applicant amount to differences in style rather than scope or content. In our recommended conditions in appendix 4 we have attempted to ensure that the wording of conditions concisely focusses on the essential elements. We have therefore avoided general references to submitted documents, long lists of matters to be addressed or organisations that should also be consulted.

13.73 There is agreement that the statutory timescales need to be altered to be realistic for a development of this complexity and scale. We also consider that it is necessary to define the terms of the planning permission by clarifying the number of dwellings and that the conversion to a hotel is not required. The uses and key physical parameters used in the environmental statement are also included. There is agreement that certain site wide surveys are necessary before development commences. Above, we explain why we consider that phasing conditions would be a superior mechanism for securing the consolidation of the castle ruins and the restoration of the gardens and designed landscape. We include other matters relating to road improvements where phasing is considered to be necessary.

13.74 We do not agree with the applicant that a combination of the already submitted material and further site wide surveys is adequate to regulate the future development of the

site. We consider that only a masterplan could combine, for example, the road layout with the drainage layout in order to realistically identify the developable areas and areas of open space. We cannot foresee how the design details of individual areas of the site can be meaningfully assessed without a masterplan. We therefore recommend a condition requiring the submission of a masterplan prior to the consideration of specific design details which should include the road layout, the developable areas, areas of open space, the drainage layout, a phasing plan and a design code.

13.75 There is general agreement for a range of other conditions including the works to the castle, landscape master plan, road improvements, travel plan and a construction environmental management plan. There are other conditions suggested by both parties that whilst we considered desirable, are not essential in order to make the proposal acceptable. The fact that we do not include these as conditions would not preclude a future developer or the council adopting such measures if they considered them appropriate.

13.76 In appendix 4 we set out our recommended planning obligations and planning conditions in the event that Scottish Ministers decide to grant planning permission in principle. We are only able to suggest general heads of terms for necessary planning obligations. It is possible that in the context of a minded to grant decision that further discussion between the applicant and council could resolve the issues that we have identified. However, we feel that we have to point out that agreement is far from guaranteed. The applicant's submissions to date would indicate that they would have difficulty in agreeing our heads of terms or accepting our criticisms. If no agreement is possible the matter would return to Scottish Ministers.

13.77 If agreement was not possible it would be open to the applicant to propose a unilateral undertaking. At the hearing session we canvassed opinion regarding this outcome. Both the applicant and council do not think that a unilateral undertaking is appropriate in this instance.

Overall conclusions

Our conclusions on the key policy tests, as identified in paragraph 13.15 above, follow.

Whether the proposal is sympathetic

13.78 The proposal would result in a new major tourism and recreation facility that would be of at least regional importance. Such a development would be consistent with a range of economic strategies and implement a long standing development opportunity. If built, the proposal would have significant economic and social benefits not only for East Ayrshire but the wider region.

13.79 The consolidation of the existing castle ruins and the restoration of the gardens and designed landscape through extensive new woodland planting has the potential to represent important conservation benefits, assuming that the repairs and planting can be secured and thereafter maintained. The extensive woodland planting would be a major component in mitigating any landscape and visual impacts and adverse impacts upon natural heritage.

13.80 The submitted information appears to us to demonstrate that, subject to appropriate obligations and conditions and the proper assessment of future designs, there is no reason

why matters relating to transport, flooding and drainage, archaeology, ground stability or impact on residential amenity need preclude the principle of the development.

13.81 However, there is no detailed scheme available for the consolidation of the castle. It is accepted that further surveys and studies would be necessary and subject to a future application for listed building consent. There is only an illustrative landscape restoration plan, which has been prepared without knowing the final road layout, drainage plan, extent of developable areas or the overall phasing of the development. Only preliminary estimates of such a plan can be prepared.

13.82 Whilst we are confident that the ultimately approved schemes for the consolidation of the castle ruins and the restoration of the gardens and designed landscape could be secured by a phasing condition, the applicant disagrees (we consider this further below). However, we agreed with the council and Historic Environment Scotland that the proposed long term maintenance arrangements both for the castle ruins and the restored gardens and designed landscape would not be acceptable.

13.83 We attach special importance to acceptable long term maintenance arrangements, otherwise any repairs or restoration would only postpone but not address the deterioration of an A listed building and the designated gardens and designed landscape. Without long term maintenance there may not be adequate screening to mitigate the landscape and visual impacts and without management, the habitat enhancement measures may not be implemented.

13.84 Without adequate long term maintenance arrangements we conclude that there is a risk that the known significant impacts from the enabling residential development and the rest of the proposal would not be offset. Therefore as the proposal currently stands we conclude there is an unacceptable risk that the proposal would:

- Not address the future deterioration of the castle ruin;
- Have adverse impacts upon the setting of the A listed castle;
- Have adverse impacts on the designated garden and designed landscape;
- Have unacceptable landscape and visual impacts; and
- Have unacceptable impacts upon natural heritage.

13.85 In addition, we do not consider that the proposal addresses the provision of public transport services or demonstrates an acceptable impact upon community services such as schools and health facilities. Aside from an illustrative layout in the design statement, which preceded the comments from consultees, we do not consider that the submitted information demonstrates that a new community would be able to function effectively. We attach importance to being assured that a new community would function effectively before planning permission in principle can be granted.

13.86 Overall, we find that the proposal would not be sympathetic and this is principally due to a combination of the scale of the proposed enabling development and our concerns regarding the lack of acceptable long term maintenance arrangements.

Whether there is an acceptable masterplanned approach

13.87 We cannot accept that the range of submitted material, prepared by different authors at different times, much of which is illustrative, in combination with future site wide surveys required by conditions, constitutes an adequate masterplanned approach. We believe the applicant has significantly underestimated the difficulties that would be caused by its proposed approach. We do not consider that the approach advocated by the applicant complies with the objectives of policy Rural Area 4 or policy OP 1.

13.88 The approach the applicant has adopted means that they cannot be aware of the likely costs of developing the project. They are reliant on either average costs or general estimates. They cannot be aware of the realistic identification of either developable areas or those areas that have to be set aside for roads, sustainable urban drainage, public open space, planting or other constraints. They cannot be aware of a realistic phasing programme or the sequence of provision for infrastructure, services or community facilities. No one can tell the final form of the proposal in anything other than a general distribution of land uses. It means committing to planning obligations covering, for example, bus transport or maintenance arrangements before any real understanding of what is realistically known.

13.89 We can understand the dilemma faced by any developer of a major project. We recognise that before the certainty of a planning permission, funding for a comprehensive design process is difficult. However, the converse is true for the decision maker. Without knowing the basic form, road layout or phasing etc before granting planning permission in principle the decision maker risks having to make a decision with no appreciation of the full implications of the proposal. It may mean having to accept undesirable design compromises at the later stages because key constraints or issues had not been identified. We assume the guidance in the development plan and elsewhere advocating the use of masterplans as part of a designers "tool kit" seeks to avoid these problems.

Whether there is adequate financial information

13.90 We do not believe we have adequate financial information to demonstrate that 1025 houses is the minimum necessary amount of enabling development. This is because an overall conservation deficit has not been quantified and we consider that the applicant is mistaken in arguing that there is a policy and legal bar from considering contributions from the overall development.

13.91 In any event, even if we are wrong in this finding, we consider that a development appraisal for a development of this scale, to be developed over at least 17 years is such an uncertain tool no meaningful conclusions can be drawn. Even if a development appraisal could be considered to be an appropriate tool, we do not consider that the final development appraisal has relied upon conservative assumptions. We consider that on the basis of the evidence before us it is far more likely that the costs of consolidating the castle ruin would increase and the residual value from the enabling development reduce to that predicted.

13.92 In our opinion the financial information is so uncertain that any decision to grant planning permission in principle would have to be taken in the knowledge that there is a significant risk that:

- The overall development is not viable and would not be commenced; or

- More houses that were strictly necessary were constructed; or
- Costs relative to income are higher than assumed leading to pressure to amend the consolidation scheme, reduce costs and hence quality of the proposed new community or increase the number of houses; or
- A combination of all three.

Whether the new community could function effectively

13.93 It is not possible with the information before us to have any appreciation as to whether the proposed new community could function effectively. We accept that it should be possible to design and plan a new community. However, as it stands there are no details of a road or footpath layout, no knowledge of whether a bus service could be introduced, whether school capacity would be sufficient, whether health facilities would be adequate or how on site facilities would be provided. As we state above, for a new community which would be the permanent home for approximately 2000 people, demonstrating that a new community could function effectively should be completed before, not after the grant of planning permission in principle.

Whether the conservation benefits can be secured and maintained

13.94 The applicant proposes to secure the consolidation of the castle and the planting to restore the garden and designed landscape by the use of financial bonds. As currently drafted, the planning obligation assumes that the amount the bonds would cover are the costs provided in the budget estimate and Table 1: Loudoun Castle Landscape Restoration – indicative calculations of the possible initial cost ([APP1.21](#)). We consider that realistic costs can only be provided when a final scheme is available. This would only be after the planning permission is issued. Actual construction and planting could take place several years after the decision. It could involve a different developer. Particularly for the consolidation of the castle, costs could alter as the need for further work is discovered. We consider that a phasing condition is a superior mechanism for securing the consolidation of the castle and restoration of the gardens and designed landscape. The use of a phasing condition would avoid the need to accurately establish the size of a financial bond for schemes that have as yet not been designed.

13.95 We are aware of no proposal to maintain the consolidated castle ruins aside from the hope that at some future point it could be converted to another use, possibly a hotel. For the reasons we set out in chapter 11, we do not believe that the proposed “owner manager” model is an acceptable approach for the long term management of the garden and designed landscape or for the implementation of a 20 year habitat management plan. As the proposal currently stands we do not believe that the applicant has properly addressed the need for a sustainable arrangement for the long term management of the site.

13.96 Drawing these matters together, we therefore consider that the proposal currently before Scottish Ministers would be contrary to local development plan policies Rural Area 4, Res 13, OP1, OP2, Env 4, Env 6, Env 8, T1 and T2. Overall, we consider that the proposal is contrary to the provisions of the development plan.

13.97 We also find that there is an unacceptable risk that the proposal would have an adverse impact on the setting of the A listed castle and associated gardens and designed landscape, all being contrary to the statutory requirement set out in Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

13.98 We found in chapter 2 that the other policy guidance and advice were consistent with the provisions of the development plan. We accept that if the development took place significant economic and social benefits would occur. We have taken into account that if there is no development then both the castle and its grounds would deteriorate further. However, we do not consider it reasonable to assume that refusal of this particular proposal would preclude the formulation of an alternative but acceptable set of proposals. We therefore consider that there are no material considerations that outweigh the planning harm that we believe would occur if the provisions of the development plan were set aside in this instance.

13.99 It is possible that some of our concerns could be addressed through further discussions and the production of an alternative planning obligation. However, we do not believe this would address all our concerns. We also note the several years of discussions that have taken place already and therefore agreement is by no means guaranteed. Under the circumstances, we consider that refusal of planning permission in principle would clarify the matters that would have to be addressed and permit the applicant, council and other consultees to develop alternative proposals.

Recommendation

13.100 We therefore recommend to Scottish Ministers that planning permission in principle for the proposal before them should be refused. If, however, Scottish Ministers disagree with our assessment we recommend that they issue a minded to grant intention subject to a planning obligation satisfactorily addressing the heads of terms and subject to the planning conditions listed in appendix 4.

13.101 If Scottish Ministers do not agree with our assessment of the planning obligations and conditions, we prefer the version put forward by the applicant (appendix 2).

Dan Jackman
Assistant Chief Reporter

Karen Black
Reporter

APPENDIX 1: Submitted evidence

1. Core documents

Application and related documents

- [CD1.1](#) Application form
- [CD1.2](#) Ownership certificate
- [CD1.3](#) Access statement (2015)
- [CD1.4](#) Design statement (2015)
- [CD1.5](#) Drainage impact assessment (2015)
- [CD1.6](#) Flood risk assessment (2015)
- [CD1.7](#) Framework travel plan (2015)
- [CD1.8](#) Loudoun Castle energy report (2015)
- [CD1.9](#) Loudon Castle engineers report (2015)
- [CD1.10](#) Repair schedule - External Fabric
- [CD1.11](#) Repair schedule - Internal Fabric
- [CD1.12](#) Transport assessment (2015)
- [CD1.13](#) Current aerial view
- [CD1.14](#) Site location plan (2015)
- [CD1.15](#) Transport and access plan (2015)
- [CD1.16](#) Existing ruin layout ground floor
- [CD1.17](#) West elevation existing ruin
- [CD1.18](#) South elevation existing ruin
- [CD1.19](#) East elevation existing ruin
- [CD1.20](#) North elevation existing ruin
- [CD1.21](#) West elevation proposed rebuilt as 1940
- [CD1.22](#) South elevation proposed rebuilt as 1940
- [CD1.23](#) East elevation proposed rebuilt as 1940
- [CD1.24](#) North elevation proposed rebuilt as 1940
- [CD1.25](#) Environmental Statement – non technical summary (2015)
- [CD1.26](#) Environmental Statement (2015) - Volume 1. Text
- [CD1.26](#) Environmental Statement (2015) - Volume 2 Appendices Part 1
- [CD1.26](#) Environmental Statement (2015) – Volume 2 Appendices Part 2
- [CD1.26](#) Environmental Statement (2015) – Volume 2 Appendices Part 3
- [CD1.26](#) Environmental Statement (2015) – Volume 2 Appendices Part 4
- [CD1.26](#) Environmental Statement (2015) – Volume 3 Figures
- [CD1.27](#) Site location plan (2015)
- [CD1.28](#) Site boundary (2015)
- [CD1.29](#) Parameters plan (2015)
- [CD1.30](#) Illustrative layout plan (2015)
- [CD1.31](#) Pre application consultation report (2015)
- [CD1.32](#) Neighbour notification list (2015)
- [CD1.33](#) Neighbour notification plan (2015)
- [CD1.34](#) Planning Statement (2015)
- [CD1.35](#) Public notice - Kilmarnock Standard
- [CD1.36](#) Public notice - Kilmarnock Standard Environmental Impact Assessment advert 18 September 2015
- [CD1.37](#) Public notice - Edinburgh Gazette Environmental Impact Assessment advert 18 September 2015

[CD1.38](#) Letter Loudoun Woods Homes 24 December 2015
[CD1.39](#) Letter from Scottish Government 24 December 2015
[CD1.40](#) Shaw and Jagger letter 11 September 2015
[CD1.41](#) Shaw and Jagger letter 29 October 2015
[CD1.42](#) Shaw and Jagger letter 5 November 2015
[CD1.43](#) Turner and Townsend - Castle Construction – Enabling Works
[CD1.44](#) Environmental Statement Addendum – Non-Technical Summary (2017)
[CD1.45](#) Environmental Statement Addendum (2017) – Volume 1 Text
[CD1.45](#) Environmental Statement Addendum (2017) – Volume 2 Appendices (excluding Appendix N7.1 listed separately at CD1.53)
[CD1.45](#) Environmental Statement Addendum (2017) – Volume 3 Figures
[CD1.46](#) Transport Assessment (2017)
[CD1.47](#) Parameters Plan (2017)
[CD1.48](#) Illustrative Layout Plan (2017)
[CD1.49](#) Economic Impact Assessment (Aventia Consulting) (2017)
[CD1.50](#) Illustrative Landscape Restoration Plan (2017)
[CD1.51](#) Enabling Development Case Report (Rettie) (2017)
[CD1.52](#) Initial Budget Estimate for the Stabilisation of Loudoun Castle (Thornton-Firkin LLP) (2017)
[CD1.53](#) Conservation Plan (Simpson and Brown) – Environmental Statement Addendum (2017) Appendix N7.1
[CD1.54](#) Letter from DWF LLP to East Ayrshire Council (27 April 2017)
[CD1.55](#) Letter from RPS Group Plc to Historic Environment Scotland (27 April 2017)
[CD1.56](#) Letter from East Ayrshire Council to DWF LLP (12 May 2017)

Consultation responses to planning application

[CD2.1](#) Health and Safety Executive (14 September 2015)
[CD2.2](#) East Ayrshire Council Environmental Health Service (Contaminated Land Officer 14 September 2015)
[CD2.3](#) East Ayrshire Council Environmental Health Service (20 October 2015)
[CD2.4](#) Ayrshire Roads Alliance (Flooding) (16 September 2015)
[CD2.5](#) Access Panel (24 September 2015)
[CD2.6](#) Transport Scotland (24 September 2015)
[CD2.7](#) Transport Scotland (1 October 2015)
[CD2.8](#) Coal Authority (25 September 2015)
[CD2.9](#) Dumfries and Galloway Council (23 September 2015)
[CD2.10](#) South Lanarkshire Council (29 September 2015)
[CD2.11](#) Scotland's Garden and Landscape Heritage (30 September 2015)
[CD2.12](#) Garden History Society (30 September 2015)
[CD2.13](#) Garden History Society (11 March 2015)
[CD2.14](#) Scottish Natural Heritage (8 October 2015)
[CD2.15](#) East Ayrshire Outdoor Access Officer (8 October 2015)
[CD2.16](#) Scottish Environment Protection Agency (13 October 2015)
[CD2.17](#) Scottish Environment Protection Agency (29 October 2015)
[CD2.18](#) East Renfrewshire Council (13 October 2015)
[CD2.19](#) Galston Community Council (14 October 2015)
[CD2.20](#) Architectural Heritage Society for Scotland (19 October 2015)
[CD2.21](#) Moscow and Waterside Community Council (16 October 2015)
[CD2.22](#) Ayrshire Roads Alliance (roads matters) (28 April 2015)
[CD2.23](#) Woodland Trust (28 October 2015)

[CD2.24](#) North Ayrshire Council (3 November 2015)
[CD2.25](#) National Health Service (6 November 2015)
[CD2.26](#) East Ayrshire Council Education Service (3 November 2015)
[CD2.27](#) East Ayrshire Council Economic Development (28 October 2015)
[CD2.28](#) Scottish Government Culture, Europe and External Affairs (October 2015)
[CD2.29](#) Ayrshire Roads Alliance Transport Assessment response (November 2015)
[CD2.30](#) Strathclyde Partnership for Transport (29 October 2015)
[CD2.31](#) Scottish Water (31 May 2016)
[CD2.32](#) West of Scotland Archaeology Service (28 April 2016)
[CD2.33](#) Scottish Wildlife Trust (27 May 2016)
[East Ayrshire Council Environmental Health](#) (26 April 2016)
[East Ayrshire Education Service](#) (May 2016)

Representations

Objection

[CD2.56](#) Mrs P Smith (22 October 2015)
[CD2.57](#) Miss S Johnstone (27 October 2015)
[CD2.58](#) Mr and Mrs Struthers (5 October 2015)
[CD2.59](#) Mr W Black (26 September 2015)
[CD2.60](#) Mr A McNab (6 October 2015)
[CD2.61](#) Mrs G Roberts (17 October 2015)

Support

[CD2.62](#) Ms M Crabb (5 October 2015)
[CD2.63](#) Mr A Houston (5 October 2015)
[CD2.64](#) Mr A Jeffrey (5 October 2015)
[CD2.65](#) Ms F Jeffrey (5 October 2015)
[CD2.66](#) Mr R Jeffrey (7 October 2015)

Consultation responses to further environmental information (March 2017)

[CD2.34](#) Scottish Water (17 March 2017)
[CD2.35](#) Galston Community Council (27 March 2017)
[CD2.36](#) Transport Scotland (29 March 2017)
[CD2.37](#) South Ayrshire Council (5 April 2017)
[CD2.38](#) Scottish Environment Protection Agency (6 April 2017)
[CD2.39](#) Historic Environment Scotland (6 April 2017)
[CD2.40](#) Scottish Natural Heritage (13 April 2017)

Minutes from technical meetings

[CD2.41](#) Archaeology (28 February 2017)
[CD2.42](#) Consolidation Works (28 February 2017)
[CD2.43](#) Development Appraisal (1 March 2017)

East Ayrshire Council Planning Committee (29 April 2016)

[CD2.44](#) Report to the East Ayrshire Council Planning Committee (29 April 2016)

[CD2.45](#) Minute of Planning Committee (29 April 2016)

East Ayrshire Council Planning Committee (28 April 2017)

[CD2.49](#) Report to the East Ayrshire Council Planning Committee (28 April 2017)

[CD2.50](#) Minute of the Report to the East Ayrshire Council Planning Committee (28 April 2017)

Reports from East Ayrshire Council's Consultants

[CD2.46](#) Audit of Landscape and Visual Assessment (Ironsides Farrar April 2016) [CD2.47](#) Audit of Heritage Assessment (Peter Drummond Architects: April 2016) [CD2.48](#) Audit of Heritage Assessment : Supplementary Comments (Peter Drummond Architects April 2016)

[CD2.51](#) Environmental Statement: Conservation Management Plan Appraisal (Peter Drummond Architects: April 2017)

[CD2.52](#) Environmental Statement: Cost Appraisal (David Adamson and Peter Drummond Architects: April 2017)

[CD2.53](#) Audit of Landscape and Visual Assessment (Ironsides Farrar: April 2017)

[CD2.54](#) Review of Development Appraisal : Appendix 1 (Technical Meeting 2 – Development Appraisal : Minutes (1 March 2017)

[CD2.55](#) Review of Development Appraisal (Graham + Sibbald: April 2017)

Development Plan and Policy Guidance

[CD3.1](#) East Ayrshire Council East Ayrshire Local Plan (2010)

[CD3.2](#) East Ayrshire Council Alteration to East Ayrshire Local Plan, Supplementary Guidance: Master Planning (2010)

[CD3.3](#) East Ayrshire Local Development Plan Report of Examination (2016)

[CD3.4](#) East Ayrshire Council East Ayrshire Local Development Plan (2017)

[CD3.5](#) East Ayrshire Council East Ayrshire Local Development Plan Environmental Report (2017)

[CD3.6](#) Ayrshire Joint Structure Plan Committee Ayrshire Joint Structure Plan: Growing a Sustainable Ayrshire (2007)

[CD3.7](#) Scottish Planning Policy (2014)

[CD3.8](#) Scottish Government Third National Planning Framework (2014)

[CD3.9](#) Scottish Government Planning Circular 6/2013 – Development Planning

[CD3.10](#) Planning Advice Note (PAN) 44 Fitting New Housing Development into the Landscape (2005)

[CD3.11](#) Planning Advice Note 60 Planning for Natural Heritage (2000)

[CD3.12](#) Planning Advice Note 61 Planning and Sustainable Urban Drainage Systems (2001)

[CD3.13](#) Planning Advice Note 65 Planning and Open Space (2008)

[CD3.14](#) Planning Advice Note 67 Housing Quality (2003)

[CD3.15](#) Planning Advice Note 68 Design Statements (2003)

[CD3.16](#) Planning Advice Note 69 Flood Risk (2004)

[CD3.17](#) Planning Advice Note 72 Housing in the Countryside Part 1 (2005)

[CD3.17](#) Planning Advice Note 72 Housing in the Countryside Part 2 (2005)

[CD3.18](#) Planning Advice Note 75 Planning for Transport (2005)

- [CD3.19](#) Planning Advice Note 83 Masterplanning (2008)
- [CD3.20](#) Planning Advice Note 1/2011 Planning and Noise (2011)
- [CD3.21](#) Planning Advice Note 2/2011 Planning and Archaeology (2011)
- [CD3.22](#) Scottish Government Air Quality and Land Use Planning (2004)
- [CD3.23](#) Scottish Government Green Infrastructure : Design and Placemaking (2011)
- [CD3.24](#) The Scottish Government Getting the Best from Our Land – A Land Use Strategy for Scotland (2011)
- [CD3.25](#) East Ayrshire Council Green Infrastructure and Green Network Strategy (2015)
Volume 1
- [CD3.25](#) East Ayrshire Council Green Infrastructure and Green Network Strategy (2015)
Volume 2
- [CD3.25](#) East Ayrshire Council Green Infrastructure and Green Network Strategy (2015)
Volume 3
- [CD3.25](#) East Ayrshire Council Green Infrastructure and Green Network Strategy (2015)
Volume 4
- [CD3.26](#) East Ayrshire Council New Residential Development in the Countryside – Design Guidance
- [CD3.27](#) Ayrshire and Arran Forestry and Woodland Strategy (2014)
- [CD3.28](#) Ayrshire and Arran Tourism Strategy 2012/17
- [CD3.29](#) Tourism Development Framework for Scotland
- [CD3.30](#) Visit Scotland Aspirations and Ambitions
- [CD3.31](#) Highways Agency Design Manual for Roads and Bridges: Volume 11, Section 3, Part 5: Landscape Effects (1993)
- [CD3.32](#) The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011
- [CD3.33](#) East Ayrshire Council - Supplementary Guidance on Masterplanning (2017)

Impact on heritage assets including the scale of enabling development

- [CD4.1](#) Historic England Conservation Principles, Policies and Guidance (2008)
- [CD4.2](#) Historic England Enabling Development and the Conservation of Significant Places (2008)
- [CD4.3](#) Historic Environment Scotland Managing Change in the Historic Environment: Gardens and Designed Landscapes (2016)
- [CD4.4](#) Historic Environment Scotland Managing Change in the Historic Environment: Setting (2016)
- [CD4.5](#) Historic Environment Scotland Managing Change in the Historic Environment: New Design in Historic Settings (2016)
- [CD4.6](#) Historic Environment Scotland, Managing Change in the Historic Environment: Castles and Towerhouses (2017)
- [CD4.7](#) Historic Environment Scotland Historic Environment Scotland Policy Statement (2016)
- [CD4.8](#) Ayrshire Designed Landscapes Survey Final Report (September 2009)
- [CD4.9](#) East Ayrshire Council, Local Housing Strategy 2013 - 18
- [CD4.10](#) East Ayrshire Housing Land Audit 2012 - 19
- [CD4.11](#) North Ayrshire Housing Land Audit 2012 - 19
- [CD4.12](#) South Ayrshire Housing Land Audit 2015 - 20
- [CD4.13](#) East Renfrewshire Housing Land Audit 2015
- [CD4.14](#) Glasgow and Clyde Valley Housing Needs and Demand Assessment 2015
- [CD4.15](#) Scottish Government, house building statistics

- [CD4.16](#) Stewart, M. (2016) The Architectural, Landscape and Constitutional Plans of the Earl of Mar, 1700-32
- [CD4.17](#) Debois Landscape Survey Group (1997) Designed Landscapes in Scotland:
- [CD4.18](#) Chartered Institute for Archaeologists : Code of Conduct (2014)
- [CD4.19](#) Chartered Institute for Archaeologists : Standard guidance for archaeological field evaluation (2014)
- [CD4.20](#) Chartered Institute for Archaeologists: Standard guidance for commissioning work (2014)
- [CD4.21](#) Chartered Institute for Archaeologists : Standard guidance for historic environment desk-based assessment (2014)
- [CD4.22](#) Inventory of Garden and Designed Landscapes – extract for Loudoun Castle
- [CD4.23](#) Listed Buildings – extract for Loudoun Castle

Landscape and visual impact

- [CD5.1](#) European Parliament European Landscape Convention (2000, ratified 2006)
- [CD5.2](#) Countryside Agency and Scottish Natural Heritage Landscape Character and Assessment – Guidance for England and Scotland (2002)
- [CD5.3](#) Forestry Commission Scotland The Scottish Government's Policy on Control of Woodland Removal (2009)
- [CD5.4](#) Landscape Institute Advice Note 01/11: Photography and photomontage in landscape and visual impact assessment (2011)
- [CD5.5](#) Guidelines for Landscape and Visual Impact Assessment: Third Edition, (2013)
- [CD5.6](#) Land Use Consultants with Bidwells Ayrshire and Arran Forestry and Woodlands Strategy (2014)
- [CD5.7](#) Scottish Natural Heritage The Ayrshire Landscape Assessment (1998)
- [CD5.8](#) Scottish Natural Heritage Natural Heritage Zones: A National Assessment of Scotland's Landscape (2002)
- [CD5.9](#) Scottish Natural Heritage Visual Representation of Wind Farms: Version 2 (2014)

Planning conditions and obligations

- [CD6.1](#) Scottish Government Circular 4/1998: The Use of Conditions in Planning Permissions
- [CD6.2](#) Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements

Scottish Government Directions

- [CD7.1](#) Scottish Government Circular 3/2009 : Notification of Planning Applications

2. Further supporting information and comments

Applicant

[Comments on consultation responses](#) – transport (June 2017)
[Comments on consultation responses](#) – flooding and drainage (June 2017)
[Comments on consultation responses](#) – ecology (June 2017)
[Comments on consultation responses](#) – impact on community services (June 2017)
[Comments on consultation responses](#) – residential amenity (June 2017)
[Response to Mr Wilson email of 22 June 2018](#)

Council

[Ayrshire Roads Alliance \(Transport\)](#) response to applicant's comments on consultation responses (June 2017)
[Ayrshire Roads Alliance \(Flooding and Drainage\)](#) response to applicant's comments on consultation responses (June 2017)

Others

[National Health Service Ayrshire and Arran](#) response to applicant's comments on consultation responses – community facilities (June 2017)
[Strathclyde Partnership for Transport](#) response to applicant's comments on consultation responses (June 2017)
[Transport Scotland](#) response to applicant's comments on consultation responses (June 2017)
[Scottish Environment Protection Agency](#) response to applicant's comments on consultation responses (June 2017)
[Scottish Water](#) response to applicant's comments on consultation response (June 2017)

3. Hearing statements

Applicant

[Planning Policy](#)
[Landscape and Visual Impact](#)
[Economic and Social Benefits](#)
[Planning Obligations and Conditions](#)

Council

[Planning Policy](#)
[Landscape and Visual Impact](#)
[Economic and Social Benefits](#)
[Planning Obligations and Conditions](#)

Historic Environment Scotland

[Comments on Proposed Conditions and Obligations 10 October 2017](#)
[Comments on Proposed Conditions and Obligations 12 February 2018](#)

Strathclyde Partnership for Transport

[Hearing Statement](#)

[Comments on Proposed Conditions and Obligations 13 February 2018](#)

Transport Scotland

[Hearing Statement](#)

[Comments on Proposed Conditions and Obligations 12 February 2018](#)

4. Hearing documents

Applicant

[APP2.1](#) Consultation Timeline

[APP2.2](#) Highway Improvements Bellfield Interchange Preliminary Design

[APP3.1](#) East Ayrshire Council Roads Development Guide(2010)

[APP3.2](#) The Scottish Government Creating Places (2013)

[APP3.3](#) The Scottish Government Designing Streets (2010)

[APP3.4](#) Forestry Commission Booklet 48 Forest Yield

[APP3.5](#) Trees of Britain and Northern Europe (2002)

[APP3.6](#) BS39936 Nursery Stock

[APP3.7](#) Forestry Commission Bulletin 124 An Ecological Site Classification for Forestry

[APP3.8](#) Scottish Natural Heritage Topic Paper 6 – Techniques and Criteria for Judging Capacity and Sensitivity (2002)

[APP3.9](#) Historic Environment Scotland Scotland's Inventory of Gardens and Designed Landscapes (2016)

[APP3.10](#) Retaken photographs from suggested viewpoints figure

[APP3.11](#) Landscape Institute Technical Guidance Note 0217 Visual Representation of Development Proposals

[APP3.12](#) Additional photomontages figure

[APP3.13](#) Composite Zone of Theoretical Visibility figure

[APP3.14](#) Outline Construction Environmental Management Plan for lodges within garden plantation

[APP3.15](#) Planning Circular 3/2011 Environmental Impact Assessment (Scotland) Regulations 2011

[APP3.16](#) Design Manual for Roads and Bridges (2015)

[APP3.17](#) Site Specific Landscape Character Types figure

[APP3.18](#) Scottish Natural Heritage Guide to Understanding the Scottish Ancient Woodland Inventory

[APP3.19](#) Email from East Ayrshire Council Irvine Valley Trails Project Officer [APP3.20](#) Rights of Way and Core Paths figure

[APP3.21](#) BS5489-1:2013 Code of Practice for Design of Road Lighting

[APP3.22](#) Scottish Natural Heritage Loch Lomond and The Trossachs National Park Landscape Character Assessment

[APP3.23](#) Landscape Institute Technical Information Note 082015

[APP3.24](#) Replacement Viewpoint Location Plan Fig N6.32 Rev B

[APP4.1](#) Scotland's Economic Strategy

[APP4.2](#) Tourism Scotland 2020 Strategy

- [APP4.3](#) Ayrshire & Arran Tourism Strategy 2012-2017
- [APP4.4](#) Ayrshire Growth Deal
- [APP4.5](#) East Ayrshire Economic Development Strategy 2014-2025
- [APP4.6](#) Community Plan 2015-2030
- [APP4.7](#) Indicators Framework 2015-2016
- [APP4.8](#) East Ayrshire Tourism Action Plan 2016-2020

Council

- [EAC1.11](#) Ayrshire Roads Alliance response to applicant comments in relation to impact on transport
- [EAC1.15a](#) High Court Judgement Verdin (t/aDarnhall) v. Secretary of State for Communities and Local Government [2017] EWHC 2079
- [EAC1.15b](#) High Court Judgement Verdin (t/aDarnhall) v. Secretary of State for Communities and Local Government [2017] EWHC 2079
- [EAC1.16](#) Scotland's Economic Strategy
- [EAC1.17](#) Draft Advice on Net Economic Benefit and Planning
- [EAC1.19](#) East Ayrshire Local Development Plan Supplementary Guidance on Developer Contributions (May 2017)
- [EAC1.20](#) East Ayrshire Draft Heat Generation Supplementary Guidance (August 2017)
- [EAC1.21](#) East Ayrshire Public and Private Green Infrastructure/ Open Space Standards Supplementary Guidance (August 2017)
- [EAC1.22](#) East Ayrshire Tourism Action Plan 2017-2020
- [EAC1.23](#) East Ayrshire Economic Development Strategy 2014-2025
- [EAC1.24a](#) Loudoun Castle Park Landscape Management Plan
- [EAC1.24b](#) Loudoun Castle Park Landscape Management Plan
- [EAC1.24c](#) Loudoun Castle Park Landscape Management Plan
- [EAC1.25](#) Designing Streets Policy
- [EAC1.26](#) Scottish Archaeology Strategy (September 2015)
- [EAC1.27](#) Draft Cost Plan and structural sketches (November 2016).
- [EAC1.28](#) Rettie Enabling Development Case Working Draft.
- [EAC1.29](#) Technical Queries and discussion document
- [EAC1.30](#) Rettie response to technical queries
- [EAC1.33](#) Richard Woolley: Counting the Cost
- [EAC1.34](#) Revised Draft Minute of meeting with Historic Environment Scotland and applicant on 21 July 2017 and email response to revisions from Peter Drummond
- [EAC1.35](#) Simpson and Brown Draft Conservation Plan
- [EAC1.36](#) Enabling Assessment Case
- [EAC1.37](#) Summary Report on Structural Condition and Consolidation Works by Ben Adam
- [EAC1.38](#) Extract from Finalised Draft East Ayrshire Local Plan 2009.
- [EAC1.39](#) Extract from 2010 Local Plan Examination Report
- [EAC1.40](#) Extract from East Ayrshire Local Plan 2010
- [EAC1.41](#) Local Development Plan Supplementary and Non-Statutory Guidance Table
- [EAC1.42](#) Geophysical Survey Report Bothwell Castle
- [EAC1.43](#) Archaeological Excavation Report at Bothwell Castle
- [EAC1.44](#) Rowallan Castle Archaeological Geophysics Survey
- [Photographs of castle](#)
- EAC1.31 applicant's drone footage – no weblink available

5. Inquiry statements

Applicant

[Inquiry Statement](#)

Council

[Inquiry Statement](#)

Historic Environment Scotland

[Inquiry Statement](#)

6. Inquiry precognitions

Applicant

[John Sanders](#) (Heritage Management)

[Nansi Rosenberg](#) (Archaeology)

[John Boyle](#) (Development Appraisal)

[Francis Shaw](#) (Castle Consolidation)

[Richard Quigley](#) (Castle Consolidation Budget Estimate)

[Corinna Demmar](#) (Garden and Designed Landscape Restoration)

[Brian Wallis](#) (Garden and Designed Landscape Restoration)

[Robert Thorniley Walker](#) (Castle Consolidation)

[Robert Thorniley Walker Rebuttal Precognition](#) (Castle Consolidation)

[Agreed matters statement – Neil Smith/Richard Quigley \(24 January 2018\)](#)

Council

[Peter Drummond](#) (Heritage Management)

[Hugh McBrien](#) (Archaeology)

[Fraser Lang](#) (Development Appraisal)

[Neil Smith](#) (Castle Consolidation)

[Ben Adam](#) (Castle Consolidation)

[EAC1.47 Ben Adam updated precognition](#) (Castle Consolidation)

[Agreed matters statement – Neil Smith/Richard Quigley \(24 January 2018\)](#)

Historic Environment Scotland

[Dara Parsons](#)

[Catherine Middleton](#)

7. Inquiry reports

Applicant

- [APP1.8](#) John Sanders (Heritage Management)
- [APP1.9](#) Nansi Rosenberg (Archaeology)
- [APP1.10](#) Francis Shaw (Castle Consolidation)
- [APP1.11](#) Richard Quigley (Castle Consolidation Budget Estimate)
- [APP1.12](#) Robert Thorniley-Walker (Castle Consolidation)
- [APP1.13](#) Corinna Demmar (Garden and Designed Landscape Restoration)
- [APP1.21](#) Brian Wallis (Garden and Designed Landscape Restoration)
- [APP1.45](#) John Boyle (Development Appraisal)
- [APP1.50](#) Response to the Updated Report on Structure following Joint Site Visit (response to East Ayrshire Council 1.46)
- [APP1.52](#) Clarification of calculations in the Inquiry Report by Brian Wallis

Council

- [EAC1.6](#) Peter Drummond (Heritage Management)
- [EAC1.9](#) Hugh McBrien (Archaeology)
- [EAC1.8](#) Fraser Lang (Development Appraisal)
- [EAC1.45](#) Fraser Lang (Review of Development Appraisal APP1.3)
- [EAC1.7](#) Neil Smith (Castle Consolidation)
- [EAC1.37](#) Ben Adam (Castle Consolidation)
- [EAC 1.46](#) Update Report on Structure for comment following Ben Adam site visit
- [EAC 1.48](#) Review of Revised Development Appraisal APP1.51

8. Inquiry documents

Applicant

- [APP1.1](#) Summary of relationships between submitted documents
- [APP1.2](#) Budget Estimate
- [APP1.3](#) Development Appraisal
- [APP1.51](#) Revised Development Appraisal
- [APP1.4](#) Minute of the meeting between Historic Environment Scotland, East Ayrshire Council and applicant on 21 July 2017 (as agreed between Historic Environment Scotland and applicant)
- [APP1.5](#) Email correspondence between applicant and East Ayrshire Council about scope of meeting with Historic Environment Scotland 21 July 2017
- [APP1.6](#) Email correspondence between applicant and East Ayrshire Council about technical details underpinning the Environmental Statement: Cost Appraisal by Peter Drummond Architects
- [APP1.7](#) Models of Loudoun Castle - Shaw and Jagger Architects Ltd
- [APP1.22](#) Forestry Commission (2017) The UK Forest Standard
- [APP1.23](#) The Scottish Government (2006) The Scottish Forestry Strategy
- [APP1.24](#) United Kingdom Woodland Assurance Scheme Steering Group Guide to Certification (2000)
- [APP1.25](#) Forestry Commission Booklet 48 Forest Yield (2016)
- [APP1.26](#) Flora Locale Code of Practice (2012)

[APP1.27](#) BS 8545: Trees: (2014)

[APP1.28](#) Ecological Site Classification for Forestry in Great Britain (2001)

[APP1.29](#) Forestry Commission (March 2017) Timber Price Indices

[APP1.30](#) The Forestry Grant Scheme – Forestry Commission Scotland (July 2017)

[APP1.31](#) Correspondence 9 October 2017 - 'Loudoun Castle, Initial Restoration and Timber Return Cost Appraisal'

[APP1.32.a](#) Correspondence 2 -14 June 2016 General Historic Design

[APP1.32.b](#) Correspondence 20 June -12 July 2016 Roundels

[APP1.32.c](#) Correspondence 17 June -14 July 2016 Roundels and Water Feature

[APP1.32.d](#) Correspondence 17 June - 26 July 2016 Roundels

[APP1.32.e](#) Correspondence 25 August 2016 Recommendations of Gardens to visit

[APP1.32.f](#) Correspondence 25 September 2016 site visit

[APP1.32.g](#) Correspondence 27 September 2016 useful images

[APP1.32.h](#) Correspondence 27 - 28 September 2016 other useful images

[APP1.32.i](#) Correspondence 29 September 2016 Nasmyth Plan and Sundial

[APP1.32.j](#) Correspondence 30 September 2016 Lifespan of Trees

[APP1.32.k](#) Correspondence 2 – 4 October 2016 Cascade Steps

[APP1.32.l](#) Correspondence 5 – 6 October 2016 Loudoun Yews

[APP1.32.m](#) Correspondence 19 October 2016 Cooksey Photograph

[APP1.32.n](#) Correspondence 27 October 2016 Compartments and Roundels

[APP1.32.o](#) Correspondence 30 October 2016 Cooksey Photograph

[APP1.32.p](#) Correspondence 19 October -1 November 2016 Cooksey Nasmyth Plan

[APP1.32.q](#) Correspondence 9 November 2016 Hiraeth and Dùthchas

[APP1.32.r](#) Correspondence 9 November 2016 CP Figures

[APP1.32.s](#) Correspondence 29 November 2016 Portrait of 4th Earl

[APP1.32.t](#) Correspondence 16 December 2016 MS LiDAR Comments

[APP1.32.u](#) Correspondence 21 December 2016 - 5 January 2017 Cairn and Stone Circle Golf Course

[APP1.32.v](#) Correspondence 5 - 6 January 2017 Cairns

[APP1.32.w](#) Correspondence 9 January 2017 West Belvedere and Car Par LiDAR

[APP1.32.x](#) Correspondence 16 January 2017 Illustrative Landscape Plan

[APP1.32.y](#) Correspondence 6 February - 10 February 2017 Yews

[APP1.32.z](#) Correspondence 6 February - 13 February 2017 Yews

[APP1.33](#) Examples of figures and notes accompanying emails from June 2016 - January 2017

[APP1.34](#) Historic Environment Scotland, Scotland's Inventory of Gardens and Designed Landscapes 2016 (2016)

[APP1.35](#) Changing fashions in the conservation and restoration of gardens in Great Britain (2010)

[APP1.36](#) Historic Environment Scotland, Caring for Gardens and Designed Landscapes (website accessed, 6 October 2017)

[APP1.37](#) LiDAR (Light Detection and Ranging) hillshade image of Loudoun Estate (A1 figure)

[APP1.38](#) December 2016 Aerial photograph of the Loudoun Estate (A1 figure)

[APP1.39](#) Illustrative Landscape Restoration Plan (A1 figure)

[APP1.40](#) Photographs from field work (May/June 2016 and September 2016)

[APP1.41](#) West of Scotland Archaeology Service letter 27 April 2015

[APP1.42](#) Prospect Archaeology completed Scott Schedule 28 February 2017

[APP1.43](#) Historic England 2015, Management of Research Projects in the Historic Environment: The MoRPHE Project Manager's Guide

[APP1.44](#) Coal Mining Risk Assessment

[APP1.46](#) Email from Richard Quigley to Peter Drummond dated 19 July 2017
[APP1.47](#) Letter from Historic Property Restoration Ltd dated 3 October 2017
[APP1.48](#) Illustrative example of mine shafts in a development site
[APP1.49](#) Geophysical survey examples

Council

[EAC1.3](#) Conservation of Architectural Ancient Monuments (2001)
[EAC1.4](#) Steer v. Secretary of State for Communities and Local Government
[EAC1.5](#) PPA-270-2155 Cnoc an Eas Wind Farm

Others

[Email from Mr Wilson 22 June 2018](#)

8. Closing submissions

Applicant

[Closing Submissions](#)

Council

[Closing Submissions](#)

9. Miscellaneous

[Note of pre – examination meeting 10 May 2016](#)
[Note of pre examination meeting 12 May 2017](#)
[Council updated list of supplementary guidance January 2018](#)

All hearing and inquiry evidence is also available to view on the Planning and Environmental Appeals Division webcast site (DPEA webcasts)

APPENDIX 2: Planning obligations and conditions recommended by applicant

The obligations and conditions recommended by the applicant were submitted on 6 February 2018 and included in [further written submissions on planning obligations and conditions](#).

APPENDIX 3: Planning obligations and conditions recommended by East Ayrshire Council

The obligations and conditions recommended by the council were submitted on 5 February 2018 and are included in 3 separate documents:

1. [Finalised set of planning conditions](#)
2. [Revision to the draft Section 75 Agreement - part 1](#)
3. [Revision to the draft Section 75 Agreement - part 2](#)

APPENDIX 4: Heads of terms and conditions recommended by the Reporters

Planning obligations

An agreement to provide for:

- A mechanism or mechanisms to ensure the long term maintenance of the castle (pending a future use) and the restored gardens and designed landscape;
- Financial support for a bus service in the initial years of the development taking into account the provision of necessary infrastructure and the likelihood of a bus service becoming commercially viable;
- A further assessment of the impact of the proposal on community services and the needs of the future occupiers of the new community and either confirmation that no financial or other contributions are required or measures identified to address any deficiency; and
- The establishment of a community liaison group.

Planning conditions

Preliminary matter Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) sets timescales and other limitations. Where non-standard time limits are considered appropriate Scottish Ministers would have to indicate this in the decision letter. Given the long term, and phased development of the site, it was agreed at the planning conditions hearing that 17 years be allowed for the time to submit further matters specified in conditions applications. In the final decision letter, should Ministers grant planning permission in principle, we recommend that Scottish Ministers include a direction as follows:

“The period of 3 years referred to in Section 59(2)(a)(i) and (3) should be substituted with a period of 17 years” for the required approval of matters specified in conditions and the period of 2 years referred to in section 59(4) should be substituted with a period of 3 years.

1. Defining the planning permission

The planning permission shall relate to the description of development set out in the planning application form subject to the following limitations:

- a) No more than 1025 dwellings
- b) The 450 lodges shall not be used for permanent residential accommodation
- c) The distillery shall not store notifiable quantities of any hazardous substances
- d) Planning permission is not granted for the use of the castle as a hotel
- e) Planning permission is not granted for any class 1 retail use except for retail activities ancillary to the uses described in the planning application form
- f) The floor areas of the uses specified in the planning application form shall not exceed the total floor areas specified in the application form

g) The heights of the buildings for each of the uses specified in the application form shall not exceed the heights given for each use in Table 2.1 of the environmental statement addendum

Reason: To define in detail the scope of the planning permission

2. Phasing

Notwithstanding any phasing programme agreed by condition 4 the following sequence shall apply:

a) no enabling residential development shall commence until the castle ruins have been consolidated in accordance with the approved scheme required by condition 5;

b) no enabling residential development shall commence until the completion of the landscape masterplan and landscape management plan approved under condition 6;

c) The 251st house within the area shown on the parameters plan for residential enabling development shall not be occupied until:

- i) the completion of the improvements to Bellfield Interchange as shown in drawing number LTP/1820/T1/03/01 of the revised Transport Assessment dated March 2017
- ii) the completion of a second northern access as approved under condition 8(f).

Reason: To ensure that the consolidation of the castle ruins and the restoration of the garden and designed landscape are secured before the enabling residential development is commenced and that necessary highway works are completed before the 250th house

3. Preliminary Site Wide Matters

Prior to the commencement of development and before the masterplan (condition 4) and the first application for details under matters specified in conditions (condition 7) the following preliminary site-wide matters shall be submitted to and approved in writing by the planning authority. The development shall thereafter be carried out fully in accordance with the details approved unless otherwise agreed in writing with the planning authority:

a) a programme of archaeological work, in accordance with a written scheme of investigation;

b) a flood risk assessment for the site establishing the outline and level of fluvial 1: 200 year + climate change event;

c) a full drainage impact assessment establishing the flood route of pluvial waters for the 1:200 year + climate change flood event to the attenuation that does not put any part of the site at risk of flooding other than those intended. The assessment shall take account of the fact that the discharge rate from the development to the River Irvine shall be restricted to 6.95 litres per second per hectare. The assessment shall contain full details of the proposed means of disposal of foul and surface water from each phase of the development, with all surface water from the development site shall be treated by a sustainable urban drainage system (SUDS);

d) a habitat management plan for the habitats to be retained on the site and measures for protected species. The management plan shall include proposals for the creation of new habitats, the protection of existing habitats, mitigation measures for badgers, bats, otters and water voles and timescales for the implementation of these proposals, together with proposals for monitoring and reporting;

e) a scheme for intrusive site investigations to establish the situation regarding coal mining legacy issues (including mine entries on the site, high walls and shallow workings) and a report identifying any necessary remedial works;

f) an assessment of the effects of the development on the quality and quantity supplied to all properties reliant upon private water supplies within or adjacent to the site and a report identifying any necessary remedial works.

Reason: Details are required for certain site wide matters to identify any constraints that might influence the masterplan and submission of further details.

4. Masterplan

Before the first application for details under matters specified in conditions at condition 7, a masterplan shall be submitted to and approved in writing by the planning authority. The submitted masterplan shall include:

a) details of the road network, cycleways and footpaths for the entire site, including the road layout suitable for public transport and bus stop locations;

b) the extent of the developable areas for each of the proposed uses identified in the submitted parameters plan (Figure R2.1 of Environmental Statement Addendum March 2017);

c) the areas of open space, woodland or features of the garden and designed landscape that are to be retained and restored;

d) surface water and drainage arrangements to treat and attenuate surface water for the site including the shape and location of any sustainable urban drainage ponds (SUDS) and water drainage channels;

e) a design code for each of the development areas;

f) a phasing plan and programme of works, detailing the phasing of the development as a whole. The phasing plan shall include timescales and key trigger points for the construction of all of the components of development as illustrated in the masterplan;

The development shall thereafter be carried out fully in accordance with the details approved unless otherwise agreed in writing with the planning authority.

Reason: In accordance with policy Rural Area 4 of the East Ayrshire Local Development Plan 2017; Supplementary Guidance for the Production of Residential Masterplans August 2017; Planning Advice Note 83: Master Planning; and to ensure that the site is developed within the context of an overall design framework.

5. Scheme of Consolidation and Maintenance of the castle ruins

Prior to the commencement of development a scheme for the consolidation and maintenance of the castle ruins shall be submitted to and approved in writing by the planning authority. The approved scheme shall be implemented unless otherwise agreed in writing by the planning authority and in accordance with the phasing set out in condition 2.

Reason: To secure the implementation of the consolidation of Loudoun Castle.

6. Landscape Masterplan and Management Plan

Prior to the commencement of development a landscape masterplan and management plan, which shall set out the details of the proposals for restoration of the gardens and designed landscape and other areas of open space and their future maintenance shall be submitted to and approved in writing by the planning authority. The approved scheme shall be implemented unless otherwise agreed in writing by the planning authority and in accordance with the phasing set out in condition 2.

Reason: To secure the implementation and management of the restored gardens and designed landscape

7. Specified Matters

Development shall not begin on an individual phase of development (identified in compliance with condition 4(f) until all of the details listed in this condition for that phase of the development have been submitted to and approved in writing by the planning authority. Thereafter the development shall be carried out fully in accordance with the approved details unless otherwise agreed in writing with the planning authority:

- a) full details of the layout and siting of the proposed phase of development including plans and elevations of all buildings;
- b) full details of the external appearance and finishing materials of all buildings in the proposed phase of development;
- c) a scheme of landscaping for the phase of the development, detailing existing landscape features and vegetation to be retained; the locations of new trees, shrubs, hedges, grassed areas and water features; a schedule of plants including species, plant sizes and proposed numbers and density; the layout, design and materials of all hard landscaping works including walls, fences, gates and street furniture; the extent and distribution of public open space within the phase; and a programme for the completion and subsequent maintenance of the proposed landscaping. Thereafter, all management and maintenance of the landscaped and open space areas shall be implemented, in perpetuity, in accordance with the approved programme;
- d) a detailed levels survey of the site and cross sections showing proposed finished ground and floor levels relative to existing ground levels and a fixed datum point for the phase of development. The finished floor levels shall be maintained at a minimum of 150 millimetres above ground level while adjacent to the floodplain, the finished floor levels shall be 500 millimetres above the 1:200 year + climate change level as determined by the Flood Risk Assessment;

- e) a design statement for the proposed phase of the development;
- f) a scheme for the lighting of the proposed phase of the development;
- g) full details of the location and extent of all water bodies (including watercourses, field drains and the proposed lake) within and bordering the phase of development;
- h) the report of a tree survey (fully in accordance with BS 5837:2012) of all trees in each phase of development and within 30 metres of the boundary of that phase, including a plan showing the root protection zones of those trees and full details of the position and design of tree protection fencing for trees to be retained;
- i) full details of the proposed means of disposal of foul and surface water from the phase of development;
- j) full details of roads, footways, cycleways, cycle parking, public transport infrastructure and crossings within each phase;
- k) full details of the proposed car parking and vehicle turning areas within the phase of development;
- l) details of the infrastructure required to facilitate the connection of the buildings within each phase of development to the fibre optic network within East Ayrshire;
- m) a construction environmental management plan (CEMP) for each phase of development based on that approved under condition 11;
- n) a scheme to deal with land contamination within that phase of the site which should include any necessary measures to treat/remove contamination;
- o) a scheme identifying the likely magnitude of noise generated from the development within that phase and any necessary measures to mitigate noise.

Reason: Permission for the development has been granted in principle only, and subsequent approval of these matters is required in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 and to allow for a reasonable period of time to plan and implement the development.

8. Road Improvements

Prior to the occupation of any dwelling house within the development:

- a) the existing footway on the east side of the A719 between Loudoun Academy and the proposed tourist access which leads towards Loudoun Castle shall be upgraded to provide a 2 metre wide footway. Details of the proposed footway works shall be approved in writing by the planning authority. The footway shall be implemented in accordance with the approved details;
- b) a fully lit, 2 metre wide, footway shall be provided on the east side of the A719 between the proposed tourist access which leads towards Loudoun Castle and the northern-most

access to the residential areas. Details of the proposed footway works shall be approved in writing by the planning authority. The footway shall be implemented in accordance with the approved details;

c) a puffin pedestrian crossing facility shall be installed in the vicinity of the existing bus stops on the A719 positioned approximately 140 metres to the south of the proposed tourist access which leads towards Loudoun Castle. The precise location of the crossing shall be approved in writing by the planning authority in advance of the crossing being constructed. The crossing shall be implemented in accordance with the approved details;

d) a puffin pedestrian crossing facility shall be installed between the two proposed residential accesses which lead from the A719. The precise location of the crossing shall be approved in writing by the planning authority in advance of the crossing being constructed. The crossing shall be implemented in accordance with the approved details;

e) the existing bus stops (positioned approximately 140 metres to the south of the proposed tourist access) shall be upgraded to incorporate hardstanding, raised Kassel boarding kerbs, a shelter and flag with facilities to incorporate full Real Time Passenger Information (RTPI) provision, all to be agreed in writing by the planning authority. The bus stop improvements shall be implemented in accordance with the approved details;

f) details of the northern residential access shall be submitted to and approved in writing by the planning authority and shall be constructed in accordance with the approved details and the phasing set out in condition 2.

Reason: In the interests of road traffic and pedestrian safety

9. Electrical vehicle charging points

Prior to any building within the leisure and tourism development as identified in the masterplan required under condition 4 being opened to the public, a minimum of 2 fast electrical vehicles charging points shall be provided within the leisure and tourism areas. The charging points shall be maintained thereafter in perpetuity and available for public use for all times that the buildings are open to the public, unless otherwise agreed in writing with the planning authority.

Reason: To encourage sustainable vehicle usage.

10. Energy Efficiency

Prior to the construction of any buildings, an energy statement applicable to that building shall be submitted to and approved in writing by the planning authority. The energy statement shall include the following item[s]:

a) full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development;

b) calculations using the SAP (Standard Assessment Procedure) or SBEM (Simplified Building Energy Model) methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, will enable the development to achieve at least a Bronze Active rating under Section 7 of the Building Standards Technical Handbook;

No dwellinghouse or other building shall be occupied unless same has been constructed in full accordance with the details in the energy statement and the carbon reduction measures shall be retained in place and fully operational thereafter.

Reason: To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy.

11. Construction Environmental Management Plan

Before any development commences a construction environmental management plan outlining the details of all on-site construction works, post-construction reinstatement, drainage and mitigation to be undertaken together with a timetable of the activities shall be submitted to and approved in writing by the planning authority. The development shall be constructed in accordance with the approved construction environmental management plan unless otherwise agreed in writing by the planning authority

Reason: In terms of the protection of residential amenity.

12. Travel Plan

A travel plan, (which shall include information for all visitors and guests as well as staff and residents), and which sets out proposals for reducing dependency on the private car shall be submitted to and approved in writing by the planning authority. The travel plan shall identify measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan. The plan measures shall be implemented prior to occupation of the first residential property, or prior to the commercial operation of any element of the tourism facility, whichever is first, and maintained in perpetuity (during the operation of the development) per the approved details, unless otherwise agreed in writing with the planning authority.

Reason: To encourage active travel and reduce the use of private car trips