

DIALOGUES 6-26

Reporter's questions put to Council on 17 May 2022; Council's answers (in blue) on 27 May 2022 and subsequently.

6	The report to the Helensburgh and Lomond Area Committee on 16 September 2021 says that the Committee had instructed Officers at its meeting on 17 September 2020 to proceed with two proposed Traffic Regulation Orders. Presumably there was an officer's report to the September 2020 Committee on the matter. Can a copy of that report be provided? Completed
7	Section 1(1) of the Road Traffic Regulation Act 1984 specifies several reasons which may make it expedient for the traffic authority to make the order. Can the Council specify which of those reasons apply in this case? The Council specifically refers to section 1(1) sub-paragraphs (a) to (f) as their reasons for expediency.
8	Can the Council provide the following information about the Temporary Traffic Regulation Order (TTRO) referred to in the report to the Helensburgh and Lomond Area Committee on 16 September 2021: (a) A copy of the TTRO. See attached. (b) When was the TTRO made? 1st Luss TTRO covered 4th July 2020 until 4th January 2022 / 2nd Luss TTRO 5th January 2022 to 5th May 2023. (c) When did it, or when will it, cease to be in operation? 5th May 2023. (d) What are the main differences between the TTRO and the TRO that is the subject of the hearing? The main difference is that the TTRO does not have a prohibition on driving, residents and business permits are restricted to the core village roads only. The TTRO also covers the Duck Bay area. (e) What lessons have been learnt from the operation of the TTRO? The TTRO has been broadly successful and has given us a mechanism to manage visitor traffic within the village, this is particularly prevalent during summer and busy bank holiday weekends. It has also demonstrated the need for parking controls within the core village allowing these to be tested within a live environment.
9	Can the Council provide a copy of Appendix 1a (Draft Speed Limit TRO) and a copy of Appendix 1b (Speed Limit Plan) to the report to the Helensburgh and Lomond Area Committee on 16 September 2021. Completed
10	Can the Council indicate (a) when the Speed Limit TRO was made and (b) when it came into operation? The speed limit TRO approved by the Local Area Committee on 16 September 2021. After discussions internally a decision was made to delay its implementation until the full TRO was agreed. It was felt that this was a package of orders and implementing both orders together would deliver maximum benefit for the local area.
11	The heading of many of the objection letters includes the "Argyll and Bute Council (Off-Street Car Parking Plans & Changes, Luss) (Amendment) 202...". Can the Council indicate the current status of this Order, if indeed it is an order, and provide a copy? The Off-street order is effective from 01 November 2021 as per the below link. SCHEDULE (argyll-bute.gov.uk)

12	Can the council provide a plan or plans in hard copy showing the boundaries of the Council-operated “north car park” and the privately operated ”south car park”. Posted 27/5/22
13	Article 2 of the draft TRO says it is <i>“To make provisions in relation to the on street parking within Luss, and revoke Orders ...”</i> . The Reporter wonders if it would be more accurate for the TRO to say here <i>“To make provisions in relation to driving and on-street parking within Luss, and revoke Orders ...”</i> ? If so, would the Council welcome a recommendation from the Reporter for a modification to be made to the draft TRO to that effect? Agreed.
14	Can the Council provide a full-size hard copy of the Traffic Management Layout Plan attached to or part of the Order. Posted 27/5/22
15	The Council has indicated (minutes of Helensburgh & Lomond Area Committee, 6 September 2021) that the permit charge should be reduced from £98 to £45 per annum. Does the Council therefore wish the Reporter to recommend a modification to the draft TRO, with “£98” being amended to “£45” on both the “Resident Parking Permit” and “Business Parking Permit” lines of Schedule 6? Agreed.
16	<p>The Reporter wonders whether the Council is satisfied that all of its references to the “owner” and “registered keeper” of a vehicle are correct. The references to “owner” appear in articles 3(ii), 30(a), 30(b), and 34.1. The references to “registered keeper” appear in articles 3(ii), 31 and 32. The Reporter draws particular attention to the definition of “registered keeper” in article 3(ii), where it says that the registered keeper is not necessarily the owner. But the definition of “owner” in article 3(ii) says effectively that the owner is the keeper. The Reporter also draws attention to article 30(a) which refers to the Council making enquiry of the DVLA about ownership, whereas it is the Reporter’s understanding that the DVLA holds records of keepers of vehicles, not of owners. Is there a case for the TRO</p> <p>(a) to refer to “registered keepers” only and not at all to “owners”,</p> <p>(b) to define “registered keeper” as <i>“the person responsible for making sure a motor vehicle is properly registered, taxed and insured and is not necessarily the owner of the vehicle”</i> (which is how a vehicle’s registration document defines a “registered keeper”), and</p> <p>(c) to make appropriate modifications? The Council are comfortable with the current wording as the registered keeper and owner can be different, we do not propose any changes at this time.</p>

17	<p>The Reporter questions the validity of restricting the furniture removals exception to the driving prohibition in articles 5(f) and 12 to offices, dwelling houses and depositories. He wonders whether that exception should apply to any premises, whatever the use, and therefore whether the TRO should be modified accordingly. He seeks the Council's view on this. The Council</p> <p>are comfortable with the current wording and feel that our wardens have discretion to make decisions on the validity of PCNs being issued.</p>
18	<p>It appears to the Reporter that the cross-reference to Article 4 in the definition of "parking place" in draft TRO article 3(ii) is incorrect. Does the Council want the Reporter to recommend that the draft TRO be modified to substitute the words "Article 16, Schedule 5 and Schedule 8" for the words "Article 4" in that definition? The council apologises for this omission and agrees that this should be modified.</p>
19	<p>TRO article 40 refers to orders to be revoked or amended. Does the Council wish the Reporter to recommend that the draft TRO is modified to substitute the words "Schedule 7" for the words "Schedule 6" in that article? The council apologises for this omission and agrees that this should be modified to Schedule 7.</p>
20	<p>It appears to the Reporter that there are a number of typographical errors in the definitions in draft TRO article 3(ii), and the Reporter asks if the Council wishes him to recommend modifications as indicated in (a) to (d) below. (a) In the definition of "invalid carriage", should the draft TRO be modified to substitute the word "adapted" for the word "adopted"? Agreed.</p> <p>(b) In the definition of "motor cycle", should the draft TRO be modified to insert the word "in" immediately before the words "Section 136"? Agreed</p> <p>(c) In the definition of "parking attendant", should the draft TRO be modified to delete the word "by" immediately before the words "in section 63A"? Agreed. (d) In the definition of "Qualifying person", should the draft TRO be modified to substitute the words "<i>a resident or business user who meets the eligibility criteria to apply for a parking permit outlined in article 34</i>" for the words "<i>a resident and business user that meet the eligibility criteria to apply for parking permit outline in article 34</i>"? The council apologises for this omission and agrees that this should be modified.</p>
21	<p>Does the Council want the Reporter to recommend any other modifications to the draft TRO, either in response to objections or for other reasons? No.</p>
22	<p>Can the Council provide a copy of Appendix 3 (Thematic Summary of Objections) to the report to the Helensburgh and Lomond Area Committee on 16 September 2021. Completed.</p>

23	Submission no 69, from Police Scotland, contains objections to other matters, but says “I have no objections or further comment” on the Order that is the subject of the proposed hearing. The Reporter therefore does not propose to treat this submission as an objection to the Order that is the subject of the proposed hearing. Does the Council agree? Agreed (Letter sent 17/5/22 to Police Scotland)
24	Can the Council confirm that it has complied with the consultation requirements in regulations 4 and 6 of The Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999? Yes.
25	Can the Council confirm that it has complied with the publication of proposals requirements in Regulation 5 of the 1999 Regulations? Please provide a copy of any published notices. Yes. Completed.

26	<p>Reporter</p> <p>Regulation 8 of the 1999 Regulations provides that, before making an order, the authority may hold a hearing in connection with it and the authority shall hold such a hearing before making an order in certain specified cases. It appears to the Reporter that draft TRO article 7 with schedule 2, article 8(i) with schedule 3, and article 8(ii) with schedule 4 all include prohibitions on loading/unloading which bring the TRO within the scope of regulation 8(1)(a) for a mandatory hearing if there is an objection to those provisions. Similarly, draft TRO article 4 prohibits driving on roads specified in schedule 1 (effectively all of Luss village), except as provided in article 5, and those provisions appear to bring the TRO within the scope of regulation 8(1)(b) for a mandatory hearing if there is an objection to those provisions. There is such an objection in both cases (submission no 68 from Rowena Ferguson). On that basis, a mandatory hearing is required. Does the Council agree? If the Council does agree, it appears to the Reporter that, apart from referring to the hearing as “mandatory”, nothing substantive arises in terms of procedures leading to and at the hearing.</p> <p>Council</p> <p>... below is the response we received from Brodies ...</p> <p>We agree with the indication given by the Council in the Reporter's questions (at 26) that the holding of a hearing does not fall to be considered 'mandatory' per regulations 8(1)(a) or 8(1)(b) of the 1999 Regulations because:</p> <p>(i) the objection is not made in relation to the loading or unloading of vehicles in any road. As was indicated in our initial instructions from the Council, in order for a mandatory hearing to arise, the objection (which must be made in accordance with regulation 7) has to be "to that provision in the order". The objection from Rowena Ferguson raised a number of points in relation to the limit on business parking permits, business need for a loading bay, customer parking and public access; and</p> <p>(ii) we are also in agreement with the Council's view that that regulation 8(1)(b) of the 1999 Regulations would not apply because the objection has not been made by a person who provides a “relevant service on any road to which the order relates”. Relevant service is as defined in</p>
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regulation 8(4) of the 1999 Regulations and does not apply to the person making the objection (Rowena Ferguson).

Reporter

The Reporter notes Brodies' position in relation to the hearing being mandatory or discretionary. He accepts the position stated by Brodies at point (ii).

On Brodies point (i), the Reporter accepts that he over-stated the argument for the hearing being mandatory in his earlier assessment. However, it is still the case that the Order (article 8(i) with schedule 3) restricts waiting on Church Road. That restriction must include a restriction on "the loading or unloading of vehicles" as referred to in Regulation 8(1)(a)(i). Ms Ferguson's objection includes the words "Please consider a marked Loading Bay as shown outside my premises" and her plan shows a proposed loading bay on Church Road. It seems reasonable to the Reporter to construe that as an objection to the imposition of the waiting restriction on Church Road, ie she seeks the ability to load and unload vehicles on Church Road where the Order would restrict it.

The Reporter therefore asks for reconsideration to be given to this point.

Council

The section of road directly fronting Ms Ferguson's business is subject to (i) "Restricted waiting with exemptions" (marked blue on the attached plan); and (ii) a Prohibition of Driving with exemptions (marked purple on the attached plan).

We also attach a 'snip' of the plan which shows Ms Ferguson's property on Church Road indicated in purple outline.

Articles 4 and 5 of the TRO (Prohibition of Driving and Exceptions to Prohibitions of Driving)

As you are aware Article 4 provides for the prohibition of driving on any road specified in Schedule 1 to the Order.

The Order under Article 5(b) provides for an exception to the prohibition of driving as set out in Article 4. The Article 5(b) exception allows for vehicles being used for or in connection with the conveyance of goods or persons to or from premises situated on any road specified in Schedule 1 to the Order. This includes the section of Church Road where Ms Ferguson's business is situated (see item 2 of Schedule 1).

Therefore the Council considers that Ms Ferguson will be able to receive goods delivered to her business premises under this exception.

Articles 8 and 11 (Restrictions on waiting of vehicles in roads specified in Schedules 3 and 4 and exemptions)

Article 8(i) of the Order provides that no person shall, except upon the direction or with the permission of a parking attendant or police officer, cause or permit any vehicle to wait at any time on any length of road specified in Schedule 3 to the Order. This includes the section of Church Road where Ms Ferguson's business is situated (see item the second item 2 of Schedule 3).

Articles 11 of the Order provides that nothing in Article 8 "shall apply so as to prevent any person from causing or permitting a vehicle to wait in any restricted road specified in Schedule 3 or Schedule 4 while the vehicle is in actual use **for the purpose of delivering or collecting goods or**

merchandise or while loading or unloading the vehicle at premises adjoining the said road." Certain conditions then follow that apply to the exemption such as no such vehicle will be allowed to wait for a period of more than 30 minutes to load/unload.

Therefore the Council considers that Ms Ferguson will also be able to receive goods delivered to her business premises under this exception.

Unless Ms Ferguson has goods delivered on the section of Church Road covered by the no loading/unloading provisions in the Order (marked red on Church Road on the attached plan) then we do not consider that the proposed restrictions as set out in the Order will impact on Ms Ferguson's business with regards to the delivery of goods.

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Therefore, in relation to Regulation 8(1)(a)(i) of the 1999 Regulations, the Council considers that whilst Ms Ferguson appears to be concerned with the loading and unloading of vehicles outside of her business premises (which is **not** prohibited by the Order), Ms Ferguson's objection could be construed to be an objection to the provisions on Church Road as a whole

(and which do, on part of Church Road, restrict loading and unloading) and if this broader interpretation of the objection is taken, then we would agree that the hearing would fall to be considered a mandatory one. The Council would not wish to see this point become a bone of contention at a later date and on balance is content that the approach is taken that the hearing is prescribed by the terms of regulation 8(1)(a) of the 1999 Regulations.

Finally, we further agree with the observation from the original list of questions (at Q26) that whether the hearing is considered to be mandatory or discretionary, "nothing substantive arises in terms of procedure leading to and at the hearing". The key point is that if a hearing is considered to be necessary, that requirement is being complied with and, in the event that the Council requests Scottish Ministers to confirm the Order, it will, of course, submit a copy of your report to the Scottish Ministers in accordance with Schedule 4 of the Regulations which appears to be a requirement where a hearing has taken place regardless of whether it was necessitated by regulation 8(1)(a).