

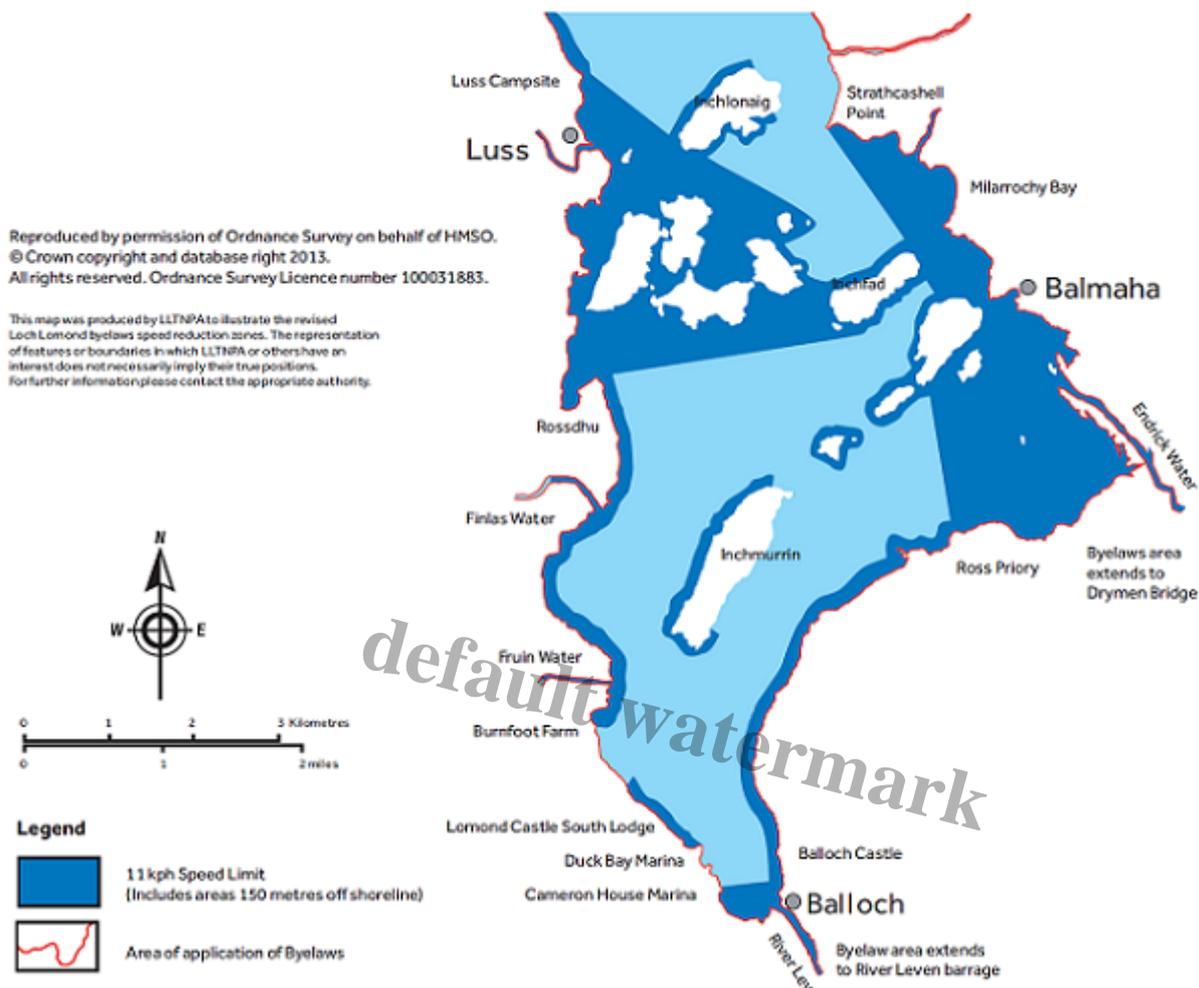
The review of the Loch Lomond byelaws (1) â?? the biased process

Description

On Monday, a special meeting of the Loch Lomond and Trossachs National Park Authority (LLTNPA) is being held to consider and approve a report to Scottish Ministers proposing revisions to the byelaws which govern boating on Loch Lomond ([see here](#) for papers and to get a link on the day to watch the meeting, which starts at 2pm, online). The Board is also being asked to consider a number of additional issues, with a view to giving staff the go-ahead to plan for further controls in future, and endorse two recommendations to the Scottish Government which have serious implications for peopleâ??s rights. I will cover the issues in a short series of posts on either side of the meeting.

Background

The Loch Lomond byelaws were first created in 1996 and were primarily intended to help manage outdoor recreation, particularly that involving motorised vessels, on the loch. While they introduced a number of rules, including a requirement for motorised vessels to be registered, perhaps the most notable, was the introduction of speed limits around most of the larger islands, the Endrick Mouth and areas of shoreline.



The byelaws were reviewed in 2007 and 2013, after the LLTNPA was created, and now come under the National Parks (Scotland) Act. By law they require to be reviewed at least once every ten years. This legal requirement and *“changing use of the Loch were the chief drivers”* of the current review but *“the process also allowed the opportunity to engage with stakeholders on a wider range of related matters such as sustainable visitor management and tackling the climate and nature crises”*.

According to the draft Review Report to Scottish Ministers ([see here](#)) an internal group of officers came together in 2021, decided what outcomes they wished to achieve in the review, the issues that needed to be addressed and the principles that should be applied to any changes, before developing six proposals which they *“explored”* informally with a group of c50 stakeholders. Out of this LLTNPA staff then created a *“Loch Lomond Stakeholder Group”* comprising 13 organisations/landowners.

Following this a public consultation was then held on six proposed changes to the byelaws ([see here](#) for the document) for 12 weeks from 27 July to 19 October 2022. This received 383 responses which were analysed by a consultant in a report ([see here](#)). As a result of the consultation and the threat of legal challenge, the LLTNPA decided to change their proposal to ban vessels over 15 horsepower from a number of new zones within the speed limit areas, which are frequented by swimmers and paddle boarders, to lowering the speed limit in these zones to 6 kph instead. The other five proposals, including that to introduce a user registration scheme which has significant implications, remain unchanged.

Once the LLTNPA Board has considered the Review Report, agreed any amendments and approved it, the public will have another 28 days to comment before it is submitted to Scottish Ministers. The LLTNPA have requested Scottish Ministers any revised byelaws are introduced in April 2024 to give them time to prepare for the changes (development of the proposed User Registration Scheme is likely to consume significant amounts of time and resource).

Comments on the process

Just like the report recommending the introduction of the camping byelaws ([see here](#) under critique and analysis), the Review Report has been designed to assure Scottish Ministers that the consultation process was sound and fair. While the consultation process did not display such obvious bias as that for the camping byelaws where hundreds of photos of abandoned and wrecked tents and rubbish were used to inflame public opinion the whole process was biased against motorised recreation and jetskis in particular as well as being flawed in other ways.

Below are the outcomes which staff supposedly agreed BEFORE looking at the issues

- 1. Safer enjoyment of the water for all Loch users and especially young people**
- 2. Protecting the environment**
- 3. Increased participation in healthy recreation by making space for all users and types of activities**
- 4. Minimising incidents of antisocial behaviour and disturbance to communities and loch users**
- 5. Appropriate management and enforcement of the byelaws**

These outcomes resulted in the initial six proposals, two of which were targeted against motorised vessels: the proposed exclusion zones and the registration scheme neither of which applied to non-motorised vessels. This was clearly biased. The number of safety issues has undoubtedly increased, particularly because of the increase in people now wild water swimming, but the risk to swimmers from dinghies or kite surfers flying along at 20kph on a windy day when it is very difficult to see people in the water (they are excluded from the current 11kph limit) is greater than a power boat observing the speed limits. This initial bias was then continued into the revised proposal for zones with the proposed 6kph hour speed limits only applying to motorised vessels.

Strangely, despite the fact that many wild water swimmers quite rightly now tow floats to make them more visible in the water, the LLTNPA never proposed making this measure compulsory outside the areas where boaters might expect swimmers. It is only a matter of time before there is a serious accident resulting from a boat, any type of boat, hitting a swimmer whom they have not seen.

The motorised boating community have historically been the group most aware of this risk, the Loch Lomond Association having written to the LLTNPA about the dangers in the past and having voluntarily

provided stewarding on the loch for mass swimming events. One would never know this from reading the consultation. Amazingly, the final major proposed change to the byelaws would relax almost all controls on businesses â??trading on the lochâ?•, on the grounds that businesses are adequately controlled by other laws. This will leave the LLTNPA with no means to check whether adequate safety arrangements are in place for businesses organising such events.

Stakeholder Group

- Cruise Loch Lomond
- Forestry and Land Scotland
- Friends of Loch Lomond & The Trossachs
- Glenfalloch Estate
- Loch Lomond Association
- Loch Lomond & The Trossachs Access Forum
- Loch Lomond Water Ski Club
- Luss Estates
- Montrose Estate
- Royal Yachting Association Scotland
- Scottish Canoe Association
- Scottish Land and Estates
- Sweeneys Cruises

Membership of the stakeholder group with landowning interests underlined in red and boating interests in blue

Although the Loch Lomond byelaws primarily control what happens on the water, landowning interests outnumbered boating interests five to four on the stakeholder group. Landowning representation of course would have been very important if issues relating to access to the loch, which has become increasingly restricted, were being discussed but that does not appear to have been the main item on the agenda.

According to the Review Report four meetings of the group were held following the consultation and:

“A majority of stakeholders present at these meetings believed that Personal Water Craft (PWCs), i.e. jet skis or jet bikes, should be banned”.

Just like irresponsible campers, jet skiers are a group that people love to hate and it seems the stakeholder group was stacked against them. Given the focus on jet skis it is legitimate to ask why their interests were not directly represented on the stakeholder group rather than indirectly through the LLA which also has to represent other interests. There are 6.6k members of the Loch Lomond Boats and Jetskis facebook group ([see here](#)), that is people who have effectively been excluded from having a seat at the table and with whom the the LLTNPA has made little or no attempt to have a dialogue. This is a repeat of what happened with the camping byelaws. It is no wonder that a lot of them are very angry.

Another flawed consultation

The overwhelming majority of responses supported all six byelaw proposals set out in the consultation. This in my view was a foregone conclusion. The questions were posed with very little background information or analysis and what was supplied was highly questionable (as I will show in my second post). There was no context to enable people to decide what was proposed was sensible or not. Asked if measures allegedly designed to promote safety or reduce anti-social behaviour are a good thing, it is very hard for anyone to respond no. The fact that the LLTNPA dropped its proposals for powered vessel exclusion zones, after a number of well argued objections, despite 65% of respondents responding yes to the proposal supports my case.

Just as with the camping byelaws, however, when many organisations and people supported the proposals but with a number of important caveats about whether they would work, the LLTNPA has failed to publish individual responses. When the Scottish Government normally publishes individual responses to consultations, this is unjustifiable and should give Scottish Ministers further reason to doubt whether the numbers in favour and against the proposals are a fair reflection of the complexity of views..

The best illustration of this concerns young people’s response to the consultation. Two of the proposed changes concern young people under 16, a new requirement that would make the wearing of personal flotation devices (life jackets) compulsory and another that would make the registered owner of a vessel liable for any offences committed by a young person when unaccompanied. It is striking therefore that the report analysing the responses to the consultation reports “There were no respondents from under 16”. Not one!

While one could understand how young people might be unconcerned about the proposal that adults should take assume responsibility where young people breach the byelaws, one might have thought young people would have views about being made to wear PFDs when adults aren’t. In 2018, the Year of Young People, the Convener of the LLTNPA James Stuart pledged that the Park would involve young people. He set up a Youth Committee to help achieve this “” which appears to have met intermittently since though its membership is again secret “” and appointed a Board Member, Heather Reid, who will take over as Convener of the Board from him next week, to lead on Youth engagement. The Loch Lomond Bye Law consultation shows up the LLTNPA Board’s attempt to engage with young people as an almost total failure.

Alongside the Review Report, Park staff signed off an Equalities Impact Assessment about the whole consultation process on 12th January ([see here](#)). While staff have described possible impacts, good and bad, of the proposals on young people, no-one appears to have thought to use the Youth Committee to respond to the consultation when the report was drafted last June and there is no mention of the lack of any response to the consultation by Young People.

If the LLTNPA cannot even engage effectively with young people, having set up structures and mechanisms to do so (a young person once again attends Board Meetings), what hope of any effective dialogue with other recreational interests?

Category

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2. Loch Lomond and Trossachs

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