

Scottish Enterprise's new exclusivity agreement and Flamingo Land's planning appeal (1)

Description

On 20th December, just before the statutory deadline expired, Flamingo Land lodged an appeal with the Scottish Government against the Loch Lomond and Trossachs National Park Authority (LLTNPA)'s decision to refuse their proposed development at Balloch. On the same day Scottish Enterprise (SE) announced they were extending their "Exclusivity Agreement" with Flamingo Land to enable them to do so. Both decisions received widespread criticism and coverage in the media ([see here](#) for example) but are what I predicted four months ago when commenting on the LLTNPA's very weak grounds for refusing the proposed development – "its far from over yet" ([see here](#)).

This post is the first of two taking a critical look at Flamingo Land's appeal and their agreement with Scottish Enterprise. The good news is that last week the Scottish Government's Planning and Enforcement Appeals Division (DPEA) extended the deadline for the public to respond to Flamingo Land's appeal until 7th February.

Planning chaos at the DPEA

The DPEA's original deadline for the public to respond to Flamingo Land's appeal was 17th January, which was clearly unreasonable because the appeal was lodged just before the holiday period. As a result of a representation from the Balloch and Haldane Community Council (BHCC) ([see here](#)) the DPEA extended this to 24th January, one week before the deadline it had given the LLTNPA as the planning authority to respond. This precluded anyone from commenting on the LLTNPA's response.

Last week, as a result of correspondence from Ian Cowan ([see here](#)) acting for Ross Greer MSP which set out the legal timescales for appeals, the DPEA extended the deadline until 7th February. That gives a more reasonable time period for those concerned to consider Flamingo Land's 75 page appeal statement and the LLTNPA's response when it appears.

The unfairness of the DPEA's first two deadlines is illustrated by the revised socio-economic assessment of the proposed development, which Flamingo Land had submitted to support their case, was missing three appendices and these were only made public on 21st January, four days after the original deadline.

All [403]	Appeal Documentation [167]	Authority Response [1]	Correspondence issued [34]	Representations to DPEA [201]
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Screenshot 27th January. There were 380 documents associated with the appeal on 23rd January. The Authority response was received by the DPEA but only

published on 24th and consists of copies of all the responses the LLTNPA received to the application from other public authorities (199 pages!)

The DPEA’s planning portal is of little help when it comes to understanding which of the 400 documents listed to date are important to read or even where to start. Indeed, the presentation of the appeal documentation is chaotic. The ordering does not even follow the numbering of the documents submitted by Flamingo Land and there is no indication of what documents on the DPEA portal are duplicates of what was published on the LLTNPA portal and what are new:

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<input type="checkbox"/>	21 Jan 2025	22 Jan 2025	Documents	Ager
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<input type="checkbox"/>	03 Jan 2025	03 Jan 2025	Documents	Ager
<input type="checkbox"/>	24 Dec 2024	30 Dec 2024	Correspondence	DPEA
<input type="checkbox"/>	23 Dec 2024	30 Dec 2024	Documents	Ager
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Page 1 of appeal documentation as it appeared on 23rd January

The key document is Flamingo Land’s Appeal Statement ([see here](#)) which for some reason is on Page 2 of the appeal documentation. Appendix A to the statement lists, numbers and dates all the supporting documents. Scrutiny of this suggests that only the updated socio-economic assessment (dated Dec 2024) is new. However, various other missing documents have been added to the portal since the appeal was lodged, including a missing appendix from the Flood Risk Assessment which I do not recall seeing before. This appears to show most of the pierhead area as vulnerable to flooding ([see here](#))

The continued high level of concern from the public is shown by the 201 representations to date, most of which are objections. Many of those use a model response issued by the BHCC when they thought the deadline for responding was very short. It is better, if you can, to respond in your own words as that will force the Reporter appointed to decide the appeal, Mr David Buylla, to read what you say.

Interestingly, the representations includes one from the LLTNPA's estates department which updates their response to the original application and draws attention to the LLTNPA's recent decision to approve a new Rescue Boat station at the pierhead without explaining this was also on land at risk of flooding ([see here](#)). It will be interesting to see what the Reporter makes of that.

Flamingo Land's agreement with Scottish Enterprise

SE's conditional missives (exclusivity agreement) may include clauses which cover the current situation in which planning permission has been refused by the LLTNPA but Flamingo Land has decided to appeal. If so, SE may have had no other choice but to extend the missives or risk being sued. If not, however, arguably they do not have a leg to stand on. I have therefore submitted a new FOI request to SE asking them to release the relevant clauses as it is in the public interest to ascertain whether they acted according to the clauses contained in the conditional missives or not.

SE had previously released a highly redacted version of the Conditional Missives to Chris Cotton, who works for Ross Greer MSP. He appealed to the Information Commissioner who subsequently decided "on balance" (Decision 036-24) to uphold SE's redactions on the grounds of the financial and economic harm releasing them might cause and because they had been agreed in confidence. It is particularly interesting therefore Flamingo Land in their Appeal Statement have, when describing their relationship with SE, have revealed some elements of the conditional missives (which they call "an option contract") which SE had argued should be kept confidential:

1) *"SE will also through the Option Contract have preliminary oversight and control of the quality of the building design and the construction materials used and all signage proposals"*. It would now be in the public interest for SE also to disclose whether they had "preliminary control and oversight" of the plans submitted for planning permission in principle.

2) *"In terms of its contract with SE, the Appellant [i.e Flaming Land] is entitled to construct the Proposed Development in up to four phases."* That had never been explicitly stated before – the key word is entitled – but the order of construction, as I will explain in my second post, has an important bearing on one of the main arguments Flamingo Land use in support of their appeal.

3) The appeal also states *"the intention of the Appellant to build the Proposed Development in up to four sequential phases to be commenced over a 10 year period"*. That ten year period must be allowed for in the Conditional Missives and would appear to commence from AFTER the first phase has been granted planning permission. It appears the Gateway to the National Park will be a building site for years!

Flamingo Land's relationship with the LLTNPA

In their appeal statement Flamingo Land describe how they were appointed preferred bidder for the Riverside Site, quoting material that was published on parkswatch about their tender score but without

saying that the LLTNPA were on the interview panel.[\(see here\)](#).

They also make no mention of their first application for Planning Permission in Principle. They withdrew this in September 2019 AFTER the LLTNPA had published a report for their board recommending it be rejected [\(see here\)](#). That upset the LLTNPA planners but not enough to require Flamingo Land to submit a new planning application, as would usually be the case, after the one they had submitted in 2022 had to be substantially amended because of the introduction of National Planning Framework (NPF4). Hence what I have called the Mark II and Mark III applications [\(see here\)](#). Indeed, the LLTNPA included the delivery of developments in the pipeline – which clearly included Flamingo Land – in their new National Park Partnership Plan approved last year [\(see here\)](#).

As I showed in my two posts on the story of the Flamingo Land proposal, LLTNPA staff had backed the development from the start but then, when they felt which way the political wind was blowing, jumped up onto the fence before jumping down the other side and deciding at the last minute to recommend rejection of the application. This helps explain why Flamingo Land argue in the Appeal Statement that they had been unfairly treated by the the LLTNPA and given no chance to address any of the concerns presented by staff in their Committee Report:

“Scottish Ministers should be aware, particularly in their consideration of Reasons for Refusal 2 and 3 that it was only following the publication of the Recommendation Report that the Appellant and its consultants were made awarethat its planning department had any concerns regarding the impact of the Proposed Development on woodland and on the ability of the Appeal Site to improve biodiversity.”

“Again the Scottish Ministers may also wish to note that it was only at the point when the Recommendation Report was published on the NPA’s planning portal on 2nd September 2024 that the Appellant and its consultants were made aware of the NPA planning department’s position (and its reason in support thereof) on the issue of whether the Appeal Site complied with the exception provisions set out in paragraph iv) of NPF4 Policy 22 a) relating to flood risk and water management; this notwithstanding the fact that these provisions had formed part of the statutory development plan since February 2023 and had been subject of some discussion, including with SEPA.”

“On 11th September 2024 the NPA published on its online planning portal for the first time the copies of the internal consultation responses which its planning department had received from the NPA officers specialising in landscape, built heritage, ecology and trees and woodland; this notwithstanding the fact that, for example, the trees and woodland consultation response had been sent to the Director of Place and the relevant case officer on 29th April 2024.”

Having worked so closely with LLTNPA staff for so long to deliver the development Flamingo Land had a right to feel aggrieved:

“As a result of these actions on the part of the Director of Place the Appellant and its consultants were precluded from having any opportunity to (i) challenge the conclusions that had been drawn by the specialist officers in those responses, particularly in relation the assumptions that had been made by the NPA’s trees and woodland officer concerning the extent of the areas of land within the Appeal Site that would require to have trees removed from them in order to deliver the Proposed Development and (ii) discuss how any residual concerns might be properly and appropriately conditioned so that they were fully addressed at the detailed design stage”.

However, being let down by the LLTNPA does not necessarily in planning terms invalidate the way they reached their decision.

In my view the more important process point which the Reporter needs to consider is why the weak reasons LLTNPA staff had given for rejecting Flamingo Land’s application were not strengthened at the Board Meeting on 16th September which decided the application:

1) First, when the Convener Heather Reid was introducing the meeting – I have a complete video recording thanks to Parkswatch readers – she failed to explain why the locally elected member for Balloch, Sid Perrie, was not at the meeting. The minute fails to do so either, noting only that he was “not present”. The reason for this is that having opposed the first Flamingo Land application and tried to raise concerns about the second, Mr Perrie received a letter from the LLTNPA’s lawyers, Anderson Strathern, basically telling him he had a conflict of interest and should not attend (I have seen the letter because I am currently advising Mr Perrie on other matters). Normally, under the various Codes of Conduct for those in public life, it is up to a person involved in taking a decisions to decide whether or not they have a conflict of interest but in this case – which may be unprecedented – the LLTNPA decided to take matters out of Mr Perrie’s hands. What would have happened had he tried to attend the Board Meeting is unclear. The important point, however, in terms of the process is that having removed Mr Perrie, LLTNPA staff had removed the one Board Member who, on past form, might have criticised the officers report and forced Board Members to consider whether there were additional reasons for rejecting the application.

2) Second, when Board Members present did raise additional concerns about flood risk this came across as stage managed and designed to show board members were capable of using their critical faculties. The BHCC has referred to this in a representation to the appeal:

“Dr Richard Johnson, an eminent hydrologist and a LLTNP Board Member in a concluding statement, presented a review of the Lomond Banks planning application at the hearing on 16th September 2024 stating that a FRA (Flood Risk Assessment) should have been carried out prior to PPIP for the Unnamed Watercourses (UW) 1, 2, 3 on Old Luss Road at the Woodbank House area. Dr Richard Johnson’s remarks can be seen from the LLTNP audio/visual recording of the hearing”

Despite local representations drawing attention to the flood risk on Old Luss Rd, LLTNPA staff had refused to require a Flood Risk Assessment for the Woodbank House part of the development.

Mr Johnson also explained at the meeting why the flood risk on the Riverside part of the site was actually worse than what the officer's report stated. Instead, however, of strengthening the reasons for refusing the development the minute records:

"HR [Heather Reid, the Convener] asked if any Member wished to move an amendment to the Officer's Recommendation in the Report. No amendment was proposed."

It will be very interesting to see if LLTNPA staff use the points made by Mr Johnson in their response to Flamingo Land's appeal which is due at the end of this week.

3) Third, Alistair McKie from Anderson Strathern LLB, who was described as the LLTNPA's Legal Clerk, played an extraordinarily prominent role at the meeting. He spoke for around 10 minutes and basically advised Board Members that they had to be extraordinarily careful if they wanted to reject the recommendation from officers. It may be because of that that Board Members like Mr Johnson were not prepared even to strengthen any of the officers' recommendations. The overall impression given was that it was Mr McKie, and not Board Members, who had the real power when it came to deciding whether or not to approve, reject or amend officers' recommendations.

The scope of the appeal

Of the six reasons the LLTNPA approved for rejecting the Flamingo Land application, one – the strongest in my view – was about flood risk and the other five were all related to the impact the development would have on nature/biodiversity/woodland. The important point is these are not the only reasons that the Reporter can consider in respect of deciding whether to uphold or reject Flamingo Land's appeal. While I will consider this further in my second post on the appeal, it is crucial that those concerned about the proposed development make submissions setting out other reasons for rejecting it.

In that respect, while comments that other public authorities made about the planning application before it was decided have been published on the DPEA portal, objections from the public have not. As a result the Reporter may not see the many excellent objections to the application made by members of the public. My advice, therefore, to anyone who objected to the planning application for reasons other than those given by the LLTNPA (car parking, traffic, landscape are obvious examples) is use those objections as the basis of a further representation to the DPEA – you can send these to Lomondbanksappeal@gov.scot

Category

1. Loch Lomond and Trossachs

Tags

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2. Governance
3. LLTNPA
4. planning

5. Scottish Government

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