

The Flamingo Land appeal – the Reporter’s decision was predictable but the battle for Balloch is far from over yet

## Description

The provisional decision of the Scottish Government appointed Reporter last week to uphold Flamingo Land’s appeal against the Loch Lomond and Trossachs National Park Authority (LLTNPA)’s refusal of planning permission for their proposed development at Balloch should surprise no-one.

Senior management at the LLTNPA had long backed Scottish Enterprise’s wish to use the land they owned at Balloch for commercial purposes and were secretly involved in appointing Flamingo Land as preferred developer for the site in August 2015 ([see here](#)). LLTNPA senior management also failed to explain during the consultation of the Local Development Plan (LDP) ([here](#)), before it was approved by their Board in October 2015, what sort of development they envisaged for the village or their involvement with Flamingo Land. That corrupt process explains why there were only three objections to the LDP but tens of thousands of objections to Flamingo Land’s two subsequent applications for planning permission in principle (PPiP) to develop the village.

Under pressure from the public and from their Board, some of whom want to be seen to be doing something to tackle the nature crisis, LLTNPA senior management had little choice but to recommend rejection of Flamingo Land’s application last September. The grounds they provided for doing so, however, were very weak ([see here](#)) and ([here](#)) and they engaged a lawyer from Anderson Strathern to exclude the local member for Balloch, Sid Perrie, from the meeting ([see here](#)) and to ensure there was as little debate as possible by emphasising the semi-judicial nature of the process and claiming that anyone who expressed an opinion could expose the LLTNPA to legal challenge. Mr Perrie was the one board member who might have proposed strengthening the reasons for rejecting the application and predictably, other board members who are totally under the thumb of senior management, failed to do so.

This rotten process paved the way for the Reporter, the planning expert appointed by the Scottish Government’s Planning and Environmental Appeals Division (DPEA), to overturn the LLTNPA’s weak reasons for rejecting the application on planning grounds.

## The “Lomond Promise” and the reason the decision has been deferred six months

The Reporter, Mr David Buylla, has not yet approved Flamingo Land’s application for planning permission in principle but issued notice of his intention to do so in a report which is available on the DPEA website ([see here](#)). He has given Flamingo Land and the LLTNPA six months to come up with a legally binding “*planning obligation that secures the employment issues and environment issues that are set out in the Lomond Promise*”.

On 15th December 2022 Flamingo Land (under the guise of “Lomond Banks” – the brand name for their proposed development) issued what they called “The Lomond Promise” to try and win public

support for their Mark II planning application ([see here](#)). They subsequently drafted this in the form of a legal agreement ([see here](#)) which clearly had no legal status because Mr Buylla (para 391) now requires a new one which will legally commit Flamingo Land:

a) On employment issues to “*secure payment of the real living wage, preclude the use of zero hours contracts, and prioritise the employment of local people and local businesses wherever possible*”. It is NOT clear from Mr Buylla’s decision whether this legal agreement should cover sub-contractors or how it could effectively ensure that local people and businesses are employed/engaged “wherever possible”. Mr Buylla has also removed Flamingo Land’s promise, under the heading “Community Support Issues”, to point visitors to other local businesses;

b) On environmental issues to:

- “consulting with Zero Waste Scotland to influence how the site is developed and operated”
- “preparing a plan that would aim to make the development “net zero” by no later than 2035.”
- “prepare and implement a Woodland Management Plan for Drumkinnon Wood and its informal path network”
- “keeping the core path network and informal path network open at all times”

Only the last environmental requirement, which could help preserve access rights across the site, appears enforceable. For the rest, producing plans and delivering them are quite different matters. There are, for example, very good reasons to be sceptical about Flamingo Land’s commitment to achieving net zero following their switch, before last year’s General Election, from supporting the Tories to supporting Reform UK ([see here](#)) which has pledged to scrap net zero targets ([see here](#)).

Mr Buylla has also, however, ruled that it would be inappropriate to incorporate other parts of the Lomond Promise, as included by Flamingo Land in their own draft “legal agreement”, in a legally binding agreement with the LLTNPA. Those other promises included:

- Social issues – a commitment “to manage any anti-social behaviour within and around the proposed development”, discounted membership rates to local people for leisure facilities and “working with local water sports clubs to ensure they have access to appropriate facilities within the development;”
- Transport issues – which Mr Buylla believes could be secured by planning conditions rather than a legally stronger planning obligation;
- Social value portal – a commitment to monitor the impact of the development

It says something about how the DPEA works that Mr Buylla has been keen to impose as few planning obligations on Flamingo as possible and dismisses what were (vague) promises from Flamingo Land on the grounds that “*I am not convinced that.....[ X, Y, Z ]..... is essential for the proposed development to be acceptable in planning terms*”.

What Mr Buylla’s decision to delay the decision does do, however, is create time to challenge it. There are potentially two ways of doing this. The first is the Scottish Government can call in appeals – i.e Ministers can decide a case themselves – as long as this is BEFORE a decision is made. The Reporter’s deferred decision means the Scottish Government could still do that. The second is through seeking a judicial review of the decision. While that costs money it is something the LLTNPA Board could pay for if they were serious about acting like a real National Park.

## The basis for the Reporter's decision – site allocations in the Local Development Plan

Mr Buylla's report determining Flamingo Land's appeal is 60 pages long plus an appendix setting out a revised list of planning conditions (based on those proposed by LLTNPA staff, had their Board decided to approve the planning application, but with many of those objected to by Flamingo Land removed).

The report starts by focussing on the principle of development at the site and the first eight pages of this (pages 3-11) are about the Local Development Plan. The first para is the most crucial:

*"The planning authority's reasons for refusal raise no objections to the principle of developing the appeal site for the types of development that are proposed, and the report to the planning authority's Board advised its members that the proposed development, both within the areas that have been allocated for development in the LDP and elsewhere, is supported by the LDP."*

While Mr Buylla acknowledges *"the principle of developing this land is a matter of great concern to those who have objected to the proposal (who are very significant in number). Many of these representations consider the site unsuitable in principle for the types of development that are proposed"*, he concludes Flamingo Land's proposals are quite compatible with the way the site land was allocated for development in the LDP. In planning terms the report is no doubt correct about this, since the whole thrust of the local development planning system in Scotland is it should be plan lead. The Reporter's reasoning, however, appears open to challenge on two grounds.

The first is that Mr Buylla at no point questions the legitimacy of the LDP or the way that LLTNPA senior management appear to have manipulated the development planning process to enable Balloch to be turned into a holiday resort. Mr Buylla accepts that a holiday resort is what is being proposed but concludes that was allowed for in the LDP. He does so without giving any consideration as to WHY *"those who have objected to the proposal (who are very significant in number)"* failed to object to the draft LDP. The answer is no-one understood what was being proposed because they had been kept in the dark by the LLTNPA throughout the consultation (which unbelievably gained a planning award!)

The second is that the LDP, which was supposed to cover the period 2017-21, is now very out of date. If the LLTNPA Board was serious about the reasons it gave for refusing the planning application, which were based on policies set out in National Planning Framework 4 (e.g flood risk, impact on nature), it would not now allocate land for development in the way its predecessor agreed to do back in 2015. The Reporter gives no consideration as to whether the LLTNPA's site allocations at Balloch might have been changed as a result of NPF4 or other planning guidance such as that on Local Place Plans, issued in 2022 ([see here](#)), or the Local development planning guidance issued in 2023 ([see here](#)) which said that local communities should be at the heart of the planning system. The proposed development appears completely incompatible with much of that guidance suggesting that the Reporter has put Flamingo Land's interests and those of Scottish Enterprise before those of the public.

Meantime, the LLTNPA's senior management are still acting in ways that appear designed to enable the Flamingo Land development to go ahead. Specifically, they have delayed consultation on a new LDP – the call for ideas and sites has now been put back until October too late to affect the appeal –

and only agreed to a local place plan for Balloch after pressure from the Community Council and locally elected member Sid Perrie ([see here](#)). Had either consultation been started by now it would have likely shown that the site allocations in the very out of date LDP have almost no public support.

I submitted my two posts questioning the legitimacy of the LDP and development planning process as it affected Balloch to Mr Buylla it may be that such matters are outwith the scope of matters which can be considered by a Reporter. They should NOT, however, be outwith matters which can and should be considered by Scottish Ministers or which could be raised in a judicial review.

## **The basis for the Reporter's decision – policies in the LLTNPA's local development plan**

My Buylla applies a similar logic when considering the application of the policies in the LLTNPA's LDP to the development. For example (para 86):

*"LDP Visitor Experience Policy 2 seeks to deliver a world-class visitor experience. It requires (among other things not relevant to this proposal) new tourism development to enhance the visitor experience of the national park and, where necessary, to demonstrate viability and market demand. The park authority has not raised any issue with this policy and I too find no reason to find any conflict. For those visitors to the national park who seek the types of visitor experience that the proposal would provide, there is no reason to doubt that the proposals would enhance their experience. Similarly, there is no evidence to suggest that what is proposed would fail in viability or market demand grounds."*

While touching on all the LDP policies the LLTNPA considered when deciding the Flamingo Land application, the Reporter only questions the LLTNPA's interpretation and application of those policies (and those in NPF4) where they were used to justify refusing the development. This approach effectively discounts all the representations from the public (on traffic, parking etc), disenfranchising the public from the whole planning system, and means the Reporter takes as his starting point the LLTNPA's very weak reasons for rejecting the application and their subsequent submission to the appeal ([see here](#)). The LLTNPA's failure, for example, to object to the landscape impact of the development had the consequence that the Reporter declined my suggestion that when undertaking his site visit he should hire a boat and view the location of the proposed aparthotel and leisure complex from Loch Lomond.

The Reporter then dismisses all the reasons the LLTNPA gave for rejecting the application because of its likely impact on nature by pointing out that IF the woodland was so important, the site would never have been allocated for development in the LDP:

*"Unlike many parts of the national park, the appeal site has limited natural heritage value. There would be some impact on AWI [Ancient Woodland Inventory] woodland, but not to any significant degree. Areas of non AWI woodland would be lost but again, the scale of such loss would not be significant"*

The Reporter goes on to state that in any case Flamingo Land's promise to manage Drumkinnon Woods for nature will offer more than adequate compensation for the loss of trees and woodland on the development site (hence his Notice of Intent to give time for this to be included in a legal agreement).

That effectively reduces the LLTNPA's reasons for refusing the development to just one, that as a result of the revised guidance in NPF4 on flood risk part of the site is now deemed at risk of flooding. This appears to me where the Report is on weakest ground. Policy 22 a) only supports development proposals on land that would be at risk of flooding where one of four exemptions applies, only the fourth of which is applicable to this planning application: the "redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice."

The Reporter, correctly in my view (para 133), does *"not accept as helpful, the planning authority's attempt to draw a distinction between its acceptance that the appeal site has been used "previously" and the phrase "previously used" in policy 22? .* Mr Bylla, however, then equally unhelpfully claims that Policy 22 a) iv) "should only exclude land that has not previously been used", i.e land that has never ever been subject to development. To back this up he makes claims such as *"it is quite conceivable that an existing use of land may no longer be the optimal use of that land"*. If that was correct any managed green space along a river subject to flooding could still be developed under NPF4. In my view that interpretation undermines the intention of policy 22 which was to further restrict development on flood plains in future to water compatible uses and some exceptional cases.

## What next?

Despite the weakness of its case for rejecting the Flamingo Land planning application, the LLTNPA would still in my view have grounds to apply for a judicial review of the Reporter's interpretation of the meaning of Policy 22 a) iv) in NPF4 on flood prevention and its implications for development on the site. It will be interesting to see if the LLTNPA now calls a special board meeting to consider this or whether the decision will be left to the same senior managers who have backed Flamingo Land from the start.

In view view too there are good grounds for others opposed to the development to lobby for Scottish Ministers to call in the application or, failing that, to apply for a judicial review on the grounds that the Local Development Plan, as it applies to Balloch, lacks any legitimacy.

In a welcome development the Balloch and Haldane Community Council have called an Emergency meeting on Friday 30<sup>th</sup> May @ 18.30 at St Kessogs Church Hall (28 Balloch Rd, Balloch, Alexandria G83 8LE) "to discuss the next steps in fighting this ludicrous development". The BHCC early yesterday asked the public to write to Ivan McKee, the Finance Minister responsible for planning, asking him to call in the planning appeal for Ministerial determination and to suspend any transfer of public land at West Riverside by Scottish Enterprise "until there is a future genuinely supported by the local community". Unfortunately, later in the day Mr McKee responded to questions in the Scottish Parliament from Green MSP Ross Greer stating that he would not call in the application ([see here](#)). People who object to the Flamingo Land development therefore now need to ask their own MSPs to put pressure on Mr McKee and the SNP Government to call in the application. The Green Party could also ramp up the pressure by making clear they will not support the SNP in future if they do not change their position.

Finally it is worth emphasising that even if the Scottish Government maintains its current position AND neither the LLTNPA nor other stakeholders apply for a judicial review AND the Reporter in six months

time confirms their intention to grant planning permission in principle, THE BATTLE FOR BALLOCH IS FAR FROM OVER. First, as the Reporter made clear, planning permission in principle only establishes the maximum parameters for the proposed development. That means the public can still contest each element of the development as individual planning applications are submitted. Second, if current levels of anger about the proposed development continue, Flamingo Land could still decide to walk away it because of the financial risks. The Lomond Shores development at Balloch has been a commercial failure, despite being tolerated by the local community: imagine, what might happen if the local community asked people to boycott Flamingo Land.

**Category**

1. Loch Lomond and Trossachs

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