

Flamingo Land is the Scottish Government rushing the development through?

Description

Four important letters relating to the Flamingo Land planning application appeared on the Department of Planning and Enforcement Appeals planning portal on 4th July, three of which were retrospective.

The letters ([see here](#)) include one dated 24th June, sent on behalf of the Minister for Planning, Ivan McKee, officially confirming that Mr David Buylla had been appointed to produce a further report on the development which he had previously recommended should go ahead ([see here](#)). It appears the publication of the letters may have been prompted by inquiries from the Sunday Mail who published an article at the weekend about how Scots Gov official who approved Flamingo Land will lead the review into decision ([see here](#)).

The press interest in Mr Buylla's appointment is welcome and more should follow given what the letters reveal about the scandalous way the Scottish Government is now proposing to proceed.

16th June Flamingo Land goes on the offensive

The first of the letters was sent six days after Mr McKee announced that he had recalled Flamingo Land's appeal against refusal of planning permission for their proposed development at Balloch for Ministerial decision. It is from Gillespie MacAndrew, a legal firm acting on behalf of Flamingo Land, to the Chief Planner for Scotland, Dr Fiona Simpson, who they address as Simpson as an aristocrat might do a servant.

After brazenly claiming their understanding is that Mr Buylla's Notice of Intention to approve the development *will now be regarded as a recommendation from the Reporter that they [i.e Ministers] uphold it* subject to a legal binding S75 Agreement, they offer to write that agreement themselves. Mr Buylla had asked the Loch Lomond and Trossachs National Park Authority (LLTNPA), who would be responsible for enforcing that S75 Agreement, to negotiate this WITH Flamingo Land and their board had meekly agreed to comply with this at their meeting on 9th June ([see here](#)).

Smarting from the decision to reject their planning application, at the first opportunity Flamingo Land have tried to sideline the LLTNPA. There is a lesson here about Flamingo Land's willingness to work in partnership with the LLTNPA or anyone else in future but also for planning system more generally. It says something about the sorry state of Scotland's planning system that Flamingo Land thought the Chief Planner would take seriously their offer to write the legal agreement which is supposed to govern their development and protect the public interest.

18th June – the LLTNPA’s response to Flamingo Land & the Scottish Government

The LLTNPA responded to Dr Fiona Simpson through their own lawyers, Anderson Strathearn. They helpfully point out that Paragraph 3(7) of Schedule 4 to the Town and Country Planning (Scotland) Act 1997 states:

“In determining the appeal the Secretary of State may [my emphasis] take into account any report made to him by any person previously appointed to determine it”

The letter states that as a consequence the LLTNPA *“does not share the Appellant’s understanding that Mr David Buylla’s Notice of Intention shall be treated as a recommendation to the Minister”* and that *“the Park Authority’s position is that the Minister is not bound to follow the Reporter’s Notice of Intention.”*

Quite! Why else would the Scottish Government call in a planning appeal?

Anderson Strathearn go on to state the LLTNPA disagrees that Flamingo Land should be allowed to draft its own Section 75 Agreement and that the Reporter should hold *“hearing sessions”* before reaching a decision. Having previously adopted this position, LLTNPA could hardly have asked for less.

What a real National Park would have said is this call-in has major implications for National Parks in Scotland and set out ALL the points, substantive and procedural, that Scottish Ministers should consider. They could have also publicised what is going on, which would have helped fill the information void at the DPEA, but there have been no updates on their website since 11th June.

24th June – the Scottish Government wades in to push Flamingo Land through

As previously explained the recall direction issued by the Scottish Government on 10th June contained a minimum amount of information and did not explain what concerns they had about Mr Buylla’s Notice of Intention to approve the Flamingo Land planning application ([see here](#)). Their letter of 24th June formally appoints Mr Buylla to produce a new report but without requiring him to address any of the failings in his existing report or explaining what needs to change ([see here](#)).

Instead, the letter requires Mr Buylla to be steered by Flamingo Land’s letter of 16th June (as above) to the Chief Planner and:

“Request that the appellant [i.e Flaming Land] provides the draft planning obligation which it had offered to provide in the 16 June letter, setting out the scope of matters to be covered, the means by which those matters are proposed by the appellant to be addressed, and the level of control this would afford the National Park Authority over the appeal site”

This completely ignores the representations the LLTNPA made on 18th June (there is NO mention to *“hearing sessions”*) and instructs Mr Buylla to hand sole responsibility to Flamingo Land for drafting the Section 75 Agreement, contrary to his original Notice of Intention that this should be done with the LLTNPA. Clearly when Gillespie MacAndrew wrote their letter on 16th June to Dr Fiona

Simpson, the Chief Planner, offering to write the S75 Agreement they had a good idea she would see nothing wrong with this and support their interests as a developer.

The only other substantive requirement set out in the letter is for Mr Buylla to *seek further representations on the terms of that draft obligation [i.e the Section 75 Agreement] in accordance with the Appeals Regulations* before producing a new report for Ministers.

What this means is that the ONLY substantive difference between the new report produced by Mr Buylla and the old one will be that the accompanying Section 75 will have been drafted by the developer alone with the LLTNPA being offered an opportunity to comment.

4th July letter sent on behalf of Mr Buylla

Mr Buylla appears too important to write letters himself, so gets his case officer to do so. The letter sent on his behalf follows the instructions in the Scottish Government's letter of appointment, even asking the LLTNPA to desist from negotiating the Section 75 Agreement when their letter of 18th June said they had already done so pending further instructions.

The importance of the letter, however, are the timescales it gives for completing the Section 75 Agreement. Mr Buylla has given two weeks to Flamingo Land to produce a Section 75 Agreement, two weeks for the LLTNPA to respond and then given another two weeks for the developer to have the final before producing his report for Scottish Ministers. That contrasts with the six months Mr Buylla had previously given the LLTNPA and Flamingo Land to negotiate the Section 75 Agreement.

The difference in timescales is striking and no explanation is given for the change. It is also worth noting that the new process and timescales, as set out by Mr Buylla, give no opportunity for the public to comment despite the massive levels of concern about his original decision. Scotland's planning system is designed not to be democratic

What's going on?

Rather than hitting the pause button to enable the Scottish Government time to have a re-think on the on the proposed Flamingo Land development, the whole planning process is being speeded up. The timescales as described above will allow Scottish Ministers to consider Mr Buylla's revised report or rather his existing report but with the accompanying Section 75 Agreement written by Flamingo Land and take a decision BEFORE the Scottish Parliament is recalled on 31st August.

Ivan McKee had refused to call-in Mr Buylla's Notice of Intention to approve the Flamingo Land appeal despite receiving over 50,000 letters from the public. He only did so so when faced with the prospect of losing a vote in the Scottish Parliament in a debate called by Jackie Baillie, the local constituency MSP. Far from his call-in decision indicating a change of heart, however, Mr McKee appears to have decided to use his powers to speed up the planning process and approve the development while the Scottish Parliament is in recess.

If this interpretation is correct, the letters on the DPEA planning portal demonstrate at best a cynical abuse of power by the Scottish Government in favour of development interests. While they may succeed in rushing the development through, that could still be followed by a vote of no confidence in the Scottish Parliament and would likely lose them a significant number of votes in the elections due next year.

There are also further questions to be asked about the Scottish Government's connections with developers, both within the DPEA and Department of Planning and at the Ministerial levels. How else can one explain these extraordinary letters or the fact that the Scottish Government continues to ignore the fact that LLTNPA staff were deeply involved in the Flamingo Land development and appeared to manipulate the Local Development Plan process to facilitate the development ([see here](#)) and ([see here](#)) ?

On 19th June the Daily Record reported that Derek Mackay, who had been forced to resign as Finance Secretary in 2020 and had been Planning Minister from 2016-18, now appears to be working as a consultant for Flamingo Land. ([see here](#)). The Scottish Government denied having ever been contacted by Mr Mackay about the development but ex-Ministers would know better than to do that. No smoke without fire!

While I also doubt Mr Mackay will have contacted the LLTNPA directly while working for Flamingo Land I have submitted a Freedom of Information request, just in case, in which I have also asked for all contact he had with the LLTNPA when planning Minister. There's a lot more potential for digging!

Category

1. Loch Lomond and Trossachs

Tags

1. flamingo land
2. Governance
3. LLTNPA
4. planning
5. Scottish Government

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