

Process and Timeline Update DPEA Notice of Intention Appeal PPA-002-2021 Lomond Banks Planning Application 2022/0157/PPP Agenda Item 5

**National Park Authority Board Meeting
9th June 2025**

Paper for Noting

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1. Purpose

- 1.1. The purpose of this Report is to provide an update on the Flamingo Land Ltd's Appeal of the Planning Application 2022/0157/PPP relating to land at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House (Lomond Banks), Balloch. The National Park Authority unanimously refused Planning Permission in Principle at a Special Meeting on the 16th September 2024, which was subsequently appealed to the Scottish Ministers.
- 1.2. Members will be aware that the Scottish Government's Appointed Reporter's Notice of Intention was published on the 16th May. This Report provides a factual update on the status of the Notice, what this means for the National Park Authority, the next steps in the process, timelines and the anticipated governance arrangements on the requirements set out by the Reporter for the National Park Authority as the Planning Authority.

- 1.3. A copy of the Notice of Intention can be viewed on the Scottish Government's Planning and Environmental Appeals Division's website here:
<https://www.dpea.scotland.gov.uk/Document.aspx?id=1089341>

2. Recommendation(s)

- 2.1. That Members **note** the content of this Report and the requirement on the National Park Authority to either enter into an appropriate legal agreement or accept Flamingo Land Ltd's ability to set out a unilateral planning obligation to cover the matters specified in the Notice of Intention.
- 2.2. That Members **note** that the Director of Place will negotiate and, as appropriate, sign any legal agreement that covers the matters specified in the Notice of Intention as set out in the Delegated Signing Authority Framework for legal agreements approved by the National Park Authority Board on the 10th June 2024 and in line with the Scheme of Delegation for Planning approved by the National Park Authority Board 10th June 2024.

3. Background

- 3.1. Members will recall the National Park Authority Board's unanimous decision on 16 September 2024 to refuse the application for Planning Permission in Principle by Flamingo Land for a large-scale tourism and leisure development in Balloch (ref. 2022/0157/PPP). Flamingo Land Ltd ("the Appellant") appealed the decision to the Scottish Government's Planning and Appeals Division (DPEA) on 20 December 2024. The National Park Authority submitted a response to the appeal on 30 January 2025. The initial stages of the appeal proceedings concluded on 12 May 2025.
- 3.2. On 16 May 2025 the DPEA published the Reporter's Notice of Intention confirming that the *"Reporter is minded to allow the appeal and grant planning permission in principle subject to 49 conditions listed in Schedule 1 [of the Notice of Intention], following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 (the Act), or some suitable alternative arrangement, covering the matters listed in paragraph 402 [of the Notice of Intention]"*
- 3.3. On 23 May 2025 the National Park Authority updated the relevant section of its website to provide a statement and update for members of the public regarding the publication of the Reporter's Notice of Intention which can be viewed here:
<https://www.lochlomond-trossachs.org/park-authority/blog/west-riverside-and-woodbank-house-lomond-banks-national-park-authority-statement-may-2025/>
- 3.4. Whilst the decision of the Reporter, a planning professional appointed by the Scottish Ministers with delegated authority to determine this appeal, is very disappointing, it is legally binding on the National Park Authority as planning authority. The Notice of Intention is not a grant of planning permission. The Notice of Intention is comparable to when the National Park Authority issues a "minded to grant" planning decision subject to the entering into of a suitable legal agreement. A final decision to grant planning permission will not be issued

until the conclusion of the appeal process, namely the Reporter being satisfied that a suitable legal agreement has been entered into in accordance with his instructions.

- 3.5. Following the grant of planning permission there is a statutory period of 6 weeks for any person aggrieved, to challenge the decision via a statutory appeal to the Inner House Court of Session. This is a hard deadline after which there is no further right of appeal. A statutory appeal is not an appeal on the merits of a decision but rather a review by the Court of the lawfulness of a particular decision and there must be appropriate legal grounds to challenge a decision. If such a statutory appeal is instigated, the Court will review the legality of the decision (e.g. asking the question whether the Reporter has misinterpreted or misapplied pertinent planning policy) and the process by which it was reached. Importantly, the Court cannot substitute its own decision in place of that of the Reporter. The Court has only two options: (i) to dismiss the appeal and uphold the decision, or (ii) to uphold the appeal and quash the decision. If the decision is quashed, then the matter reverts to being a planning appeal and returns to the DPEA to be determined over again.

4. Status of the Notice of Intention

- 4.1. The Notice of Intention provides a period of up to 26 weeks to enable a planning obligation (either a legal agreement with the Planning Authority or a unilateral obligation by only the Appellant under section 75 of the Act, or some suitable alternative arrangement as may be agreed by the Appellant and the National Park Authority), to be completed and registered or recorded, as the case may be. If, by the end of the 26-week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to the DPEA, the Reporter will consider whether planning permission should be refused or granted without a planning obligation. Parties may request an extension to this period on cause shown. It is at the reporter's discretion whether to grant any such extension. The 26-week period ends on 14 November 2025.
- 4.2. The matters set out in paragraph 402 of the Notice of Intention (the matters the Reporter considers require to be included in a planning obligation) are the 'employment' and 'environment' issues. By reference to paragraph 393 of the Notice of Intention these include:
- Employment Issues:
 - A commitment to the Scottish Government's "Fair Work First" approach 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;
 - Environment Issues:
 - A commitment to consult with Zero Waste Scotland to influence how the site is developed and operated and to prepare a plan that would aim to make the development "net zero" by no later than 2035;

- A commitment to prepare and implement a Woodland Management Plan for Drumkinnon Wood and its informal path network, including keeping the core path network and informal path network open at all times.
- 4.3. The next stage of the process requires the above matters to be detailed within a planning obligation in the form of a legal agreement between the National Park Authority the Appellant (Flamingo Land Ltd) and the landowner (Scottish Enterprise).
- 4.4. Pursuant to the Notice of Intention being issued, the DPEA expects that planning authorities and appellants seek, where possible, to reach agreement on relevant matters within a planning obligation irrespective of the outcome of the appeal. The National Park Authority is therefore expected to act in accordance with the Reporter's Notice of Intention and further procedure requiring a legal agreement to be entered into. This means engaging with the Appellant to seek to agree a legal agreement during the specified period.
- 4.5. Should the National Park Authority decline to engage with the Appellant and decline to be a party to a legal agreement), this would not change the outcome of the appeal, and the Reporter would be the arbiter of whether the planning obligation submitted unilaterally by the Appellant adequately addresses the requirements he has set out. This may or may not be on terms acceptable to the National Park Authority and it is therefore in the interests of the Park Authority in its statutory planning role to engage with the Appellant on a legal agreement.
- 4.6. For avoidance of doubt. there is no opportunity to widen the scope of the matters to be included within the planning obligation (without both the agreement of the Reporter and the Appellant) and there is no role for interested parties to the appeal or for the wider public to comment as part of this process.

5. Next steps

- 5.1. The Appellant has written to the National Park Authority seeking confirmation as to whether it is prepared to be a party to a legal agreement and if not, that it is of the understanding that the Appellant will provide the Reporter instead with a unilateral undertaking under section 75(1)(b) of the Act covering the matters referred to by the Reporter in the Notice of Intention.
- 5.2. For the reasons set out earlier, it is Officer's intention is to respond to the Appellant to confirm that the National Park Authority is prepared to enter into what the National Park Authority considers to be an appropriate legal agreement in respect of the specified matters in the Notice of Intention and will engage with the Appellant supported by our external legal advisor, Anderson Strathern LLP, in its drafting.
- 5.3. It is emphasised that this situation is not unusual in an appeal where the decision of the Planning Authority (be that a delegated officer decision or a planning committee decision) to refuse an application has been overturned by a Reporter and where mitigation suitably addressed in a legal agreement is

considered by a Reporter to be a requirement. In such cases the Scheme of Delegation at 4.1.9 provides delegated authority to the Appointed Officer (the Director of Place) to participate in further procedure in relation to any appeal and to sign legal agreements in accordance with the provisions of the National Park Authority's approved Delegated Signing Authority Framework for legal agreements.

- 5.4. The Appellant has indicated that they will sign a fee undertaking to cover the National Park Authority's reasonably incurred legal expenses and outlays. This is standard practice in such situations.
- 5.5. The Appellant has also asked for a processing agreement to set out and agree the timescales and key dates for the various stages of negotiation of the legal agreement to manage the process in the period stipulated by the Reporter. Processing agreements are common in planning practice and Scottish Government encourages their use in association with project management of major or national developments.
- 5.6. At the closure of Appeal proceedings, following a grant of planning permission in principle by the Reporter, no development will be able to take place until matters of detail are submitted to and approved by the National Park Authority. This would be via applications for Matters Specified in Conditions which must include the specific details of the development pursuant to Condition 5 set out in the Notice of Intention. Application(s) for Listed Building Consent are also required to be approved prior to development commencing at Woodbank House (Zone E on the Appellant's [Parameters Plan](#)). Such applications would be processed and determined in line with relevant legislation and the National Park Authority Scheme of Delegation although may require to be determined by Members of the Planning & Access Committee or the Board. Members of the public and consultees would be able to submit comments on these applications for consideration before determination.
- 5.7. For clarity, it is noted that Members' refusal of the application for planning permission in principle in itself does not prejudice nor preclude Members from determining subsequent AMSC applications pursuant to a planning permission in principle granted on Appeal. Like applications for planning permission, AMSC applications which are refused may be appealed to the Scottish Ministers
- 5.8. As the appellant progresses their legal agreement, Officer's will ensure that the National Park Authority's Convener will be kept up to date.

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