Dear Nick

I refer to your request dated 28 January 2019 that Scottish Enterprise (SE) reviews its decision of 4 December in relation to your original request for information under the Freedom of Information (Scotland) Act 2002 (FOISA) dated 5 November 2018.

As per section 20(3)(c)(ii) of FOISA, a requirement for review must specify the reason for the applicant's dissatisfaction with the way the public authority has dealt with the information request.  You have requested a review because you consider that the response failed to answer all of the questions asked and did not provide copies of information held by SE.

In accordance with Section 21 of FOISA, an independent review of the way in which SE dealt with your request has been conducted and the findings referred to me.   My response is set out below.

**1) You have claimed its standard practice for SE to make joint planning applications, which is helpful, and the alleged benefits in this case but have not provided me with information about WHY the decision was made in this case, which would for example show if the decision was made by officers or at board level and the justification for this**

Decisions to make joint planning applications do not require formal approval by an approval board and therefore no specific document is held which would provide the rationale.   These types of decisions are considered to be business as usual and are taken by the Senior Responsible Officer of the project, who is ultimately accountable for ensuring the project is delivered within approved budget and scope.

In this case, the decision to be a joint applicant on the planning application was taken by the Senior Responsible Officer of the project and agreed at an early stage.   The rationale behind this decision is to ensure that SE is able to retain an element of control in what is being proposed by the developer and also allows SE to progress the application, should the developer decide not to.   This is particularly appealing as it allows SE to obtain a consent with minimal cost to the public purse.

**2) I appreciate provision of quotes from the Exclusivity Agreement but you have not provided me with this document or any other documents which may exist as requested.  You also quote from the EA that the Planning Application will be at the expense of Flamingo Land but not explained how then SE has provided grant funding to Flamingo Land for the site investigations.  It is I believe in the public interest for SE to provide information which explains how this could happen.**

Your original request was for “*any agreements with Flamingo Land and Peter Brett Associates about the basis for the joint application, including any financial contribution which Scottish Enterprise agreed to make to progress the application, and any liabilities should the application fail.*

The Exclusivity Agreement is the legal agreement between Scottish Enterprise and Flamingo Land Ltd.  (Iconic Leisure Ltd).   The original response provided extracts from the agreement which related to the joint application.  The response also confirmed that SE has not financially contributed towards planning costs.

I confirm that SE has not provided grant funding to ILC.   SE has contributed to the costs of a specified list of technical reports.   This is common practice and good value for the public purse as SE can use the reports for potential future developments should ILC decide not to proceed.

The Exclusivity Agreement between Scottish Enterprise (SE) and Flamingo Land contains commercially sensitive information and is therefore withheld under section 33(1)(b*)* of the Freedom of Information Scotland Act (FOISA) 2002.   Reasons why we have withheld this document under this exemption are explained at the end of this letter.

I have however provided an extract from the Exclusivity Agreement which details the list of the technical reports which SE has contributed to.

**3) I appreciate that as Applicant SE should not be lobbying the LLTNPA as Planning Authority but I had asked for information SE holds FROM the LLTNPA in this case (apart from standard information to applicants) e.g all correspondence.  Even if all information has been through Flamingo Land since the Application was submitted - and I would be grateful if this is the case that you could confirm this - there must have been correspondence/meetings etc between SE and the LLTNPA BEFORE the application was submitted or Flamingo Land appointed.**

Our initial responses provided context and background details relating to the planning process.   However, it did not provide information held.   I have, therefore, provided correspondence with NPA planners in relation to the planning application process.    Some personal information (names, contact details) has been redacted from the documents and is withheld under S38(1)(b) of FOISA.   One piece of correspondence has been withheld under S33(1)(b) as this is considered to be commercially sensitive.   The reasons for withholding the information are provided at Appendix A.

**CONCLUSION**

Your request for a review of SE’s response to your FOI request of 5 November 2018 was based on the fact that SE did not provide “information held” in relation to your specific questions and that you did not consider that all of your questions had been answered.

I have provided further information to the questions you have raised and provided information held where possible.    Two documents have been withheld under S33(1)(b) of FOISA.

I hope that this further information has helped to address your questions.   However, if you have any further questions or concerns about the information provided, please get back in touch.

**YOUR RIGHT TO AN APPEAL TO THE SCOTTISH INFORMATION COMMISSIONER**

If you are dissatisfied with the outcome of this review, you have a right under section 47 of FOISA to appeal to the Scottish Information Commissioner.  If you wish to do so, you must appeal to the Commissioner within six months following the date of receipt of this review notice.  The Commissioner’s contact details are as follows:

Appeals can be made online at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

If you do not wish to appeal online, you can appeal by post, or by e-mail.   Details are below:

Office of the Scottish Information Commissioner

Kinburn Castle,

Doubledykes Road,

St Andrews,

Fife,

KY16  9DS

Email:    [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Tel:        01334 464610

**YOUR RIGHT TO APPEAL TO THE COURT OF SESSION ON A POINT OF LAW**

If you are dissatisfied with the outcome of the Scottish Information Commissioner’s decision, you have a right under section 56 of FOISA to appeal on a point of law to the Court of Session.

Yours sincerely

Steve Dunlop

Chief Executive

**Steve Dunlop  |  Chief Executive |  Scottish Enterprise**   
**Direct dial +44 (0) 141 468 5194  |   50 Waterloo Street, Atrium Court  |  Glasgow G2 6HQ**

[Steve.dunlop@scotent.co.uk](mailto:Steve.dunlop@scotent.co.uk)

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[**Follow Scottish Development International on LinkedIn**](https://www.linkedin.com/company/scottish-development-international)

**From:** Nick Kempe [<mailto:nickkempe1@gmail.com>]   
**Sent:** 28 January 2019 12:39  
**To:** Gail Gibson <[Gail.Gibson@scotent.co.uk](mailto:Gail.Gibson@scotent.co.uk)>  
**Subject:** Re: Response from Scottish Enterprise 4.12.18

Dear Ms Gibson,

Thankyou for this response which, while helpful, fails to answer all the questions I asked and I therefore wish you to review your response which effectively refuses me some of the information I had asked for.  More specifically  in relation to:

1) You have claimed its standard practice for SE to make joint planning applications, which is helpful, and the alleged benefits in this case but have not provided me with information about WHY the decision was made in this case, which would for example show if the decision was made by officers or at board level and the justification for this

2) I appreciate provision of quotes from the Exclusivity Agreement but you have not provided me with this document or any other documents which may exist as requested.  You also  quote from the EA that the Planning Application will be at the expense of Flamingo Land but not explained how then SE has provided grant funding to Flamingo Land for the site investigations.  It is I believe in the public interest for SE to provide information which explains how this could happen.

3) I appreciate that as Applicant SE should not be lobbying the LLTNPA as Planning Authority but I had asked for information SE holds FROM the LLTNPA in this case (apart from standard information to applicants) e.g all correspondence.  Even if all information has been through Flamingo Land since the Application was submitted - and I would be grateful if this is the case that you could confirm this - there must have been correspondence/meetings etc between SE and the LLTNPA BEFORE the application was submitted or Flamingo Land appointed.

I look forward to your response

Yours Sincerely,

Nick Kempe

On 04/12/2018 16:42, Gail Gibson wrote:

Dear Mr Kempe

Thank you for your request for information under the Freedom of Information Scotland Act (FOISA) 2002 on the Planning Permission in Principle application made by Flamingo Land Limited and Scottish Enterprise for the West Riverside and Woodbank House sites in Balloch, which we received on 5 November 2018.

It’s worth reiterating the background to this planning application to provide context for our responses.

Scottish Enterprise first developed Loch Lomond Shores in 2002 within Loch Lomond and The Trossachs National Park and it has seen significant success. The site of West Riverside in Balloch has been earmarked for tourism development since this time as it has the potential to generate even more long term economic benefits for Scotland - not only through job creation but by securing the National Park as a key international tourism destination.

Following a national marketing campaign and stringent bidding process Flamingo Land Limited was selected as the preferred developer as it recognised the key sensitivities of developing within Scotland’s National Park. This, together with its strong track record in creating visitor attractions – currently home to the third most popular tourist attraction in the UK – made it the developer of choice for this opportunity.

As the preferred developer, for the Iconic Leisure resort Loch Lomond, Flamingo Land Limited has secured a timebound exclusivity agreement with Scottish Enterprise to allow time for technical due diligence such as site investigations (geotechnical, ecology, flood risk, utilities, access studies, etc), and to secure relevant planning consents.

Where you have cited the Cairn Gorms example in your FOI request, it is important to note that in this case Flamingo Land Limited is not a site leaseholder.

Please see a response to each of your questions below.

***All information Scottish Enterprise holds on how and why the decision to submit a joint application with Flamingo Land was taken.***

Where appropriate it is standard practice for Scottish Enterprise to submit a joint planning application with other parties, e.g. the application for joint planning for the development of The Village Hotel (part of De Vere Hotels) at Pacific Quay in Glasgow.

For the Iconic Leisure resort Loch Lomond development, the joint application process has two main benefits.

Firstly, it allows Scottish Enterprise to fully align the application with its strategic economic development aims to maximise any and all economic benefits for the Scottish economy.

Secondly, should the preferred developer decide to withdraw, we can amend the proposals to allow us to market the site to other developers with outline planning already in place, ensuring we can still deliver the economic vision for the site.

***Any agreements with Flamingo Land and Peter Brett Associates about the basis for the joint application, including any financial contribution which Scottish Enterprise agreed to make to progress the application, and any liabilities should the application fail***

We’ve outlined the two primary benefits of a joint application in the previous answer.

Peter Brett Associates is the planning consultant appointed by Flamingo Land for its proposals at West Riverside.  Scottish Enterprise has not financially contributed towards planning costs as these are the responsibility of Flamingo Land, as stated in this extract from the exclusivity agreement:

    ‘Flamingo Land … will apply in joint names with Scottish Enterprise at the expense of Flamingo Land for Planning Permission in Principle for the Approved Scheme of Development of the entire site.’

Scottish Enterprise has no liabilities relating to the application, as stated in this extract from the exclusivity agreement:

    ‘In the event that planning consent is refused or granted subject to conditions unsatisfactory to Flamingo Land, Scottish Enterprise and Flamingo Land will discuss whether there are prospects of successfully appealing the foregoing, whether such an appeal shall be pursued.’

***All information Scottish Enterprise holds from Loch Lomond and Trossachs National Park about the Planning Application process in this case (excluding general advice to applicants which is publicly available)***

Once the planning application has been lodged, we are legally obliged to refrain from influencing the Planning Permission in Principle application process with the Loch Lomond and Trossachs National Park Authority. All information we hold on the planning process for this case has been obtained via the planning portal, which is available publicly available (and which we have not included as mentioned in your question).

This extract from the exclusivity agreement explains Scottish Enterprise’s relationship with Flamingo Land as it relates to progress of the Planning Permission in Principle application:

    Flamingo Land will keep Scottish Enterprise fully appraised of the progress of any and all planning applications

I hope this is helpful, however if you have any further questions please get back in touch.

If you intend to publish any of this information, please contact us at [press.office@scotent.co.uk](mailto:press.office@scotent.co.uk)

If you consider that your request has not been handled appropriately you have the right under the Freedom of Information (Scotland) Act 2002 to request a review.

A request for review must be submitted in writing or other permanent form within 40 working days of the date of this letter and should be addressed to:

Steve Dunlop

Chief Executive

Atrium Court

Scottish Enterprise

50 Waterloo Street,

Glasgow,

G2 6HQ

e-mail: [steve.dunlop1@scotent.co.uk](mailto:steve.dunlop1@scotent.co.uk)

It must include your name and an address for correspondence (e-mail address is acceptable), and specify the request for information to which the requirement for review relates and the matter which gives rise to your dissatisfaction with the decision.   Scottish Enterprise will respond to any request for review within 20 working days of receipt.

**Your right to apply to the Information Commissioner under FOISA**

If you are dissatisfied with the outcome of the review you have the right under FOISA to apply to the Scottish Information Commissioner within six months following the date of receipt of the review notice.

Appeals can be made online at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

If you do not wish to appeal online, you can appeal by post, or by e-mail.   Details are below:

Office of the Scottish Information Commissioner

Kinburn Castle,

Doubledykes Road,

St Andrews,

Fife,

KY16 9DS

Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Tel:  01334 464610

Please note that we will only process the personal data you have provided to respond to this request and in accordance with our privacy notice which can be found on our website: <https://www.scottish-enterprise.com/about-us/transparency/privacy-notice/how-we-use-your-information/enquiries>

Yours sincerely

**Gail Gibson**

Engagement Partner – Corporate Services

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----------------- Original Message -------------------  
**From:** Nick Kempe  
**Received:** Mon Nov 05 2018 14:45:20 GMT+0000 (GMT Standard Time)  
**To:** SE Enquiry Service  
**Subject:** Freedom of Information - Planning Application West Riverside Site, Balloch

Dear Sir/Madam,

I am looking to understand how Peter Brett Associates submitted in May a

joint planning application between Scottish Enterprise and Flamingo Land

for the West Riverside and Woodbank House sites in Balloch.    This

appears very unusual.  For example at Cairn Gorm recently on land owned

by Highlands and Islands Enterprise it was their leaseholder, Natural

Retreats, who submitted the planning application so I am wanting to

understand not just how the decision was made but the implications:

Please provide me, under freedom of information laws, with the following:

- All information Scottish Enterprise holds on how and why the decision

to submit a joint application with Flamingo Land was taken

- Any agreements with Flamingo Land and Peter Brett Associates about the

basis for the joint application, including any financial contribution

which Scottish Enterprise agreed to make to progress the application,

and any liabilities should the application fail

- All information Scottish Enterprise holds from Loch Lomond and

Trossachs National Park about the Planning Application process in this

case (excluding general advice to applicants which is publicly available)

Yours Sincerely,

Nick Kempe

--

Nick Kempe

23 Queen Square

G41 2GB

01414239011

07952871733

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Nick Kempe

23 Queen Square

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