

Nick Kempe
By email: nickkempe1@gmail.com

11/02/2025

Dear Mr Kempe

Thank you for your request for information, which we received on the 14th January 2025, made under the Freedom of Information (Scotland) Act 2002 (FOISA). We have applied exemption Section 39(2) of FOISA as we determined that the information sought in your request relates to planning and is therefore environmental information. We are therefore handling your request under the terms of the Environmental Information (Scotland) Regulations 2004 (EIRs), though in practice, this does not change the way in which we have considered your requests.

Your original request:

...I am therefore requesting under FOI:

1. a copy of the clauses in the conditional missives which set out in what circumstances those missives could be extended.
2. I am also requesting all information Scottish Enterprise holds on how the decision to extend the conditional missives was taken.

Response:

1. We advise that your request for the relevant clauses within the Conditional Missive agreement between Scottish Enterprise (SE) and Flamingo Land (FLL) has been refused and the information is withheld under regulation 10(5)(e) of EIRs. It is SE's view that the release of the information would, or would be likely to, cause substantial harm to the legitimate economic interests of the developer, Flamingo Land and Scottish Enterprise itself.

A full explanation as to why this regulation has been applied is detailed below at Appendix A.

2. A recommendation to extend the long stop date contained within the Conditional Missives was made by Scottish Enterprise's Executive Leadership Team (ELT) at its meeting on 15/10/2024.

ELT's recommendation was then provided to the Scottish Enterprise Board, who made the decision to approve this course of action and extend the date at its meeting on 25/10/2024.

Copies of the relevant ELT and Board papers, and meeting minutes, are provided to you now at Appendix B

Whilst we have attempted to release as much information to you as possible, please be advised that some of the information contained in Appendix B has been withheld under regulations 10(5)(e), 11(3A)(a), 10(5)(f) and 10(5)(d) of EIRs. Where these regulations have been applied, the information has been redacted. It is SE's view that the release of the information would, or would be likely to, cause substantial harm to the legitimate economic interests of the developer, Flamingo Land (FL) and SE itself; and prejudice legal proceedings. Additionally, release of any personal information would be in contravention of the data protection principles.

There is a well-established and recognised route of planning appeal in Scotland, and SE believes this process should be allowed to run to its conclusion.

It is usual for contractual agreements to have an element of flexibility built in, to help respond to unforeseen events and, generally, as long as both parties agree, changes can be made. This is what happened in this case, with the deadline for obtaining planning permission in the existing Conditional Missive being extended to allow the developer to consider an appeal. This is not a new agreement.

Our response to your information request has also been guided by the Scottish Information Commissioner's notice published on 19th March 2024, a full copy of which can be read here: [Decision Notice 036-2024](#)

As the planning process is ongoing, we are of the view that Clauses 48 and 62 of the Commissioner's Decision continue to apply:

48. The Commissioner also notes that the status of the planning application for the proposed development remains live and ongoing and accepts the information, including the suspensive conditions, remains commercially confidential and that premature disclosure would have a detrimental effect on proceedings.

62. The Commissioner also takes account of the live nature of the planning process (which is transparent and should address any legitimate concerns about the nature of the development proposals).

Appendix A

Regulation 11(3A)(a)

The exemption contained in Regulation 11(3A)(a) of EIRs has been applied to some of the information you requested, and that information redacted. 11(3A)(a) together with Article 5(1) of the GDPR creates an exemption from disclosure where the information requested constitutes the personal data of a third party and disclosure of that data would breach any of the data protection principles set out in the Data Protection Act 2018 ("DPA"). Article 5(1) states that "personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."



As an absolute exemption, there is no need to consider the public interest in the application of this exemption. SE is satisfied that the information that has been withheld constitutes the 'personal data' of the individuals concerned, as defined in section 1(1) of the DPA. SE has examined whether or not disclosure of the information you have requested, insofar as that is personal data, would breach the requirements of the first data protection principle.

Fairness

In assessing whether release of the information would be fair, we have had regard to the Scottish Information Commissioner's Exemption Briefings and to guidance produced by the UK Information Commissioner, who has overall responsibility for data protection issues throughout the UK. In line with that guidance, and in coming to the decision to withhold personal data on the basis that it would be unfair to release it, we have taken into consideration:

- Any potential damage or distress which may be caused by disclosure of the information
- The seniority of the individuals' positions
- Whether the information relates to the public or private life of the individual
- And the expectations of the data subjects with regard to the release of the information

We are of the view that release of the information would be unfair and in breach of the first data protection principle, therefore making it unlawful. Given that the disclosure would be unfair, and therefore unlawful, release would not comply with the first data protection principle, and as such it is not necessary to go on to consider any of the conditions in schedules 2 or 3 of the DPA 2018, or other aspects of lawfulness.

Regulation 10(5)(e)

This exception is applicable whereby the disclosure of the information requested would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information, where such confidentiality is provided for by law or to protect a legitimate economic interest.

Before engaging regulation 10(5)(e), we considered the following matters:

- (i) is the information commercial or industrial in nature?
- (ii) does a legally binding duty of confidence exist in relation to the information?
- (iii) is the information publicly available?
- (iv) would disclosure of the information cause, or be likely to cause, substantial prejudice to a legitimate economic interest?

In this case, the documents concern information that is confidential to Scottish Enterprise and Flamingo Land Ltd. They contain information which is of a commercially sensitive nature, is not in the public domain; and not generally accessible to the public.

Relationships with private and public sector bodies are crucial to SE in meeting its overall objectives of furthering the development of Scotland's economy. It is therefore critical that SE can maintain productive dialogue with those bodies to ensure we are able to support economic development as effectively as possible. SE's engagement would be diminished if those parties were concerned that commercially confidential information could be disclosed in circumstances where it would be inappropriate to do so and would therefore cause harm.

In our reliance upon the exception contained in regulation 10(5)(e), SE considered the four stage test as follows:

(i) is the information commercial or industrial in nature?

The information comprises the content of documents pertaining to a land transaction and planning process.

(ii) does a legally binding duty of confidence exist in relation to the information?

Taking the relevant criteria at common law in turn:

Necessary quality of confidence: Although knowledge of the existence of an agreement between SE and FL is in the public domain, the detailed Conditional Missive is not. The information in question will only have been viewed by a limited number of individuals. The agreement was clearly developed under circumstances from which it should reasonably have been inferred that the content was produced on a commercial in confidence basis.

Obligation to maintain confidentiality: The information contained in the Conditional Missives was agreed with implicit and explicit obligations to maintain confidentiality, both in relation to the development process and subsequent agreement. Such an expectation is normal legal practice in transactions of this kind.

Unauthorised disclosure would cause detriment: SE considers disclosure of the material would:

- Be to the detriment of the general public interest in confidences being maintained,
- Cause likelihood of commercial damage to the developer and SE through disclosure of sensitive information, and
- Create a possibility that the developer's competitors could analyse and identify the risk profile assumed by both SE and FL, to the future detriment of both.

(iii) is the information publicly available?

The content of the Conditional Missives clauses requested is not publicly available.

- (iv) would disclosure of the information cause, or be likely to cause, substantial prejudice to a legitimate economic interest?

The transaction itself is live and ongoing. Furthermore, the implementation of the proposals contained therein can only proceed with the granting of planning permission, a process which also remains ongoing.

In this regard, whilst accepting that prejudice may diminish over time, a risk arises of substantial prejudice to the economic interests of both SE and Flamingo Land, were the full information to be disclosed at this time.

Regulation 10(5)(d) - Confidentiality of proceedings

This regulation applies where disclosure would harm the confidentiality of the proceedings of a public authority where such confidentiality is provided for by law.

In this case, legal advice was provided by internal legal staff to senior officials to assist deliberations and decision making. The Commissioner notes that "proceedings", in the context of this regulation, covers a range of activities, but will usually be confined to internal deliberations in some form or another. The matter under consideration here is a longstop date contained within a conditional missive, on which legal advice was required and obtained. Such proceedings would be prejudiced substantially by disclosure.

Regulation 10(5)(f) - Third party interests

This regulation allows an authority to withhold environmental information if its disclosure would, or would be likely to, cause substantial prejudice to the interests of a person who provided information voluntarily to the authority. We confirm that the person was not legally obliged to supply the information; did not supply it in circumstances such that it could be made available except by making a request for it under the EIRs; and the person has not consented to the information being disclosed.

Public Interest

We recognise that SE, as a public authority, has a duty to be open, transparent and to achieve best value. However, there cannot be a public interest whereby such transparency is to the detriment of a developer's commercial viability, caused by the release of confidential information.

SE considers that there is a public interest in avoiding substantial harm to the legitimate economic interests of the developer and SE. There is a significant public interest in public bodies maintaining confidences, especially where there is a clear obligation that information would be held confidentially.

Disclosure would also make SE less able to fulfil its duty to obtain value for money through the management of contracts, sales and economic development projects in the future.



Information that constitutes professional advice, or information shared with SE by third parties on a confidential basis, must be held in a private space to allow the authority to conduct its public affairs and operational activity without detriment.

Our conclusion is that the public interest in disclosure is outweighed by the public interest in avoiding substantial harm to legitimate commercial interests. Allowing parties to maintain confidentiality in their commercial positions is important to maintaining the proper and efficient operation of free markets and supporting economic development. As stated earlier, there is a well-established and recognised route of planning appeal in Scotland, and SE believes this process should be allowed to run to its conclusion. On that basis, SE consider that the public interest also favours the withholding of this information.

Request for Review

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:

Adrian Gillespie
Chief Executive
Atrium Court
Scottish Enterprise
50 Waterloo Street
Glasgow
G2 6HQ
e-mail: ceooffice@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: <https://www.foi.scot/what-if-im-unhappy>

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@foi.scot
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

Corporate Communications
Scottish Enterprise



EXECUTIVE LEADERSHIP TEAM

ELT(24)xx

INNOVATION AND INVESTMENT

FOR DISCUSSION

**PROPERTY AND GROWTH INFRASTRUCTURE
LOCH LOMOND SHORES, WEST RIVERSIDE
OPTIONS PAPER ON PROPOSED DEVELOPMENT BY FLAMINGO LAND LIMITED**

RACI

| | |
|--------------------|--|
| Activity | |
| Responsible | 11(3A)(a) (SRO) |
| Accountable | Jane Martin MD for Innovation and Investment |
| Consulted | 11(3A)(a) |
| Informed | 11(3A)(a) |

INTRODUCTION

This paper sets out the options on SE's conditional contract with Flamingo Land Limited (FLL) and invites discussion on the SE corporate position, if a request is received from FLL to extend the current Planning Permission in Principle Longstop Date of the 10(5)(e).

The Board of the Loch Lomond and Trossachs National Park Authority (LLTNPA) refused the Planning Permission in Principle application from FLL on the 16th September. Following the LLTNPA decision to refuse the application FLL have stated, so far, they intend to appeal the planning decision. FLL are expected to request extending the Longstop Date to give them the best chance of successfully appealing the current planning position.

It is important that SE can quickly convey the agreed corporate position to FLL on whether or not SE would be minded to grant consent to a request to extend the Longstop Date as this could influence whether or not FLL do decide to pursue a planning appeal or potentially withdraw from the project.

10(5)(d), albeit the decision on whether or not this would be a 10(5)(d) rests with the SE CEO in consultation with the CFO. The decision to enter into the conditional contract was approved by the SE Board in February 2021. Therefore, if any extension to the conditional contract longstop is agreed 10(5)(d) then that ELT decision would need to be ratified by the SE Board.

BACKGROUND

SE originally acquired the sites at Balloch, West Dunbartonshire over three acquisitions stretching from 1989 to 1998. The SE ownership splits into two phases. The phase 1 development, Loch Lomond Shores, was completed in 2002 and consists of a retail mall, SeaLife centre (previously a large format film theatre, visitor attraction and restaurant), a Gateway Centre (currently empty since 2020 but previously designed as an orientation centre for the National Park), a tree top ropes course, mini golf, Bird of Prey Centre, restaurant and cafes and water sports.

Various masterplans for the development of the phase 2 land on West Riverside have consistently included the development of visitor accommodation. This SE owned site currently lies undeveloped on the banks of the river Leven as it enters Loch Lomond.

In 2015 SE, in partnership with LLTNPA, marketed the Loch Lomond Shores West Riverside site for mixed-use tourism development, and subsequently awarded preferred developer status to FLL for the delivery of 'Lomond Banks', an internationally competitive tourism and leisure destination. SE entered into an exclusivity agreement with FLL to allow FLL time to undertake appropriate due diligence, work up proposals and submit a planning application. The decision was taken at that time to create a joint planning application between SE and FLL in order that should FLL decide at any time not to proceed SE would benefit from the planning status.

In early 2019, an online petition, spearheaded by the Scottish Green Party, against the proposed development received approximately 55,000 signatures, and in August 2019 the LLTNPA Planning department issued their recommendation to refuse consent citing over development within Drumkinnon Wood and Pierhead elements of the proposals.

Prior to formal refusal, FLL & SE withdrew the application and a joint decision was made for SE to no longer be a joint planning applicant. 10(5)(e)

Despite the refusal of the original application FLL remain committed to the project. In June 2020, given the potential economic benefits arising, ELT approved a recommendation to enter a conditional contract with FLL to replace the exclusivity agreement and in Feb 2021, an SE Board paper was tabled outlining the project in detail given the sensitivities around the development and involvement of media and politicians. The conditional contract was signed at the end of February 2021 and in May 2022 FLL submitted a revised Planning Permission in Principle application for the development.

A change request was approved by the Director of Innovation and Place (May 2024) to extend the conditional contract Longstop Date from 10(5)(e) to a revised date of 10(5)(e). The proposed extension was required to allow the determination of FLL's Planning Permission in Principle application. There have been multiple delays with the Planning Permission in Principle application because of several key issues arising with stakeholders including Transport Scotland and SEPA which required detailed reports and negotiations. At the time the change request was approved (end March 2024) and the contract amended there was no fixed date for the Planning Permission in Principle application to be decided by the LLTNPA. Given the original application was submitted in May 2022 the developers' request for a 10(5)(e) extension was accepted, to 10(5)(e) 10(5)(e),

10(5)(e) with any further extension specifically subject to further consideration and approval by SE]. 10(5)(e)

SCENARIOS

Following the decision by LLTNPA to refuse the Planning Permission in Principle application by FLL there are now three potential scenarios.

Scenario 1.

FLL submit an appeal, which is determined by The Scottish Government Planning and Environmental Appeals Division (SG DPEA) in favour of the developer before the Longstop Date.

10(5)(e)

Scenario 2

FLL submit an appeal, which is determined by the SG DPEA against the developer before the Longstop Date.

10(5)(e)

Scenario 3

FLL decide they do not have sufficient time to pursue a planning appeal before the Longstop Date.

In this scenario the developer would be expected to push for a further contract longstop extension.

PLANNING APPEAL TIMESCALES

10(5)(e)

The Scottish Government state that a DPEA reporter will aim to decide an appeal within:

- 12 weeks, if they do not need further information, or if they arrange a site inspection.
- 20 weeks, if they need further written submissions.
- 40 weeks, if they hold a hearing.
- 50 weeks, if they hold an inquiry.

The planning appeal regulations are also used where a planning application is called in for a decision by the Scottish Ministers. The decision timescales are expected to be the same as the appeal process. These timescales are for appeals decided by Reporters not those ultimately decided by Ministers. The SG target is to meet 80% of appeals within these timescales.

PROPOSED DEVELOPMENT

The proposed development by FLL covers both land owned by SE at West Riverside as well as land already owned by FLL at Woodbank House which lies south of Old Luss Road and south west of SE's land ownership at Lomond Shores.

The combined proposed development includes the following: erection and operation of a mixed-use tourism and leisure development including refurbished tourist information building; up to 60-bedroom apartment hotel; up to 32-bedspace budget hotel, up to 104 no. self-catering holiday lodges; restoration and redevelopment/conversion of Woodbank House and attendant listed structures for up to 21 self catering holiday apartments (subject to other necessary consents); leisure pool, waterpark, spa; restaurants, hot food cafe and retail areas; craft brewery including pub; visitor reception area and hub building; external activity areas including areas for event and performance, play, picnic and barbeque; monorail; staff service and welfare accommodation; transport infrastructure; associated access and parking; landscaping and utilities infrastructure works.

If granted planning permission the development is expected to cost c. £40m and once operational could create 80 full-time jobs, 50 part-time and 70 seasonal roles. As part of their pre-planning consultation phase FLL created the 'Lomond Promise' a legally binding promise to the local community which includes no zero hours contracts and paying staff the Real Living Wage.

STATUTORY PLANNING POSITION

On the 2nd September 2024 LLTNPA published a report recommending the FLL Planning Application in Principle application is refused. This recommendation was upheld at a meeting of the LLTNPA Board on the 16th September. The reasons cited in the planning officer's report included:

- (i) Concern over flood risk mitigation and compliance with NPF4.
- (ii) Biodiversity – *'it has not been demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention'*.
- (iii) *'The proposal would result in the removal of woodland but fails to demonstrate it can deliver appropriate and sufficient woodland compensation to mitigate the loss of woodland including ancient woodland as a consequence of the proposed development'*.
- (iv) Conflicts with the first aim of the National Park to conserve and enhance the natural heritage of the area.
- (v) *'The scale of the proposal, overall, is considered, following a detailed assessment, to be in conflict with the site's capacity for development.'*, and
- (vi) *Proposal is contrary to LDP Overarching Policy 1 (a successful sustainable place and a natural resilient place).*

The planning officer's report also highlighted that at the end of August 2024 there had been 174,946 representations on the planning application. There were 174,872 objections and 69 expressions of support for the application. There were 5 neutral responses.

BALLOCH AND HALDANE COMMUNITY

10(5)(f)

ELT should also note that Balloch and Haldane Community Council

10(5)(f)

10(5)(f)

10(5)(f)

10(5)(f)

10(5)(f)

10(5)(e)

OPTIONS

The following options on how SE progresses are summarised below.

Option 1 – SE allow the conditional contract with FLL to run until the Longstop Date, thereafter terminate the contract on the assumption the developer does not submit and win a planning appeal before that date. It is anticipated that in this scenario 10(5)(f)

10(5)(f)

Option 2 – SE agree to further extend the existing conditional missive in line with the existing contract which initially allows for a 10(5)(f) 10(5)(e) to allow FLL to fully pursue a planning appeal and planning consent for the proposed development.

NEXT STEPS

ELT are asked to discuss and agree the preferred option on SE's future contractual relationship with FLL.

The next step would be to communicate SE's position clearly to FLL and ask them to formally confirm whether or not they intend to pursue a planning appeal before the Longstop Date.

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| <p>Loch Lomond – West Riverside – Flamingo Land Limited – ELT(24)156</p> <p>11(3A)(a)</p> <p>ASK: ELT to discuss and agree the preferred option on SE’s future contractual relationship with Flamingo Land Ltd</p> <p>11(3A)(a) updated that the Board of the Loch Lomond and Trossachs National Park Authority (LLTNPA) refused the Planning Permission in Principle application from FLL on the 16th September. Following the decision FLL have stated that they intend to appeal the planning decision. FLL are expected to request extending the Longstop Date to give them the best chance of successfully appealing the current planning position.</p> <p>DISCUSSION:</p> <p>ELT had an in-depth discussion in relation to the options and key risks. Key areas discussed were:</p> <ul style="list-style-type: none">• Strategic ambitions: It was acknowledged that there was no clear alignment with SE’s mission focus. However, there remained economic development benefits for the area.• Resources: the disproportionate impact on SE resources were considered• Reputational: the vocal public opposition to the development was taken into consideration, as well as the 10(5)(e)• Unintentional consequences: the impact on how Scotland is perceived as a place for investment.• Moral obligation: in terms of SE’s intent and spirit of the conditional missive in the existing contract to ensure that the full planning process is able to run its course. <p>Following a full discussion on the options and risks, and consideration from a comms and economic perspective, ELT agreed the recommendation to the Board to further extend the existing conditional missive in line with the existing contract 10(5)(e)</p> | <p>Decision: ELT agreed the recommendation to the Board to further extend the existing conditional missive in line with the existing contract 10(5)(e)</p> |
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SCOTTISH ENTERPRISE BOARD

SE (24)66

INNOVATION AND INVESTMENT

FOR APPROVAL

**LOCH LOMOND SHORES, WEST RIVERSIDE
PROPOSED DEVELOPMENT BY FLAMINGO LAND LIMITED**

INTRODUCTION

This paper sets out the options on SE's conditional contract with Flamingo Land Limited (FLL) and invites discussion and approval on the SE corporate position, if a request is received from FLL to extend the current Planning Permission in Principle Longstop Date of the 10(5)(e).

The Board of the Loch Lomond and Trossachs National Park Authority (LLTNPA) refused the Planning Permission in Principle application from FLL on the 16th September. Following the LLTNPA decision to refuse the application FLL have stated, so far, they intend to appeal the planning decision. FLL are expected to request extending the Longstop Date to give them the best chance of successfully appealing the current planning position.

Due to the profile and potentially controversial nature of development within the Loch Lomond and Trossachs National Park, the decision to enter into the conditional contract was discussed and endorsed by the SE Board in February 2021. Any extension to the conditional contract longstop needs to be ratified by the SE Board.

BACKGROUND

SE originally acquired the sites at Balloch, West Dunbartonshire over three acquisitions stretching from 1989 to 1998. The SE ownership splits into two phases. The phase 1 development, Loch Lomond Shores, was completed in 2002 and consists of a retail mall, SeaLife centre (previously a large format film theatre, visitor attraction and restaurant), a Gateway Centre (currently empty since 2020 but previously designed as an orientation centre for the National Park), a tree top ropes course, mini golf, Bird of Prey Centre, restaurant and cafes and water sports. Various masterplans for the development of the phase 2 land on West Riverside have consistently included the development of visitor accommodation. This SE owned site currently lies undeveloped on the banks of the river Leven as it enters Loch Lomond.

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Conditional contracts are routinely used by SE when selling land assets. Firstly, they allow SE to monitor the development delivery timetable and ensure developers are making progress against pre-agreed milestones. In relation to this land sale a conditional contract, rather than a clean sale, remains particularly relevant as it ensures that the developer must rigorously follow the statutory planning process, including fulfilling community consultation requirements.

A change request was approved by the Director of Innovation and Place to extend the conditional contract Longstop Date from 10(5)(e) to a revised date of 10(5)(e). The proposed extension was required to allow the determination of FLL's Planning Permission in Principle application. There had been multiple delays with the Planning Permission in Principle application because of several key issues arising with stakeholders, including Transport Scotland and SEPA which required detailed reports and negotiations. At the time that the change request was approved (end March 2024) and the contract amended, there was also no fixed date for the Planning Permission in Principle application to be decided by the LLTNPA. Given the original application was submitted in May 2022 the developers' request for a 10(5)(e) was accepted, to 10(5)(e)

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BALLOCH AND HALDANE COMMUNITY

10(5)(e)

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10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

10(5)(e)

SE has not released any information publicly about the Longstop Date of 10(5)(e), however it has become clear in recent days that the local MP is aware of this date, and we can assume that this is now public knowledge.

OPTIONS

The following options on how SE progresses are summarised below.

Option 1 – SE allow the conditional contract with FLL to run until the Longstop Date, thereafter terminate the contract on the assumption the developer does not submit and win a planning appeal before that date. It is anticipated that in this scenario 10(5)(e)

In the discussion at ELT the pros and cons of this option were carefully deliberated. The strong and vocal public opposition to the development as well as the lack of clear alignment with SE's mission focus, and the disproportionate impact on SE's property team resources were all considered as reasons to decline any request for further extensions from the developer.

However, it was felt that this option was not in line with the intent and spirit of the conditional missive in our existing contract. SE's position on this development has been to ensure that the full planning process is able to run its course, and to support that as the statutory vehicle for considering the key implications for the environment and the local community.

Option 2 – SE agree to further extend the existing conditional missive in line with the existing contract which initially allows for a 10(5)(e) to allow FLL to fully pursue a planning appeal and planning consent for the proposed development.

Whilst respecting the unanimous decision of the LLTNPA Planning Board as well as the scale of public opposition to the plans, this is effectively the first step in the planning process. There is a well-established and recognised route of planning appeal in Scotland. If SE elect not to allow an appeal to be considered it could be argued to be acting unreasonably by the developer. Adopting this position may also negatively impact SE's market reputation when seeking to attract development partners and infrastructure investment in other SE assets such as Broomielaw or BioQuarter.

CONCLUSION

The Executive Leadership Team have considered these options in full. The recommendation to the Board is that SE agrees to further extend the existing conditional missive 10(5)(e)

This is to allow FLL to fully pursue a planning appeal and planning consent for the proposed development, in line with Scotland's current planning regulations.

11(3A)(a)

11(3A)(a)

Jane Martin
Managing Director Innovation & Investment

Please see below minute extract from 25 October 2024 SE Board Meeting.

Loch Lomond Shores, West Riverside Proposed Development by Flamingo Land Limited – SE(24)66

11(3A)(a) joined the meeting to lead on discussion of this paper which set out the options on SE's conditional contract with Flamingo Land Limited (FLL), inviting discussion and approval from the Board on the SE corporate position, should a request be received from FLL to extend the current Planning Permission in Principle Longstop Date of the 10(5)(e).

11(3A)(a) provided the background, advising that the site was openly advertised in 2015, with five interested parties, of which Flamingo Land was selected as the preferred developer. Two planning applications had been submitted, the first was withdrawn and the second, submitted in 2022, progressed to decision in principle by the planning authority in September 2024, with option to appeal. The current situation was challenging, noting the significant public opposition and the Executive Leadership Team (ELT) had deliberated extensively on next steps.

The key points under consideration included alignment of mission focus, staff resources, the economic benefits, the statutory planning decision and well-established route for planning applications, and moral obligation, e.g. not seeing through the agreement in terms of spirit and intent which may have unintended consequences for other projects, and sending the wrong message to future developers.

The Board discussed the impact on SE should it decide to progress, a key consideration being SE's integrity and reputation and credibility as a strategic partner and respecting the planning process and outcome. The disproportionate impact on staff to respond to reputational challenges was considered and alignment with SE's strategy, as well as the ongoing validity of the original economic case.

The Board approved the further extension of the existing conditional missive in line with the existing contract which initially allows for a further extension of 10(5)(e)

This is to allow FLL to fully pursue a planning appeal and planning consent for the proposed development, in line with Scotland's current planning regulations. 10(5)(e)