

**[redacted]**

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**From:** [redacted]  
**Sent:** 06 March 2019 14:17  
**To:** Higgins K (Kate)  
**Cc:** [redacted]; O'Hara J (Jo); [redacted]; O'Hara J (Jo); [redacted]; Connal K (Keith); Campbell B (Bridget); [redacted]  
**Subject:** RE: Query on Fergus Ewing and Carrbridge tree felling  
**Attachments:** Protect - Carrbridge Hotel Background and timelines.docx

Kate

Sorry for the delay and following on from our conversation, please find attached a background note and time lines on the Carrbridge felling and the associated actions taken and still in train – specifically the latest with the EIA Enforcement Notice that is currently with the Reporter and what involvement Ministers may have.

Happy to discuss further and also the local Conservator John Risby is also available if needed.

[redacted]

Please let me know if you require anything else. I understand from [redacted] that [redacted] and team will take forward any response to Mr Edwards

Regards  
[redacted]

**[redacted]**

*Head of Secretariat and Communications*

Forestry Commission Scotland

Silvan House | 231 Corstorphine Road | Edinburgh | EH12 7AT

Direct: [redacted]

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**From:** [redacted] **Sent:** 06  
March 2019 10:47

**To:** Higgins K (Kate) [redacted]; [redacted]  
**Cc:** [redacted]; O'Hara J (Jo) <[redacted]@forestry.gov.scot>; [redacted]  
**Subject:** RE: Query on Fergus Ewing and Carrbridge tree felling

Kate

[redacted] is off at the moment – so picking this up. I've attached the FOI and for completeness a copy of the document marked up prior to redacted and a redacted version.

[redacted]

We received an appeal (in which Rob comments that the documents were redacted, also attached and the appeal was answered at end of January and was not upheld.

I'm not aware of it coming out via another route?

Thanks  
[redacted]

**[redacted]**

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**From:** Higgins K (Kate)[redacted]  
**Sent:** 06 March 2019 09:31  
**To:** [redacted]  
**Cc:** [redacted]; O'Hara J (Jo) <[redacted]@forestry.gov.scot>; [redacted]  
**Subject:** RE: [Query on Fergus Ewing and Carrbridge tree felling](#)

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[redacted]

Can you call [redacted] on newsdedk please

We have had similar request into SG this morning and think this needs to be brought in house

[redacted] could you send me over the FOi on this again please

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([www.blackberry.com](http://www.blackberry.com))

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**From:** [redacted]  
**Date:** Wednesday, 06 Mar 2019, 9:19 am  
**To:** Higgins K (Kate) [redacted]  
**Cc:** [redacted], O'Hara J (Jo) <[\[redacted\]@forestry.gov.scot](mailto:[redacted]@forestry.gov.scot)>, [redacted]  
**Subject:** FW: Query on Fergus Ewing and Carrbridge tree felling

Kate – [redacted] has been dealing with Rob Edwards on this enquiry as you know.

But wanted to make you aware that this has just come in – Rob has asked for an FCS comment for the Ferret by 5pm tonight.

Once everyone is out of the Exec Board meeting we can discuss a line...but any initial thoughts from you welcome.

[redacted]

**From:** Rob Edwards <[\[redacted\]](mailto:[redacted])>  
**Sent:** 06 March 2019 09:06  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** Query on Fergus Ewing and Carrbridge tree felling

[redacted] / [redacted],

Thanks for your help already this week.

Further to my earlier emails below, can you please now help with a query for an article I am writing for [The Ferret](#)? I would be grateful if you could get back to me as soon as possible before 5pm today (Wednesday), and I would appreciate an acknowledgement of this email.

On 20 June 2018 [redacted], head of delivery and regions at Forestry Commission Scotland (FCS), wrote to the rural economy secretary, Fergus Ewing, warning about “engaging” with Colin Watt, the owner of Carrbridge Hotel in the Cairngorms National Park. He was responding to a request for urgent advice from the minister in relation to complaints made by Watt about authorities blocking his plans for a new car park near the hotel.

[redacted] pointed out that an ancient pinewood, including a 140-year-old Scots pine, had been felled without a licence at the site of the proposed car park on Sunday 14 January 2018. This had resulted in FCS sending a report to the procurator fiscal, and serving Watt with an Environmental Impact Assessment enforcement notice requiring trees to be replanted.

[redacted] pointed out that the enforcement notice could be appealed to Scottish ministers. Because there were live enforcement actions, he recommended that Ewing should take these into consideration before engaging with Watt.

Two weeks later on 5 July 2018 [a story appeared](#) in the Strathspey and Badenoch Herald under the headline 'Minister backs hotel boss in call for more village parking'. Ewing was quoted as saying that he was "concerned and disappointed" that Watt's "reasonable requirements" were being opposed by the Cairngorms National Park Authority (CNPA).

Emails released under freedom of information law show that Ewing's intervention in support of Watt upset CNPA. It would have been "courteous" of the minister to have contacted the authority directly, said CNPA chief executive, Grant Moir.

Opposition parties and environmental campaigners have accused Ewing of a conflict of interest that could prejudice the planning process and his neutrality as a minister. They also allege that he has breached the ministerial code by blurring his roles as a constituency MSP and as a minister, and are calling for a statement to parliament and an investigation.

What comments would FCS like to make? Comments by email from a named spokesperson as soon as possible before 5pm today would be much appreciated.

Thank you for your help.

Rob

--  
Rob Edwards  
theferret.scot  
[\[redacted\]](#)  
[twitter.com/robedwards53](https://twitter.com/robedwards53)  
[redacted]

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----- Original Message -----

On Wednesday, March 6, 2019 8:21 AM, [redacted] wrote:

No worries, Rob.

Copy [redacted] in though – I'm about to head into an Executive Team meeting....(as secretary!)

Regards  
[redacted]

**From:** Rob Edwards <[redacted]@protonmail.com>  
**Sent:** 06 March 2019 08:20  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Update on tree felling at Carrbridge Hotel?

Thanks, [redacted]. Another query on its way shortly.

Rob

--

Rob Edwards

theferret.scot

[\[redacted\]](#)

[twitter.com/robedwards53](https://twitter.com/robedwards53)

[redacted]

--

----- Original Message -----

On Wednesday, March 6, 2019 7:59 AM, [redacted] wrote:

Hi Rob

Yes, that's correct.

Regards

[redacted]

**From:** Rob Edwards <[redacted]@protonmail.com>  
**Sent:** 05 March 2019 16:07

**To:** [redacted]

**Subject:** RE: Update on tree felling at Carrbridge Hotel?

Thanks, [redacted]. That's helpful. Just to make sure I fully understand the process - does that mean that the enforcement notice was appealed to the Scottish Government's Planning and Environmental Appeals Division, which is now considering it and will make a recommendation to Scottish Ministers, who will then decide how to proceed?

Rob

--

Rob Edwards

theferret.scot

[\[redacted\]](#)

[twitter.com/robedwards53](https://twitter.com/robedwards53)

[redacted]

--

----- Original Message -----

On Tuesday, March 5, 2019 3:33 PM, [redacted] wrote:

Hi Rob

Apologies for not coming back to you sooner.

In response to your request for an update, we understand that the Procurator Fiscal has decided not to pursue a prosecution and that the Scottish Government Reporter is still considering the EIA appeal Enforcement Notice..

Can't really say much more than that at this stage....

Regards

[redacted]

**[redacted]**

Media Manager

Forestry Commission Scotland/Forest Enterprise Scotland

Silvan House | 231 Corstorphine Road | Edinburgh | EH12 7AT

[redacted]

[redacted]

[www.forestry.gov.uk/scotland](http://www.forestry.gov.uk/scotland)

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**From:** Rob Edwards <[redacted]@protonmail.com>

**Sent:** 04 March 2019 16:40

**To:** [redacted]

**Subject:** Update on tree felling at Carrbridge Hotel?

[redacted] / [redacted],

You may recall I asked about alleged illegal felling at Carrbridge Hotel in 2018, and you said in November that a report had gone to the Procurator Fiscal (see emails below). Can you give me an update? Is the case still with the fiscal, is it being pursued, or has it been dropped?

I'm also aware of an enforcement action on the same matter being pursued by FCS, which now seems to be [under consideration](#) by the Scottish Government's Planning and Environmental Appeals Division. Can you please confirm what stage this is at, and what can be said about it?

I would appreciate it if you were able to get back to me as soon as possible before the end of tomorrow (Tuesday).

Many thanks for your help.

Rob

--

Rob Edwards

theferret.scot

[\[redacted\]](#)

[twitter.com/robedwards53](https://twitter.com/robedwards53)

[redacted]

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On 27 Nov 2018, at 12:26, [redacted] wrote:

Hi Rob

Apologies for the delay. All I can really advise is that we have submitted a report on this to the PF.

Regards

[redacted]

---

**From:** Rob Edwards [mailto: [redacted]@protonmail.com]  
**Sent:** 26 November 2018 10:53  
**To:** [redacted]  
**Subject:** query about tree felling at Carrbridge Hotel

[redacted] / [redacted],

Can one of you, or a colleague, please help with a query for an article I am researching for The Ferret. I would be grateful if you could get back to me as soon as possible before 11am tomorrow (Tuesday and I would appreciate an acknowledgement of this email.

In August the parkswatchscotland blog wrote about the alleged illegal felling of trees at Carrbridge Hotel in the Cairngorms national park:

<http://parkswatchscotland.co.uk/2018/08/10/scottish-government-interference-in-national-parks-to-support-business-interests/>

In a July article in the Strathspey and Badenoch Herald, reproduced in the blog, Forestry Commission Scotland is reported as confirming that it was investigating an alleged illegal felling at the hotel. I gather that the commission may have since submitted a report to the Procurator Fiscal.

Can the commission please set out what the latest position is with regard to this matter? Has it submitted a report to the fiscal and, if so, when? Has the fiscal made any decision on the

matter, or is there any indication of when a decision might be made? Any guidance or background would be much appreciated.

Many thanks for your help.

Rob

--

Rob Edwards

theferret.scot

[redacted]

[twitter.com/robedwards53](https://twitter.com/robedwards53)

[redacted]

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## **Carrbridge Hotel – unauthorised felling of trees and associated FOIs and actions**

### **Background**

FCS (Highland and Islands Conservancy) took action against Mr Watt, a Director of Halle Enterprises Ltd and the Carrbridge Hotel in relation to a small area of semi-natural woodland that was felled without a licence and deforested in CarrBridge.

- The land is owned by a company, Halle Enterprises Ltd of which Mr and Mrs Watt are the sole directors.
- The area of semi natural woodland was felled on a Sunday in January 2018.
- [redacted].
- Mr Watt has set out plans for hotel parking and housing on the site to the CNPA and has engaged a firm of architects. A planning application was submitted on 7<sup>th</sup> January 2019 by an architect on behalf of Mac Infrastructure Ltd (MR Watt is also a director of this company) for building a car park on this site for use by the Carrbridge Hotel. This is being considered by CNPA.
- [redacted].

FCS has also issued Environmental Impact Assessment Enforcement Notices .  
[redacted]

Two notices were served as FCS position is that Mr and or Mrs Watt were involved in instructing the felling but FCS are unable to say whether Mr & Mrs Watt were operating in an individual capacity or on behalf of the limited company. The notices require , the replanting of the site with native tree species(this is separate to the actions under the Forestry Act)

The EIA enforcement notice was issued because the site of this native woodland lies within the National Park, a sensitive area under the regulations and the plan for the site was deforestation, Mr Watt and Halle Enterprises both appealed the Enforcement Notices; as per the regulations the appeal is then referred to the DEPA who have appointed a reporter to consider the appeals. The EIA notice is separate from action under the 1967 Forestry Act and any decision to prosecute.

The current position is that the appeal against the Enforcement Notice served on Halle Enterprises Ltd has been dropped and so FCS are awaiting to see if this notice is complied with. The replanting works required in the notice are to be done by 31<sup>st</sup> October 2019. The appeal by Mr & Mrs Watt is still being considered by the Reporter

– no decision has yet been made, nor an indication when it might be made. The Reporter will prepare a report with recommendations for Scottish Ministers to consider. Scottish Ministers will issue the decision.

[redacted]

## **Timelines**

- Unauthorised felling reported January 2018
- Case against Mr Watt submitted to the PF 13<sup>th</sup> June 2018–
- EIA Enforcement Notice served on Mr and Mrs Watt – 14<sup>th</sup> June 2018
- [redacted] advice to Cab Sec 20 June 2018
- Article in local paper 5<sup>th</sup> July 2018
- Appeal of EIA Notice – 11<sup>th</sup> July 2018
- Above notice withdrawn, EIA Enforcement Notices served on Mr and Mrs Watt and Halle Enterprises 3<sup>rd</sup> August 2018
- Appeal of notices 30<sup>th</sup> August 2018
- Referred to the DEPA Reporter – 3<sup>rd</sup> September 2018
- Appeal by Halle Enterprises Ltd abandoned 15<sup>th</sup> October 2018.

## **Timelines on FOI**

- Original request received 30 November 2018
- Draft response circulated
- Response issued, with redacted documents 18 December 2018
- Appeal received 20 December 2018 (Mr Edwards notes the redacted documents and wishes to challenge the decision).
- Appeal answered 28 January – original decision upheld and no other documents released.



**[redacted]**

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**From:** [redacted] on behalf of Cabinet Secretary for the Rural Economy  
**Sent:** 26 June 2018 09:57  
**To:** [redacted]; Cabinet Secretary for the Rural Economy  
**Cc:** [redacted]; Jo O'Hara; Connal K (Keith); Campbell B (Bridget); Director of Environment & Forestry; Higgins K (Kate); [redacted]  
**Subject:** RE: Protect: Official : Carrbridge Hotel

[redacted]

Mr Ewing would like to have a phone conversation with you about this – we will be in touch to arrange in due course.

**[redacted]** – grateful if you could set up a call with [redacted].

Thanks

[redacted]

**[redacted]**

Deputy Private Secretary to Fergus Ewing MSP  
Cabinet Secretary for the Rural Economy and Connectivity  
2N.11 St Andrew's House | Regent Road | Edinburgh | EH1 3DG  
Tel: [redacted] Email: [CabSecRec@gov.scot](mailto:CabSecRec@gov.scot)

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**From:** [redacted]  
**Sent:** 20 June 2018 16:12  
**To:** Cabinet Secretary for the Rural Economy and Connectivity  
**Cc:** [redacted]; Jo O'Hara; Connal K (Keith); Campbell B (Bridget); Director of Environment & Forestry; Higgins K (Kate); [redacted] **Subject:** Protect: Official : Carrbridge Hotel

Hi [redacted],

Having reviewed the e-mail exchanges below between Mr Ewing and Colin Watt, I wanted to advise Mr Ewing that FCS (Highland Conservancy) have recently taken action against Mr Watt in relation to a small area of semi-natural woodland that was felled without a licence and deforested in CarrBridge. Mr Watt has also stated to FCS staff that the intention is to deforest the site and develop for hotel parking and housing.

Summary

- o The land is owned by a company of which Mr and Mrs Watt are the sole directors.
- o It lies on the main road in from the north to the village immediately adjacent to the golf course.

- o The semi natural woodland including a 140 year old Scots pine were felled on a Sunday in January of this year.
- o [redacted].
- o Mr Watt has set out plans for hotel parking and housing on the site to the CNPA and has engaged a firm of architects.
- o As no licence or permission was in place, nor was the felling exempt under the Forestry Act, FCS referred the matter to the fiscal. If successful this would enable FCS to serve a restocking notice on the company (Mr & Mrs Watt).
- o FCS staff have liaised with CNPA in order to confirm that no planning permission had been granted or applied for, and seek their view on the impact of the woodland removal.

The key points are as follows:

The case has been reported to the procurator fiscal as an illegal felling under the Forestry Act(1967) and is awaiting consideration by them.

FCS has also issued an EIA enforcement notice on Mr and Mrs Watt, the owners of Carrbridge hotel, requiring the replanting of the site. The notice was mentioned by Mr Watt in his email to Mr Ewing. The EIA enforcement notice was issued because the plan for the site was complete deforestation, including removal of ground flora and stumps as opposed to replanting with young trees. The EIA notice is separate from action under the Forestry Act and any decision to prosecute. The EIA appeal process is to Scottish Ministers.

#### Recommendation

To note that this is an active case with the Procurator Fiscal and subject to an EIA enforcement notice, which could be appealed to SMs.

To advise that in these circumstances Ministers should take into account the live enforcement actions before the engaging with Mr Watt at this time.

Please let me know if you require anything further.

Regards

[redacted]

[redacted]  
Head of Delivery and Regions  
Forestry Commission Scotland

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**From:** [redacted] **On Behalf Of** [CabSecREC@gov.scot](mailto:CabSecREC@gov.scot) **Sent:** 19 June 2018 12:25  
**To:** [redacted]  
**Cc:** [CabSecREC@gov.scot](mailto:CabSecREC@gov.scot)  
**Subject:** FW: Carrbridge Hotel

[redacted]

Mr Ewing would be grateful for urgent advice on the below.

Secondly, is this something you would like added to MACCS?

Thanks

[redacted]

Assistant Private Secretary  
Cabinet Secretary for Rural Economy and Connectivity  
[CabsecREC@gov.scot](mailto:CabsecREC@gov.scot)

[redacted]

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**From:** enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)>  
**Date:** 19 June 2018 at 10:44:17 BST  
**To:** "Ewing F (Fergus), MSP" <[Fergus.Ewing.msp@parliament.scot](mailto:Fergus.Ewing.msp@parliament.scot)>  
**Subject:** Re: Carrbridge Hotel

Good morning Fergus, we have just received a letter from FC which has just added another tier of complexity on our current situation, we will have to give a considered response within 28 days.

Can I ask if you have any further advice since your meeting with the Minister for Tourism Fiona Hyslop and others.

Currently our expansion plans for the Carrbridge Hotel business is in mortal danger of having to be withdrawn due to CNPA constraints.

Thank you for your continued support

Best wishes

Colin Watt

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**From:** enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)>  
**Date:** Monday, 18 June 2018 16:48  
**To:** "Ewing F (Fergus), MSP" <[Fergus.Ewing.msp@parliament.scot](mailto:Fergus.Ewing.msp@parliament.scot)>  
**Subject:** Re: Carrbridge Hotel

Good afternoon Fergus, just a quick email following on from last week's email and my meeting with Grant Moir of the CNPA.

There would appear to be a disconnect between the CNPA and the sustainability needs of our business and employees who live and work in the park.

The Scottish Office for National Statistics are projecting that, the 65 year old and over demographic within the CNPA will increase by a staggering 75 percent by the year 2031. See attached graph

The demographic time bomb, will then lead to high value housing being eventually re-sold, which in turn will be bought by high net worth individuals as retirement homes or second and holiday homes. It will also lead to chaos within the park for employers who need a balance of youth within their work force.

A further multi-million pound investment which is planned by our good selves, has been put at risk by CNPA over a piece of land measuring 65 meters by 38 meters for key parking infrastructure requirements, to allow us to ease the construction phase pressure during a planned extension and also target off season conference and events markets.

Unless there is clear direction or intervention then the development to create further job security and much needed infrastructure and amenity along with an uplift in economic activity will be put at serious risk.

Any advice or update after speaking with the minister for tourism would be welcome, we thank you for your continued support.

Best wishes

Colin Watt, MD, Carrbridge Hotel

---

**From:** "Ewing F (Fergus), MSP" <[Fergus.Ewing.msp@parliament.scot](mailto:Fergus.Ewing.msp@parliament.scot)>

**Date:** Thursday, 14 June 2018 20:47

**To:** enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)>

**Subject:** Re: Carrbridge Hotel

Colin

Leave it with me - I am meeting Fiona Hyslop Tourism minister tomorrow in Edinburgh at a meeting so can mention it to her then. I have also sought advice from others.

It is a shocking indictment of the approach the UKG take - very anti Scotland

F

Sent from my iPad

On 14 Jun 2018, at 19:10, enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)> wrote:

Yes Fergus you can make our staffing issue public. We are not alone, it effects the whole service sector.

The Westminster government are sleepwalking the country into a disaster in terms of staffing shortage. I keep thinking they have a plan B but to be honest I don't even think there is a plan A.

As I say once the tax take drops due to low productivity and lack of staffing then Westminster may realize the issue. The fiscal quarter VAT returns should tell the tail after Brexit if nothing is done.

Also did you have a chance to review my meeting with CNPA. We just seem to be getting hit from all angles just now, any help or advice you can offer will be greatly received

Best wishes

Colin

---

**From:** "Ewing F (Fergus), MSP" <[Fergus.Ewing.msp@parliament.scot](mailto:Fergus.Ewing.msp@parliament.scot)>  
**Date:** Thursday, 14 June 2018 18:33  
**To:** enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)>  
**Cc:** "Kate.Higgins [redacted]"  
**Subject:** Re: Carrbridge Hotel

Dear Colin

Thanks for sending me this. I wonder if you are willing to make this public or allow us to do that. It is a quite shocking position we are in and we have raised this in Holyrood just this week on more than one occasion.

Fergus.

Sent from my iPad

On 14 Jun 2018, at 16:46, enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)> wrote:

Nicola, please note the start of the service sector staffing crisis due to EU BREXIT. Our agents are reporting no EU students for the first time in 18 years. The Company is Twin International and Twin UK, they are based in London and we have used them for the past 18 years.

Bring on Independence and EU membership! We do not want to leave the EU so Westminster can plunder Scotlands wealth.

Westminster may start to listen once the Tax take starts to drop off dramatically as a direct result of national staffing issues in the service sector, but it may be too late for some businesses.

Best wishes

Colin Watt

---

**From:** enquiries <[enquiries@carrbridgehotel.com](mailto:enquiries@carrbridgehotel.com)>  
**Date:** Thursday, 14 June 2018 16:12  
**To:** "[Fergus.Ewing.msp@scottish.parliament.uk](mailto:Fergus.Ewing.msp@scottish.parliament.uk)" <[Fergus.Ewing.msp@scottish.parliament.uk](mailto:Fergus.Ewing.msp@scottish.parliament.uk)>, "[drew.hendry.mp@parliament.uk](mailto:drew.hendry.mp@parliament.uk)" <[drew.hendry.mp@parliament.uk](mailto:drew.hendry.mp@parliament.uk)>  
**Cc:** "Sturgeon N (Nicola), MSP" <[Nicola.Sturgeon.msp@parliament.scot](mailto:Nicola.Sturgeon.msp@parliament.scot)>  
**Subject:** Carrbridge Hotel

Hi Fergus and Drew, I know you have a lot of important matters on going just now – The sooner Scotland has Independence the better!

BREXIT is a disaster zone, our agent are reporting for the first time in 18 years they have no EU students looking to work in the UK.

Westminster may start to listen once the Tax take starts to drop off dramatically as a direct result of national staffing issues.

Anyhow, please see the attached report on our meeting with the CNPA, I have highlighted the main point in red for easy reading.

Matters did not go well, any advice or help you can offer will be greatly received

Best wishes

Colin Watt  
Carrbridge Hotel

<mime-attachment>

<Fergus and Drew.docx>

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[redacted]

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**From:** [redacted]  
**Sent:** 12 December 2018 22:05  
**To:** Cabinet Secretary for the Rural Economy  
**Cc:** Campbell B (Bridget); Higgins K (Kate); Jo O'Hara; [redacted]; Connal K (Keith); [redacted]  
**Subject:** For Information - Response on Freedom of information Request on Carrbridge Hotel development and tree felling  
**Attachments:** Response to R Edwards December 2018 DRAFT.pdf; FW: Protect: Official : Carrbridge Hotel

[redacted]

### Routine

Following on from discussions with SpAds, I attach a copy of the proposed response to a request for information which FCS has received, along with the accompanying document which is marked up prior to redaction. We propose to issue this response in the w/c 17<sup>th</sup> December.

For background, the request is from Mr Rob Edwards, of the Herald Newspaper and relates to information FCS holds on correspondence between the Cabinet Secretary RE and the Carrbridge Hotel on their expansion plans. The full text of the request is provided at the bottom of this email. To note that the case to which the question relates is a live on-going judicial case on an unauthorised felling; we have taken that into account in formulating our response, both in terms of the impact on FCS, other third parties and the individual involved.

### Recommendation

That the Cabinet Secretary notes the request for information received from Mr Edwards and the proposed response.

Regards  
[redacted]

[redacted]  
Head of Secretariat and Communications  
Forestry Commission Scotland

[redacted]  
[redacted] (Direct)  
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[www.twitter.com/fcscotlandnews](https://www.twitter.com/fcscotlandnews)

Forestry Commission Scotland is the Scottish Government's forestry advisor and regulator

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**From:** [redacted] **On Behalf Of** FoI.SpAdsPO@gov.scot  
**Sent:** 05 December 2018 16:22  
**To:** [redacted]; FoI.SpAdsPO@gov.scot  
**Cc:** O'Hara, Jo; [redacted]; Keith.Connal[redacted]; [redacted]  
**Subject:** RE: For Clearance - Regards RE: freedom of information request on Carrbridge felling - Protect -

Hi [redacted],

As discussed with [redacted] she is content if comments are addressed.

This does not require Ministerial clearance but should go to the Minister for awareness.

Thanks,  
[redacted]

---

**From:** [redacted]  
**Sent:** 03 December 2018 21:58

Begin forwarded message:

**From:** Rob Edwards <[\[redacted\]](#)>  
**Subject:** freedom of information request on Carrbridge felling  
**Date:** 30 November 2018 at 08:31:31 GMT  
**To:** [\[redacted\]](#)

Hi [redacted],

I wish to make a request under freedom of information law and the environmental information regulations. I would be grateful if my request could be acknowledged.

In August the [parkwatchscotland blog wrote about the alleged illegal felling of some trees](#) at Carrbridge Hotel in the Cairngorms National Park. It included a story from the Strathspey and Badenoch Herald on the 5 July 2018 featuring the hotel owner, Colin Watt, and Fergus Ewing MSP. The story also quoted Forestry Commission Scotland as saying that it was investigating an illegal felling. I was told by the commission on 27 November that it had submitted a report to the Procurator Fiscal on this matter.

**Please could Forestry Commission Scotland supply copies of any correspondence with Fergus Ewing in 2018 relating to the the Carrbridge Hotel expansion plans?**

I would be happy to discuss any aspect of my request.

Thank you for your help.

Rob Edwards

--  
Rob Edwards  
theferret.scot  
[\[redacted\]](#)  
[twitter.com/robedwards53](#)  
[redacted]

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**Silvan House  
231 Corstorphine Road  
Edinburgh  
EH12 7AT**

Mr Rob Edwards

[fcscotland@forestry.gsi.gov.uk](mailto:fcscotland@forestry.gsi.gov.uk)

Tel: 0300 067 6156

Head of Forestry Commission Scotland  
Jo O'Hara

DRAFT NOT FOR RELEASE

Our ref: 247

XX December 2018

Dear Mr Edwards

### **REQUEST FOR INFORMATION: CARRBRIDGE FELLING**

Thank you for your request for information on the above which we received on 30 November 2018.

#### **Information Requested**

You have asked us for information held by Forestry Commission Scotland (FCS) connected with the above.

Your question asks:

*"Please could Forestry Commission Scotland supply copies of any correspondence with Fergus Ewing in 2018 relating to the Carrbridge Hotel expansion plans."*

We have referred to the information that you have requested from us as the "Requested Information" in this letter.

#### **How we have handled your request**

Please note that we are responding to your request in accordance with the provisions of the Environmental Information Regulations 2004 (EIRs).

This is because the Requested Information is "environmental information" for the purposes of the EIRs and is therefore exempt from disclosure under the Freedom of Information Act 2000 (FOIA) in terms of section 39(1) of FOIA. This provides that information is exempt information if a public authority is obliged by the EIRs to make it

available to the public in accordance with the EIRs or it would be so obliged but for any exceptions contained within the EIRs. Further information on the application of the EIRs is provided in Annex 1.

Our review and appeal process is detailed at the bottom of this letter.

## **Our response**

Following searches of our records, we have identified relevant information to your request.

The relevant information consists of:

- Communications (emails) from the Carrbridge Hotel to Scottish Ministers and their responses which includes references to the development and other non-related (i.e. not connected to the hotel or the development) subjects; and
- Communication (one email) from FCS officials to Scottish Ministers on the background and proposed actions on the unauthorised felling at the Carrbridge Hotel.

We have made an assessment of this information and have decided to withhold some of the Requested Information from disclosure to you, as we consider it be except from disclosure under Regulations 12(4)(e),12(5)(d) and 13 of the EIRs. This withheld information relates to the communication from FCS officials to Scottish Ministers with their advice and specific part of the communications from third parties to Scottish Ministers and their response which discuss the development. The reasons for the application of the exceptions are provided in the Annex to this letter.

We recognise that there is public interest in this case. However the case is still in a judicial process and is not complete. Therefore we have taken in account the effect of releasing the relevant information in to the public domain and the potential impact on that process in regards to both Forestry Commission Scotland and relevant third party.

## **Right to Review**

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Should you wish to complain about the way your request has been handled please contact:

The Head of Corporate Services  
Forestry Commission Scotland  
Silvan House  
231 Corstorphine Road

Edinburgh  
EH12 8RP

Tel.: 0300 067 6156

E-mail: [FCScotlandenquires@forestry.gsi.gov.uk](mailto:FCScotlandenquires@forestry.gsi.gov.uk)

Complaints regarding non-compliance with the open access legislation obligations should initially be made to Forestry Commission Scotland itself. We aim to resolve any complaints with you directly. However, should the matter fail to be resolved, you may make an appeal to the Information Commissioner's Office at:

FOI Compliance Team (Complaints)  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK95AF

Tel.: 01625 545 700

Fax: 01625 524 510

E-mail: [mail@ico.gov.uk](mailto:mail@ico.gov.uk)

Finally for information, please note that Forestry Commission Scotland forms part of the wider Forestry Commission, which is a cross border organisation. For this reason we operate under the Freedom of Information Act 2000 and Environmental Information Regulations 2004 as opposed to the Freedom of Information (Scotland) Act 2002 or Environmental Information (Scotland) Regulations 2004.

Yours sincerely

[redacted]  
Forestry Commission Scotland

## **Annex**

“Environmental information” is a broad term, which includes information on the state of the elements of the environment, such as soil, land and natural sites, and measures affecting or likely to affect the said elements (Regulation 2 of the EIRs). Trees form part of the land, landscape and natural sites and are therefore elements of the environment. Proceedings undertaken and decisions made pursuant to legislation prohibiting the felling of trees without a licence, including proceedings instituted by FCS in terms of the Forestry Act 1967 (FA), constitute measures affecting such elements of the environment. The Requested Information is therefore environmental information for the purposes of the EIRs and is exempt from disclosure under section 39(1) of FOIA. As outlined below, we consider the Requested Information to be except from disclosure under the EIRs and therefore also exempt under section 39(1) of FOIA.

We note that the exemption contained in section 39(1) of FOIA is not an absolute exemption in terms of section 2(3) of FOIA, and that we are required to apply the public interest test under section 2(2)(b) of FOIA and consider both the public interest factors in favour of disclosure of the information and those in favour of maintaining the section 39(1) of FOIA exemption. With regard to the public interest factors in favour of the application of FOIA to your request for information, we recognise that there is a broad public interest in information being made publicly available in relation to decision making by public authorities, irrespective of the legal regime that is invoked or employed to induce such public availability. However, at the same time, we acknowledge that there is a separate right of access to environmental information available to applicants under the EIRs, and the public interest in maintaining the section 39(1) of FOIA exemption and dealing with the request for information in accordance with the EIRs outweighs the public interest in favour of handling the request under FOIA.

### **Regulation 12(4) (e): Disclosure of internal communications**

This provides for an exception from disclosure of environmental information where disclosure would involve the disclosure of internal communications.

The Requested Information which has been withheld consists of:

- An internal communication exchange between FCS staff and Scottish Ministers regarding the FCS investigation at the Carrbridge Hotel.

Having reviewed the information contained within the documents forming the Requested Information, we are of the view that they fall within the scope of internal communications and are therefore exempt from disclosure in terms of Regulation 12(4)(e) of the EIRs.

### **Regulation 12(5)(b): Adversely affect the Course of Justice**

This provides for an exception from disclosure of environmental information where disclosure would adversely affect the course of justice.

The “course of justice” is to be accorded a wide meaning and includes circumstances where disclosure would prejudice proceedings and investigations of a criminal nature conducted by a public authority.

The present request relates to information concerning action taken by FCS on unauthorised felling. Where the information concerns investigations that are still in process and not yet concluded then there is, in our view, a real and identifiable negative impact on the course of justice if information in connection with such investigations is disclosed in response to a request for information.

This is because the availability of information in connection with current investigations could have a significant impact on the outcomes of processes. This applies to both certain third parties and FCS. Disclosure could result in FCS taking action that is more likely to be palatable to the wider public and does not represent the best course of action vis-à-vis the undertaking of its statutory functions and responsibilities. Equally we recognise that third parties have a right to expect that their information is not inappropriately disclosed in a way that could prevent the ability of a person to receive a fair trial or disrupt the equitable course of justice.

Moreover, disclosure of this information could reveal how FCS approaches investigations of this nature, which is highly likely to have an impact on law enforcement and crime prevention going forward, particularly with regard to identifying considerations that FCS takes into account in determining whether to refer a given case to the procurator fiscal for prosecution. This is neither conducive to the undertaking of FCS’s law enforcement activities nor to the effective or equitable course of justice.

### **Regulation 12(5)(d) Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest.**

This provides for an exception from disclosure where disclosure of environmental information would adversely affect the confidentiality of the proceedings of a public authority where that confidentiality is provided for by law. It has been established in the decision notices of the UK Information Commissioner that the following requirements must be met for this exception to apply:

1. there must be proceedings of a public authority, which includes any formal proceedings where a public authority is exercising statutory decision-making powers or is engaged in legal proceedings;
2. the confidentiality of the proceedings must be provided for by law, either by statute or the common law of confidence; and
3. disclosure of information related to the proceedings would have a negative impact on the confidentiality of the proceedings.

The Requested Information contains information pertaining to the exercise by us of our statutory powers contained within Part 2 of the Forestry Act 1967 (as amended) (the 'FA') regarding the unauthorised felling of trees without a licence, in relation to the prospective prosecution of those engaged in such activities. We consider that this information is except in terms of Regulation 12(5)(d) of the EIRs.

In the present case, the aforementioned exercise by us of our statutory powers contained within Part 2 of the FA regarding the unauthorised felling of trees constitutes the proceedings for the purposes of Regulation 12(5)(d) of the EIRs.

The confidentiality of the proceedings arises from the common law of confidence on the basis that the proceedings have the necessary quality of confidence and are not the subject of public knowledge.

Disclosure of the Requested Information insofar as it relates to the proceedings would have a negative impact on the confidentiality of the proceedings, as it would result in the public disclosure of communications that we have exchanged with Scottish Ministers, detailing parts of the investigations and proceedings into the commission of offences of unauthorised felling without a licence contrary to the requirements of the FA.

FCS must be able to engage in these exchanges with relevant bodies in exercise of FCS's statutory powers and functions on a confidential basis without fear of the content of the exchanges being made public. Disclosure in response to a request for information would compromise the confidentiality of such proceedings to their detriment. This would have a consequential impact on future similar proceedings, during which FCS may be inclined to be less candid and frank with relevant bodies and other organisations with which it is involved, which is not conducive to the effective conduct of proceedings, particularly where a potential criminal offence has been perpetrated.

### **Public Interest Test**

We note that Regulation 12(1)(b) of the EIRs provides that the exceptions contained in Regulation 12(4)(e), 12(5)(b) and 12(5)(d) of the EIRs (outlined above) are subject to the public interest test. This provides that we may refuse to disclose the Requested Information if in all the circumstances of the case, the public interest in maintaining the exception is outweighed by the public interest in disclosing the Requested Information. In determining whether this is the case, we must consider both the public interest factors in favour of and against disclosure of the Requested Information.

In the present case, we note that there is a public interest in disclosure of the Requested Information from transparency and accountability perspectives in ensuring that public authorities take well-informed decisions, particularly in relation to determining whether to institute legal proceedings in furtherance of their statutory powers on the basis of sound and robust internal deliberations and decision-making. It

could also be argued that disclosure of the Requested Information could increase public confidence in decision-making mechanisms.

At the same time, however, there is a strong public interest in ensuring the protection of information associated with internal deliberation and decision-making processes from external scrutiny in cases where there has been a short period of time between the issuing of a decision and receipt of a request for information. It has been recognised by the UK Information Commissioner in a number of decision notices that public authorities are entitled to a “private thinking space” in which to engage in debate and formulate decisions, without interference from external scrutiny. This protection continues to apply for a period of time after the decision has been made or issued in order to give public authorities an opportunity to explain and defend the reasoning underlying their decisions. Failure to accord protection to this private thinking space and to require the disclosure of information associated with the decision-making process is not conducive to effective decision-making because it could result in decisions being taken to engage in legal proceedings in only those cases where such a decision is capable of withstanding public scrutiny. It could also discourage public authorities’ staff involved in the decision-making process from being free and frank in terms of how they participate and engage in such processes. This could significantly undermine and reduce the efficacy of decision-making and, in turn, exercise of the enforcement powers available to public authorities.

There is also a strong general public interest in ensuring the confidentiality of proceedings of public authorities in order that such proceedings are not adversely affected by disclosure and to ensure that the effective exercise of statutory powers and functions is not prejudiced.

There is also a further public interest in protecting the identities of staff who are involved in internal communications and proceedings, particularly where, as in this case, the members of staff involved cover a broad geographic area. To disclose their identities within the Requested Information would be inconsistent with their expectations and could result in internal formulations of approach and decisions being wrongly attributed to the members of staff on an individual basis rather than the public authority on a collective basis. This is not in the public interest.

In our view, in the present case, in all the circumstances of the case, the public interest in maintaining the exceptions contained within Regulation 12(4)(e) and Regulation 12(5)(b) and 12(5)(d) of the EIRs outweighs the public interest in disclosing the internal communications forming part of the Requested Information.

### **EIR Reg: 13 Personal Data**

Following consideration of the relevant information we hold and the information which has been released to you, we have not released the names of FCS and Scottish Government employees and the names of third party individuals. We consider that disclosure of this personal data to you would breach the data protection principles contained within the Data Protection Act (DPA) and GDPR. The first data protection

principle contained within the DPA requires us to manage the personal data that we hold fairly.

In our view, the individuals whose personal data we have withheld would not reasonably expect their personal data to be made publicly available in response to an information request. Disclosure would be unfair and in breach of the first data protection principle contained within the DPA and the GDPR. In withholding this personal data, we have relied on the personal information exception contained within Regulation 13 of the EIRs.

[redacted]

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**Subject:** FW: Protect: Official : Carrbridge Hotel

[redacted]

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[redacted]

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**From:** Jo O'Hara  
**Sent:** 04 December 2018 06:58  
**To:** [redacted]  
**Cc:** Director of Environment & Forestry  
**Subject:** Re: For Clearance - RegardsRE: freedom of information request on Carrbridge felling - Protect -

Thanks [redacted], copying in director inbox for info.

Jo

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**From:** [redacted]  
**Sent:** Monday, 3 December 2018 21:57  
**To:** Kate.Higgins[redacted]; FoI.SpAdsPO@gov.scot  
**Cc:** O'Hara, Jo; [redacted]; Keith.Connal[redacted]; [redacted]  
**Subject:** For Clearance - RegardsRE: freedom of information request on Carrbridge felling - Protect -

Kate

Following on from the previous email I have now drafted a response. Following searches of our records we have identified relevant information held by FCS, which essentially is a series of communications on the same email chain. This falls into two areas: a series of emails from the hotel owner to the Cab Sec, responses from the Cab Sec back to the hotel owner and an email from an FCS official to the Cab Sec with advice.

[redacted]

I have attached a draft response and also a copy of the relevant information (the email chain) marked up with part which I proposed for redaction.

Happy to discuss.

[redacted]

[redacted]  
Head of Secretariat and Communications  
Forestry Commission Scotland

[redacted]  
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[www.twitter.com/fcscotlandnews](https://www.twitter.com/fcscotlandnews)  
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**From:** [redacted]  
**Sent:** 30 November 2018 12:16  
**To:** 'Kate.Higgins[redacted]'  
**Cc:** O'Hara, Jo; [redacted]; Keith.Connal[redacted];

[redacted]

**Subject:** FW: freedom of information request on Carrbridge felling - Protect

Kate

I wanted to give you early sight of an FOI request we have received from Rob Edwards – highlighted below. You may recall this issue relates to the investigation by FCS of an unauthorised felling at the Carrbridge Hotel, which has now gone forward to the Fiscal.

We will start our full searches with colleagues, but our initial return shows that we have no specific correspondence to Mr Ewing advising on the detail of the hotel's proposed expansion plans.

We have an email from officials with advice on the background on the unauthorised felling which makes a reference to the context of the hotel owners plans and the need to confirm details from the Park Authority's planning team. We also have copies of emails from the hotel owner to private office, which mention the planning application.

I will draw these files together and draft a response, taking account of the timing of the case with the Fiscal and the nature of the advice to Ministers, which I will share as soon as possible.

Regards

[redacted]

[redacted]

Head of Secretariat and Communications  
Forestry Commission Scotland

[redacted]

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Begin forwarded message:

**From:** Rob Edwards <[\[redacted\]](#)>

**Subject:** freedom of information request on Carrbridge felling

**Date:** 30 November 2018 at 08:31:31 GMT

**To:** [\[redacted\]](#)

Hi [\[redacted\]](#),

I wish to make a request under freedom of information law and the environmental information regulations. I would be grateful if my request could be acknowledged.

In August the [parkswatchscotland blog wrote about the alleged illegal felling of some trees](#) at Carrbridge Hotel in the Cairngorms National Park. It included a story from the Strathspey and Badenoch Herald on the 5 July 2018 featuring the hotel owner, Colin Watt, and Fergus Ewing MSP. The story also quoted Forestry

Commission Scotland as saying that it was investigating an illegal felling. I was told by the commission on 27 November that it had submitted a report to the Procurator Fiscal on this matter.

**Please could Forestry Commission Scotland supply copies of any correspondence with Fergus Ewing in 2018 relating to the the Carrbridge Hotel expansion plans?**

I would be happy to discuss any aspect of my request.

Thank you for your help.

Rob Edwards

--  
Rob Edwards  
theferret.scot  
[\[redacted\]](#)  
[twitter.com/robedwards53](https://twitter.com/robedwards53)  
[redacted]

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[redacted]

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**From:** [redacted]  
**Sent:** 06 March 2019 13:59  
**To:** [redacted]  
**Subject:** FW: urgent query about Fergus Ewing and tree felling at Carrbridge

Hi [redacted]

Just to be aware of this. Here is our response:

*Grant Moir, Chief Executive at the CNPA said: "We will not comment on the enforcement action taken by FCS as this is outwith our remit. However, in relation to Mr Watt's intention to build a car park on the site in question, Mr Watt was advised that a planning application would need to be submitted. While the site in question is not allocated in the Local Development Plan for this type of use, Mr Watt's application - which we are currently processing - will be assessed on its merits and against our planning policies. A decision will be taken in due course by members of our Planning Committee."*

Best Wishes, [redacted]

---

**From:** Rob Edwards [[redacted]]  
**Sent:** 06 March 2019 09:09  
**To:** [redacted]; [redacted]  
**Cc:** Grant Moir; [redacted]  
**Subject:** urgent query about Fergus Ewing and tree felling at Carrbridge

[redacted]/ [redacted],

Can one of you, or a colleague, please help with a query for an article I am writing for [The Ferret](#)? I would be grateful if you could get back to me as soon as possible before 5pm today (Wednesday), and I would appreciate an acknowledgement of this email.

On 20 June 2018 [redacted], head of delivery and regions at Forestry Commission Scotland (FCS), wrote to the rural economy secretary, Fergus Ewing, warning about “engaging” with Colin Watt, the owner of Carrbridge Hotel in the Cairngorms National Park. He was responding to a request for urgent advice from the minister in relation to complaints made by Watt about authorities blocking his plans for a new car park near the hotel.

[redacted] pointed out that an ancient pinewood, including a 140-year-old Scots pine, had been felled without a licence at the site of the proposed car park on Sunday 14 January 2018. This had resulted in FCS sending a report to the procurator fiscal, and serving Watt with an Environmental Impact Assessment enforcement notice requiring trees to be replanted.

[redacted] pointed out that the enforcement notice could be appealed to Scottish ministers. Because there were live enforcement actions, he recommended that Ewing should take these into consideration before engaging with Watt.

Two weeks later on 5 July 2018 [a story appeared](#) in the Strathspey and Badenoch Herald under the headline ‘Minister backs hotel boss in call for more village parking’. Ewing was quoted as saying that he was “concerned and disappointed” that Watt’s “reasonable requirements” were being opposed by the Cairngorms National Park Authority (CNPA).

Emails released under freedom of information law show that Ewing’s intervention in support of Watt upset CNPA. It would have been “courteous” of the minister to have contacted the authority directly, said CNPA chief executive, Grant Moir.

Opposition parties and environmental campaigners have accused Ewing of a conflict of interest that could prejudice the planning process and his neutrality as a minister. They also allege that he has breached the ministerial code by blurring his roles as a constituency MSP and as a minister, and are calling for a statement to parliament and an investigation.

What comments would CNPA like to make? Confirmation of the CNPA's role in this issue and the current position would be welcome. Comments by email from a named spokesperson as soon as possible before 5pm today would be much appreciated.

Thank you for your help.

Rob  
--  
Rob Edwards  
theferret.scot  
[\[redacted\]](#)  
[twitter.com/robedwards53](https://twitter.com/robedwards53)  
[redacted]

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T: 0300 244 4000  
E: scottish.ministers@gov.scot

Colin Watt  
General Manager  
Carrbridge Hotel  
Main Street  
Carrbridge  
PH23 3AB

---

September 2018

I saw the contribution you made to the Channel 4 report broadcast earlier this week expressing concerns about the future for migration if the UK leaves the EU and free movement ends. I wanted to write to say that the Scottish Government shares those concerns, and wants a different approach for Scotland that both addresses the particular challenge we have with demographic change and an ageing society, but also ensures employers have access to the skills and labour they need with fewer burdens imposed on them than under the current immigration rules. We set out our proposals on how this could work earlier in the year.<sup>1</sup>

Since taking up post as Minister for Migration, I have reached out to a range of business representative organisations, and have met or will meet with the Institute of Directors Scotland, CBI Scotland, Scottish Chambers of Commerce, the Federation of Small Businesses Scotland, and others. I am also interested in engaging directly with businesses and understanding the issues you face, and the concerns you and your staff have for the future, and would welcome the opportunity to do so with Carrbridge Hotel.

**BEN MACPHERSON**

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<sup>1</sup> [www.gov.scot/Publications/2018/02/5490](http://www.gov.scot/Publications/2018/02/5490)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



[redacted]

---

**From:** Higgins K (Kate)  
**Sent:** 11 March 2019 13:26  
**To:** [redacted]  
**Cc:** Connal K (Keith)  
**Subject:** Briefing on Carrbridge  
**Attachments:** FMQ Fergus Ewing Carrbridge KH 2.docx

[redacted]

You may be aware of a media report involving Cab Sec around a felling enforcement order/notice – I attach the FMQ brief which I have adapted for Wed making clear what Cab Sec can say around it and what is for officials.

You may want to get a bit more background detail to have to hand from [redacted] and [redacted]. If it comes up you will have to speak to it from a government perspective – Mr Ewing can only speak as a constituency MSP

I will make sure and have that discussion with him ahead of Wed

Kate

Kate Higgins  
Special Advisor to the First Minister  
Rural Economy and Connectivity  
[redacted]/[redacted]

My working hours are:  
Mon, Tues, Thurs 9.30 – 4.30; Wed 8.30 -4.30  
Fri 9 – 5 and working from home, contactable on [redacted]

Scottish Government  
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG  
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## The Ferret story on Fergus Ewing – alleged conflict of interest

**ISSUE:** Article in the Ferret today by Rob Edwards on Rural Economy Secretary, Fergus Ewing's dealings on behalf of a constituent, Colin Watt (owner of Carrbridge hotel) who has alleged to have illegally felled trees. FCS referred the matter to the PF who declined to prosecute. An enforcement order was also applied which Mr Watt has appealed and which may come to Scottish Ministers for a determination.

**18 June 2018** - Mr Ewing raised the matter and was given background and advice by Forestry Commission officials which concluded *"that in these circumstances ministers should take into account the live enforcement actions before engaging with Mr Watt at this time."*

**5 July 2018** - Mr Ewing appeared in a photo with Mr Watt in the Strathspey and Badenoch Herald on 5 July and commented on the case, including criticism of the leadership of Cairngorms National Park Authority. He was quoted as "Strathspey MSP". The Ferret report carries comments from the Chief Executive of the CNPA and also Rhoda Grant, Labour's opposition spokesperson:

*Scottish Labour's rural economy spokesperson, [Rhoda Grant MSP](#), accused Ewing of a "clear conflict of interest" in backing Watt. "These are extremely serious allegations and must be thoroughly investigated," she told The Ferret. "Fergus Ewing as constituency MSP is supporting a constituent in a matter likely to come before him in his capacity as cabinet secretary responsible for the Forestry Commission."*

*Grant highlighted [section 8.7 \(c\) of the Scottish Government's code of conduct](#) governing behaviour by all ministers. "They should make no comment of their own where the determination of a planning application will lead to, or will implicitly involve, other decisions in which the minister making representations on behalf of a particular constituency or region is involved in his or her own ministerial capacity," it says. She added: "Therefore, Fergus Ewing must be investigated under the code. He must also come to the parliament and provide full transparency on his role in this process and the degree of his intervention."*

## **The Ferret story on Fergus Ewing – alleged conflict of interest**

### **Top Lines for Cab Sec to take:**

- As Rural Economy Minister, I have not played and would never play any part in deciding this case, because I am the constituency MSP.
- My contact with Mr Watt last year was in my role as constituency MSP, not as a Minister.
- The Ministerial Code provides that a Minister may represent the views of their constituents, as long as it is clear that he or she is doing so as the constituency MSP. That is what I have done in this case.
- I have maintained the proper separation of my constituency and Ministerial responsibilities. There are no grounds to suggest that I have breached the Ministerial Code.

### **Lines for officials:**

- The enforcement notice appeal by Mr Watt is being considered currently by the Reporter appointed independently of Ministers by the Planning and Environmental Appeals Division (DPEA) of the Scottish Government.

### ***Para 8.6 of the Ministerial Code says:***

The general guidance at 7.5 to 7.10 above also applies to planning matters, including energy consents. It is entirely legitimate for Ministers, in their capacity as a constituency or regional MSP, to make representations on behalf of their electorate on planning matters, but they must take particular care to ensure they follow this due process when doing so. Where Ministers find it unavoidable to express a view on a planning case, they should be aware of the potential sensitivities in doing so, should make it clear that they are not involved in the decision making process on the planning case, and must make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate.

[redacted]

---

**From:** [redacted] on behalf of Connal K (Keith)  
**Sent:** 22 March 2019 09:42  
**To:** [redacted]  
**Subject:** FW: Ministerial Decision Making - Forestry Appeal - correction  
**Attachments:** Mr Ewing - Forestry Appeal - 13 March 2019.docx  
  
**Importance:** High

---

**From:** Campbell B (Bridget) [redacted]  
**Sent:** 13 March 2019 13:47  
**To:** Connal K (Keith) [redacted]  
**Subject:** FW: Ministerial Decision Making - Forestry Appeal - correction  
**Importance:** High

Keith

For information. I will speak to you about this.

Bridget

---

**From:** [redacted]  
**Sent:** 13 March 2019 10:02  
**To:** DG Economy [redacted]  
**Cc:** Permanent Secretary [redacted]; First Minister <[firstminister@gov.scot](mailto:firstminister@gov.scot)>; Minister for Energy, Connectivity and the Islands <[MinisterECI@gov.scot](mailto:MinisterECI@gov.scot)>; Cabinet Secretary for the Rural Economy <[CabSecRE@gov.scot](mailto:CabSecRE@gov.scot)>; Director of Environment & Forestry [redacted]; Mitchell E (Elinor) [redacted]; Lloyd E (Elizabeth) [redacted]; Higgins K (Kate) [redacted]; [redacted]; Hynd JS (James) [redacted]; Cabinet Secretariat inbox  
[redacted]  
**Subject:** Ministerial Decision Making - Forestry Appeal - correction  
**Importance:** High

Colleagues,

James has asked me to re-issue his minute of 9.35 a.m., to correct a small typographical error in the first line of the minute.

Please replace the earlier minute with this version.

Many thanks,

[redacted]

[redacted] | Cabinet Secretariat | Scottish Government | T [redacted] | M [redacted] | [redacted], St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG

---

**From:** Hynd JS (James) [redacted] **Sent:** 13 March 2019 09:35

**To:** DG Economy [redacted]

**Cc:** Permanent Secretary [redacted]; First Minister <[firstminister@gov.scot](mailto:firstminister@gov.scot)>; Minister for Energy, Connectivity and the Islands <[MinisterECI@gov.scot](mailto:MinisterECI@gov.scot)>; Cabinet Secretary for the Rural Economy <[CabSecRE@gov.scot](mailto:CabSecRE@gov.scot)>; Director of Environment & Forestry [redacted]; Mitchell E (Elinor) [redacted]; Lloyd E (Elizabeth) [redacted]; Higgins K (Kate)[redacted]; [redacted]; [redacted]

**Subject:** Ministerial Decision Making - Forestry Appeal

Top Copy Liz Ditchburn

2 page minute

James

James Hynd  
Head of Cabinet, Parliament and Governance Division  
[redacted]  
St Andrew's House  
Edinburgh  
Internal ext [redacted]  
[redacted]

## OFFICIAL-SENSITIVE

From: James Hynd  
Head of Cabinet Secretariat  
13 March 2019

DG Economy

Copy to: Permanent Secretary  
PS/First Minister  
PS/Minister for Energy, Connectivity and the Islands  
PS/Cabinet Secretary for the Rural Economy  
Director for Environment and Forestry  
Director for Agriculture and Rural Economy  
Kate Higgins, Special Adviser

### **MINISTERIAL DECISION-MAKING IN RELATION TO AN APPEAL AGAINST A FORESTRY COMMISSION SCOTLAND ENFORCEMENT NOTICE**

1. This note set out arrangements to be put in place, on behalf of the Permanent Secretary, to ensure that no actual or perceived conflict of interest will arise in connection with a forthcoming Ministerial decision to determine an ongoing appeal against a Forestry Commission Scotland (FCS) enforcement notice.

#### **Background to Enforcement Notice**

2. The appeal was lodged with the Planning and Environmental Appeals Division (DPEA) on 30 August 2018 against an enforcement notice served by the FCS on 3 August which related to the alleged unauthorised deforestation of land adjacent to the A938 in Carrbridge, which it appeared had been carried out without consent, where consent was required by regulation 3(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.

3. Full details of the appeal to the DPEA, which is ongoing, may be found at: <http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=119887>

4. The appeal has been lodged by Mr Colin Watt and Mrs Teresa Watt, who are constituents of Mr Ewing's.

#### **Scottish Ministerial Code**

5. In line with sections 7 and 8 of the Scottish Ministerial Code, Ministers may represent the views of their constituents, so long as they make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate.

6. Consistent with the requirements of the Ministerial Code, Mr Ewing has engaged with Mr Colin Watt solely in his capacity as constituency MSP for Inverness and Nairn. To date, neither Mr Ewing, nor any other Scottish Minister, has had any

## OFFICIAL-SENSITIVE

involvement in the case in any Ministerial capacity. Mr Ewing has maintained the proper separation of his constituency and Ministerial responsibilities.

### Future Decision-Making Process

7. As noted, there has thus far been no Ministerial involvement in the delegated DPEA appeals process. The enforcement notice appeal by Mr Watt is currently being considered by the Reporter appointed by the DPEA independently of Ministers.

8. Once the Inquiry Reporter submits a report, the process for enforcement orders issued by the FCS requires that the report is routed to officials in the Agriculture Policy Division, who will then prepare a Ministerial submission so that the Reporter's decision can be confirmed on behalf of Ministers.

### Arrangement to Take Account of Constituency Interest

9. Paragraph 7.5 of the Scottish Ministerial Code provides that, in cases where a decision would normally fall to be taken by a Minister but which might have an impact on his or her own constituency, "*responsibilities should be arranged to avoid any conflict of interest*":

7.5 Where Ministers have to take decisions within their area of portfolio responsibility which might have an impact on their own constituency or region, they must take particular care to avoid any possible conflict of interest. They should advise the Permanent Secretary and, in the case of junior Scottish Ministers, the relevant Cabinet Secretary of the interest, and responsibilities should be arranged to avoid any conflict of interest.

10. Under normal circumstances, the final decision in relation to appeals against enforcement orders issued by the FCS would fall within the portfolio responsibility of the Cabinet Secretary for the Rural Economy.

11. However, in light of Mr Ewing's acknowledged constituency interest in this case, alternative arrangements need to be put in place in advance of any referral to Ministers of the Inquiry Reporter's appeal report, so that Mr Ewing will play no part in determining the outcome of the appeal.

12. In order to remove any risk of a conflict of interest, Mr Wheelhouse, as Minister for Energy, Connectivity and the Islands reporting to the Cabinet Secretary for Transport, Infrastructure and Connectivity, has agreed to be responsible for any Ministerial decisions in this case.

13. Therefore, all future papers in relation to Ministerial decision-making in this case should be sent to Mr Wheelhouse, and should not be copied to Mr Ewing or his private office, up to and including the point that a Ministerial decision is reached.

**James Hynd**  
Head of Cabinet Secretariat  
13 March 2019

-----Original Message-----

From: Grant Moir [redacted]

Sent: 22 August 2018 20:28

To: Connal K (Keith) [redacted]

Subject: Re: Catch-up

Keith

[redacted - out of scope]. Might get back to office at 4pm. On Friday I am seeing Mr Ewing and Mr Watt about Carrbridge Hotel. [redacted - out of scope]

Grant

[redacted - out of scope]

[redacted]

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**From:** [redacted]  
**Sent:** 22 March 2019 10:12  
**To:** [redacted]  
**Subject:** FW: Carrbridge

---

**From:** Grant Moir [redacted]  
**Sent:** 13 August 2018 09:28  
**To:** Connal K (Keith) [redacted]  
**Subject:** Carrbridge

Keith

Just for info but you may want to read this <http://parkswatchscotland.co.uk/2018/08/10/scottish-government-interference-in-national-parks-to-support-business-interests/>

[redacted] has today FOI'd the CNPA about this.

Fergus Ewing has asked me for a meeting with Mr Watts in attendance on 24th August. Eleanor (Convenor of Planning Committee) and Gavin (Head of Planning ) will be accompanying me.

Let me know if you want to speak.

All the best  
Grant

Grant Moir

Chief Executive  
Cairngorms National Park Authority  
14 The Square  
Grantown-on-Spey  
PH26 3HG

Direct Dial [redacted]  
Mobile [redacted]  
Twitter @cairngormsCEO  
[www.cairngorms.co.uk](http://www.cairngorms.co.uk)



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[redacted]

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**From:** [redacted]  
**Sent:** 22 March 2019 10:13  
**To:** [redacted]  
**Subject:** FW: CONFIDENTIAL - Grant Moir Letter  
**Attachments:** 180705FergusEwinglittreCarrbridge.pdf

---

**From:** [redacted]  
**Sent:** 13 July 2018 09:18  
**To:** Connal K (Keith) [redacted]; [redacted]  
**Subject:** CONFIDENTIAL - Grant Moir Letter

Hi  
Grant has asked me to send you the attached letter in confidence regarding Carrbridge Hotel.

[redacted]

[redacted]  
**PA to Grant Moir, Chief Executive; Peter Argyle, Convener; and David Cameron, Director of Corporate Services**

***Please note that my working days are now Tuesday – Friday.***

Cairngorms National Park Authority  
14 The Square  
Grantown-on-Spey  
PH26 3HG  
Tel: [redacted]  
Tel: [redacted]



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Fergus Ewing MSP  
Constituency Office  
Highland Railhouse  
Station Square  
Inverness  
IVI ILE

14 The Square  
Grantown-on-Spey  
Moray  
PH26 3HG  
(t) 01479 873535  
(f) 01479 873527  
enquiries@cairngorms.co.uk  
www.cairngorms.co.uk  
grantmoir@cairngorms.co.uk

5 July 2018

Dear Fergus

I have seen a quote from you in the Strathy about the Carrbridge Hotel proposal. I do not intend to respond to you and Mr Watt through the press but thought I would write to you on the issues raised.

The Planning Committee last week received feedback from the Main Issues Report consultation on the Local Development Plan 2020 onwards. The Planning Committee gave officers a steer on the proposals and this will be worked up into the Proposed Local Development Plan for public consultation in November 2018.

Mr Watt has been in contact about the site alongside the A938 that he wishes to convert into a car park for the hotel. As background Mr Watt applied for and was granted planning permission for a hotel extension in 2017 from Highland Council. This was despite the existing Hotel and new planning application not meeting Highland Council's normal parking standards, but on the basis of the applicant's case that their business was coach-based and that lower parking provision than normal was therefore adequate. It is our understanding that Mr Watt business model has now changed.

Earlier this year we were made aware by members of the community, including the community council, that some trees had been felled in Carrbridge. We informed FCS and our understanding is that FCS have now investigated and have served a notice under EIA Regulations requiring re-planting of the site as the original felling was done without a felling licence. In addition, we understand that a report has been submitted to the Procurator Fiscal.

The area of land that Mr Watt wishes zoned for a car park is the same as the area that FCS are taking action on. I met with Mr Watt on 13 June along with Director of Planning, Murray Ferguson, as he wished to discuss his options. At this meeting I informed Mr Watt that the best option for him would be to submit a planning application for the site and make his case to the Planning Committee if he wished to pursue this site. I also made it clear that based on it being a site outside the settlement boundary, in woodland and unallocated for development in the current plan that officers would find it difficult in policy terms to support the application. That is not to say that the Committee would not support it. Murray Ferguson and I also agreed with Mr Watt that we would

contact the local estate and the Council to see if there were alternative sites or other ways that help could be provided. We reported this information back to Mr Watt.

Whether the land is zoned in the next LDP which takes full effect from 2020, would have no bearing on any current planning application for the proposed car park site as it only becomes a material planning consideration at a later stage.

Mr Watt will have a further opportunity to state his case for inclusion of this site as a car park as part of the consultation on the proposed LDP later this year. Our advice, which was also echoed by Members at the Planning Committee on Friday at which Mr Watt was present, is that he should put in a planning application and then make his case rather than wait a further 2 years. We have already given pre-application advice so that Mr Watt is aware of the issues he would need to address.

I should finally say that rather than find out through the press and the statements that you have made about the Board and myself it would have been courteous to contact me directly. The CNPA delivers across all 4 of the Park Aims and specifically on the 4<sup>th</sup> Aim through work, such as, the regeneration work in Tomintoul/Glenlivet, the support of the community housing group in Dulnain Bridge, the Badenoch Great Place Scheme, the Snow Roads and the proposed infrastructure investment at Glenmore and Aviemore. The CNPA Planning Service also provides high quality advice to applicants and in the past 3 years the approval rate has been 2015/16 100%, 2016/17 100% and 2017/18 91%. This was shown on Friday by the consent for a 2MW run of the river scheme on the River Muick. A complex scheme but done well by the applicant following advice from CNPA.

Eleanor Mackintosh, Planning Convener, Peter Argyle, Board Convener and I would be delighted to meet with you and to discuss the facts around this issue and other rural development issues in the National Park.

Yours sincerely



**GRANT MOIR**  
Chief Executive