

{redacted}

---

**From:** {redacted}  
**Sent:** 05 December 2019 08:53  
**To:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

I have let them and Balfour and Manson know

Thanks

{redacted}  
{redacted}

{redacted} | Solicitor | Litigation Division | Scottish Government Legal Directorate  
T 0131 244 7942 | F 0131 244 7527 | M 07557201070  
Area 1 F North | Victoria Quay | Edinburgh | EH6 6QQ | DX 557000 Edinburgh -20

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**From:** {redacted}{redacted}{redacted}  
**Sent:** 04 December 2019 16:35  
**To:** {redacted}{redacted}{redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

Please see attached the signed joint minute. I will intimate the relevant motion tomorrow, if you want to let Turcan Connell know now.

Kind regards,

{redacted}  
{redacted}

{redacted}  
Associate  
For Morton Fraser LLP  
t: 0131 247 1315 | [LinkedIn](#)  
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**From:** {redacted}{redacted}{redacted}{redacted}  
**Sent:** 04 December 2019 15:26  
**To:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

thanks

---

**From:** {redacted}{redacted}{redacted}  
**Sent:** 04 December 2019 14:36  
**To:** {redacted}{redacted}{redacted}  
**Cc:** {redacted}{redacted} {redacted}{redacted}{redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

I have spoken with our client and they are not seeking an additional fee against the Scottish Ministers.

Kind regards,

{redacted}  
{redacted}

**{redacted}**  
Associate  
For Morton Fraser LLP  
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**From:** {redacted}{redacted}{redacted}{redacted}  
**Sent:** 03 December 2019 16:50  
**To:** {redacted}  
**Cc:** {redacted}{redacted}{redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted},  
{redacted},

I don't think it merits an additional fee and that certainly was never on offer or part of the agreement from us.

**{redacted}** is signing the Joint minute tomorrow and <sup>{redacted}</sup><sub>{redacted}</sub> is arranging to collect it. She will be in touch with <sup>{redacted}</sup><sub>{redacted}</sub> your PH Clerk.

Thanks

{redacted}  
{redacted}

**{redacted}** | Solicitor | Litigation Division | Scottish Government Legal Directorate  
T 0131 244 7942 | F 0131 244 7527 | M 07557201070  
Area 1 F North | Victoria Quay | Edinburgh | EH6 6QQ | DX 557000 Edinburgh -20

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---

**From:** {redacted}{redacted}{redacted}  
**Sent:** 03 December 2019 12:50  
**To:** {redacted}{redacted}{redacted}

Cc: {redacted}{redacted} {redacted}{redacted}{redacted}  
Subject: RE: CEC V Scottish Ministers

{redacted}  
{redacted}

Thanks for this. I don't have any specific instructions on an additional fee but can check with our client.

{redacted} - out of scope {redacted} - out of scope {redacted} - out of scope  
{redacted} - out of scope {redacted} - out of scope

Kind regards,

{redacted}  
{redacted}

**{redacted}**  
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---

**From:** {redacted} {redacted} {redacted}  
**Sent:** 03 December 2019 12:10  
**To:** {redacted}  
**Cc:** {redacted} {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted} {redacted} ,

Thank you. {redacted} - Out of Scope {redacted} - Out of Scope She is copied into this email and knows your PH colleague {redacted} {redacted} .

First I note that the joint minute does not mention the fact that you won't apply for an additional fee in respect of the expenses against us. I can't imagine you will but please confirm you won't !

Second {redacted} {redacted} has reminded me that we will need a motion when the Joint Minute is lodged. If we can get an executed motion to you will you intimate and lodge the motion ? {redacted} - Out of Scope {redacted} - Out of Scope

I also wondered if you could please send me a scanned copy of the Joint Minute so I can have it for my file and also so I can let the other parties know ? I have an outstanding reply to {redacted} {redacted} {redacted} on certain issues which he has raised, who will not be happy if he hears from you first. So if I knew when you were going to intimate the motion I could warn him in advance.

Many thanks

{redacted}  
{redacted}

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**From:** {redacted} {redacted} {redacted}  
**Sent:** 03 December 2019 11:21  
**To:** {redacted} {redacted} {redacted}  
**Cc:** {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

I now have instructions and our client is prepared to accept a concession on expenses up to and including 10 October. I understand Counsel are going to liaise regarding having the joint minute signed.

Kind regards,

{redacted}  
{redacted}

{redacted}  
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**From:** {redacted} {redacted} {redacted}  
**Sent:** 02 December 2019 14:14  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted} {redacted} ,

I am taking instructions and will revert.

Kind regards

{redacted}  
{redacted}

{redacted} | Solicitor | Litigation Division | Scottish Government Legal Directorate  
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---

**From:** {redacted} {redacted} {redacted}  
**Sent:** 02 December 2019 14:11  
**To:** {redacted} {redacted} {redacted}  
**Cc:** {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

I am taking instructions from our clients on the expenses.

Is it your intention to just rest on the joint minute and not participate further in the appeal? I anticipate the motion for interim suspension will come after the joint minute is executed.

Kind regards,

{redacted}  
{redacted}

**{redacted}**

Associate

For Morton Fraser LLP

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---

**From:** {redacted} {redacted} {redacted}  
**Sent:** 02 December 2019 12:54  
**To:** {redacted}  
**Cc:** {redacted} [t](#)  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted}  
{redacted}

{redacted} has instructions to back to {redacted} on the question of expenses but maybe I should just set out here so you can take instructions. We are prepared to concede the expenses (without any additional fee element) until 10 October 2019 which was when we intimated our answers at 8.55am and also clearly stated in our email that we would be conceding the Appeal.

What is the timescale regarding your motion for interim suspension ? If it is after we have exited the process then it need not be intimated on us.

Please could you let me know and then I shall take instructions.

I look forward to hearing from you.

Kind regards

{redacted}  
{redacted}

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**From:** {redacted} {redacted} {redacted}  
**Sent:** 02 December 2019 12:17  
**To:** {redacted} {redacted} {redacted}  
**Cc:** {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

Following our discussion on Friday and discussion between Counsel, our client would be prepared to enter into the joint minute without the Annex. I understand that your Counsel was going to seek instructions on expenses from you. Have you been able to obtain instructions in this respect?

{redacted} - Out of Scope {redacted} - Out of Scope {redacted} - Out of Scope  
{redacted} - Out of Scope {redacted} - Out of Scope {redacted} - Out of Scope

Kind regards,

{redacted}  
{redacted}

**{redacted}**  
Associate  
For Morton Fraser LLP  
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**From:** {redacted}{redacted}{redacted}{redacted}  
**Sent:** 28 November 2019 15:32  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted}

{redacted} has instructions to liaise direct with {redacted} to adjust the Joint Minute. In essence we are not prepared to make all the concessions that {redacted} asks us to on behalf of your clients.

The earlier draft which we proposed says all it needs to say; it needs no amplification as re-determination will be by a different Reporter; we do not believe the Joint Minute should be used either to further your client's defence in the Appeal nor further future arguments to refuse the referred re-determination. Therefore we would ask that you reconsider the Joint minute as originally drafted.

I look forward to hearing from you. This office is closed tomorrow as is the Scottish Government generally for the St Andrew's holiday. At the foot of the email is my mobile. I can log on in the afternoon if you need me to.

Kind regards

{redacted}  
{redacted}

{redacted} | Solicitor | Litigation Division | Scottish Government Legal Directorate  
T 0131 244 7942 | F 0131 244 7527 | M 07557201070  
Area 1 F North | Victoria Quay | Edinburgh | EH6 6QQ | DX 557000 Edinburgh -20

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**From:** {redacted}{redacted}{redacted}  
**Sent:** 28 November 2019 10:37  
**To:** {redacted}{redacted}{redacted}  
**Cc:** {redacted}{redacted}  
**Subject:** RE: CEC V Scottish Ministers

Thanks {redacted} {redacted} I look forward to hearing from you.

Kind regards,

{redacted}  
{redacted}

{redacted}  
Associate  
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**From:** {redacted}{redacted}{redacted}{redacted}  
**Sent:** 27 November 2019 18:00  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Thank you I will expedite tomorrow

{redacted}  
{redacted}

---

**From:** {redacted}{redacted}{redacted}  
**Sent:** 27 November 2019 17:11  
**To:** {redacted}{redacted}{redacted}  
**Cc:** {redacted}{redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

{redacted} - Out of Scope {redacted} - Out of Scope {redacted} - Out of Scope  
{redacted} - Out of Scope {redacted} - Out of Scope {redacted} - Out of Scope

{redacted} - Out of Scope  
{redacted} - Out of Scope

{redacted} - Out of Scope

It would be helpful if the joint minute could be executed given the risk of judicial review. I look forward to hearing from you once you have instructions.

Kind regards,

{redacted}  
{redacted}

**{redacted}**

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**From:** {redacted}  
**Sent:** 26 November 2019 14:58  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Thank you, {redacted}. I look forward to hearing from you further once you have instructions.

Kind regards,

{redacted}  
{redacted}

**{redacted}**

Associate  
For Morton Fraser LLP  
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**From:** {redacted} {redacted} {redacted}  
**Sent:** 26 November 2019 14:47  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted},

Thank you for this. We are considering the Joint Minute. It looks as if statements 13,18 and 19 go further than we would accept but I am waiting on instructions and will get back to you soon.

Kind regards

{redacted}  
{redacted}

**{redacted}** | [Solicitor](#) | [Litigation Division](#) | [Scottish Government Legal Directorate](#)  
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**From:** {redacted} {redacted} {redacted}  
**Sent:** 19 November 2019 16:20  
**To:** {redacted} {redacted} {redacted}  
**Cc:** {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

With apologies for chasing, I was wondering if you had managed to consider the revised joint minute with your clients/Counsel?

Kind regards,

{redacted}  
{redacted}

**{redacted}**  
Associate  
For Morton Fraser LLP  
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**From:** {redacted}  
**Sent:** 14 November 2019 09:38  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

{redacted}  
{redacted}

We had the opportunity to consult with clients and Counsel earlier in the week. Our Counsel sees benefit in the Council and the Scottish Ministers still lodging a joint minute to record their agreement on matters, albeit this will not be able to dispose of the action where the interested party is still defending the action. However, this may put pressure on GCDL to decide whether they still wish to defend, or may narrow the issues for the substantive hearing in due course.

Our clients would be looking for the Scottish Ministers to meet their expenses up to the date of lodging the joint minute.

I attach a very slightly revised joint minute which seeks to clarify the grounds of appeal which are being conceded by reference to the statements in the appeal, and also amends the position on expenses.

I look forward to hearing from you as to whether the Ministers would be prepared to agree a joint minute in these terms.

Kind regards,

{redacted}  
{redacted}

**{redacted}**  
Associate  
For Morton Fraser LLP  
t: 0131 247 1315 | [LinkedIn](#)

**From:** {redacted} {redacted} {redacted}  
**Sent:** 06 November 2019 11:10  
**To:** {redacted}  
**Cc:** {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Dear {redacted}  
{redacted}  
All parties are content with the joint minute apart from the developer. {redacted} and {redacted} are going to speak to {redacted}  
Kind regards  
{redacted}  
{redacted}

{redacted} | Solicitor | Litigation Division | Scottish Government Legal Directorate  
T 0131 244 7942 | F 0131 244 7527  
Area 1 F North | Victoria Quay | Edinburgh | EH6 6QQ | DX 557000 Edinburgh -20

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**From:** {redacted} {redacted} {redacted}  
**Sent:** 06 November 2019 09:38  
**To:** {redacted} {redacted} {redacted}  
**cc:** {redacted} {redacted}  
**Subject:** RE: CEC V Scottish Ministers

Hi {redacted}  
{redacted}

I am just catching up on matters on my return to the office. Did you receive any responses to this joint minute from the other parties?

I will discuss with our clients but it may be difficult to take forward if Granton Central Developments are still defending the appeal.

Kind regards,

{redacted}  
{redacted}

{redacted}  
Associate  
For Morton Fraser LLP  
t: 0131 247 1315 | [LinkedIn](#)  
[www.morton-fraser.com](http://www.morton-fraser.com)

**From:** {redacted} {redacted} {redacted}  
**Sent:** 31 October 2019 15:58

To: {redacted} {redacted} {redacted} {redacted} {redacted} {redacted}  
Cc: {redacted}  
Subject: CEC V Scottish Ministers

Dear all,

I have included {redacted} in this email list as she has just lodged answers on behalf of {redacted} {redacted} {redacted} {redacted}

I attach a joint minute drafted by our Counsel, {redacted} Solicitor Advocate and would be obliged if you could take your clients instructions.

I look forward to hearing from you so that the Joint Minute can be circulated for signature by Counsel\* and the appeal disposed of.

Kind regards

{redacted}  
{redacted}

\*  
CEC- {redacted}  
SG- {redacted}  
Developer – {redacted}  
{redacted} – {redacted}

{redacted} | Solicitor | Litigation Division | Scottish Government Legal Directorate  
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{redacted}

---

**From:** {redacted}  
**Sent:** 13 December 2019 09:28  
**To:** {redacted}{redacted}  
**Subject:** City of Edinburgh Council V Scottish Ministers and others - XA105/19  
**Attachments:** CEC V Scottish Ministers - XA105-19 - Letter to DPCS.doc

Dear all,

I attach a soft copy of the letter which will be delivered to the DPCS today. I have also sent a soft copy to the Inner House Clerks.

Kind regards

{redacted}  
{redacted}

{redacted} | [Solicitor](#) | [Litigation Division](#) | [Scottish Government Legal Directorate](#)  
[T 0131 244 7942](#) | [F 0131 244 7527](#) | [M 07557201070](#)  
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T: 0131 244 7942 F: 0131 244 7527  
E: {redacted}{redacted}

Deputy Principal Clerk of Session  
Court of Session  
Parliament House  
Parliament Square  
Edinburgh

13 December 2019

Our Ref :- LIT/ 17607

Dear Sir,

**City of Edinburgh Council V The Scottish Ministers and others – XA105/19**

We refer to the above Appeal in which we act on behalf of the Scottish Ministers. We also refer to the timetable issued by the Court on 1 November 2019 .

We are writing to advise the Court that we will not be lodging any items in accordance with the timetable. The explanation for this is that our Answers contain concessions on behalf of the Scottish Ministers in respect of statements 13, 18 and 19 of the Grounds of Appeal.

This is also reflected in the Joint Minute entered into between Scottish Ministers and the Appellants which was lodged with the Court on 10 December 2019. In that Joint Minute Scottish Ministers, in paragraph 4

“acknowledge that ... the decision was not within the powers of the 1997 Act and that for this reason alone the decision may be properly quashed by the Court and ought to be remitted back to the respondents for a fresh decision.”

Therefore, the Scottish Ministers propose to take no further part in the substantive element of the Appeal currently before the Court.

It is also our intention not to be represented at the procedural hearing scheduled for 23 January 2020. However, if the procedural judge wishes us to attend at that hearing, then we shall arrange to do so . We would, therefore, be grateful if this letter could be brought to the attention of the procedural judge assigned to this Appeal. Thereafter, please let us know whether or not we are required to attend at the hearing on 23 January 2020.

In addition if the Court wishes to be addressed on the terms of the concession made by Scottish Ministers at an earlier time, please let us know.

Yours faithfully,

{redacted}

Victoria Quay, Edinburgh EH6 6QQ  
Hays DX 557000, Edinburgh 20  
www.scotland.gov.uk

{redacted}

---

**From:** {redacted}{redacted}{redacted}  
**Sent:** 06 December 2019 10:02  
**To:** {redacted}{redacted}{redacted}  
**Cc:** {redacted}  
**Subject:** XA105/19 City of Edinburgh Council v the Scottish Ministers  
**Attachments:** Motion for joint minute.rtf; JOINT MINUTE (signed).pdf

**Confidential: intended recipient only**

Dear all,

I attach by way of intimation, a motion for a joint minute executed between City of Edinburgh Council and the Scottish Ministers to be received. We shall enrol this on Tuesday.

Kind regards,

{redacted}  
{redacted}

{redacted}

Associate  
For Morton Fraser LLP  
t: 0131 247 1315 | [LinkedIn](#)  
[www.morton-fraser.com](http://www.morton-fraser.com)

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Form 23.2

**Form of motion**

*PART I* Sheet 1 of ..... sheets

(To be completed where motion enrolled  
by post or fax only)

Name of pursuer/petitioner\* .....City of Edinburgh Council.....

Name of first defender/respondent\* .....The Scottish Ministers.....

Name and nature of petition (*e.g.* John Smith's curatory) .....  
.....

Court case number ...XA105/19.... Date of last interlocutor .....9 October 2019.....

Is case due in court during the next seven days? No

(If Yes, state reason)

*PART II*

Name of firm enrolling motion .....Morton Fraser LLP.....

Agent for .....City of Edinburgh Council..... Ref No. ...UC/RA4/01393.00543.....

Rutland Exchange No. ....DX ED 119..... Town .....Edinburgh.....

Tel. No. ...0131 247 1315..... FAX No. ...0131 247 1000.....

Date of enrolment of motion .....10 December 2019.....

Has motion been intimated? Yes If yes, give date .....6 December 2019.....

THE MOTION IS (state terms of motion; if necessary, use a separate sheet):-

On behalf of the appellant, to allow the joint minute between the appellant and the respondent  
number [ ] of process to be received.

REASON FOR MOTION (state reason if reason required) by Practice Note of 10<sup>th</sup> December  
1986; if necessary, use a separate sheet):-

The joint minute records agreement between the appellant and the respondent.

\* Delete as appropriate

---

*PART III*

MOTION SLIP – General Department only

Name of case ..... v. ....

Name of firm .....

*e.g.* John Smith v. John Brown.

IN THE COURT OF SESSION

JOINT MINUTE

BETWEEN THE APPELLANT AND THE RESPONDENTS

in an

APPEAL

to

THE COURT OF SESSION

under

Section 239 of the Town and Country Planning (Scotland) Act 1997

by

**CITY OF EDINBURGH COUNCIL**, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its headquarters at City Chambers, High Street, Edinburgh, EH1 1YJ.

Appellant

against

A decision by Andrew Fleming, a Reporter appointed by the Scottish Ministers, dated 31 July 2019 allowing an appeal by Granton Central Developments Limited (Case Reference: PPA-230-2253) and granting planning permission for development without compliance with condition 1a and 1b imposed in the grant of planning permission 01/00802/OUT dated 23 June 2003 for mixed use development comprising residential units, hotel plus serviced apartments, shops plus retail / services, restaurants / cafes, public houses, general business, leisure facilities plus marina on land at Granton Harbour, West Harbour Road, Edinburgh (Planning Application Reference: 18/01/PPP).

{redacted} for the appellant and {redacted} for the respondents concur in stating to the Court that the parties are agreed as follows:

- 1) That the appellant has appealed in terms of section 239 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) against the decision of a Reporter appointed by the respondents dated 31 July 2019 allowing an appeal by Granton Central Developments Limited (Case Reference: PPA-230-2253) and granting planning permission for development without compliance with condition 1a and 1b imposed in the grant of planning permission 01/00802/OUT dated 23 June 2003.

- 2) That the effect of granting permission for a section 42 application is such that a new and separate permission exists for the development, not a modification or amendment to the conditions in planning permission 01/00802/OUT dated 23 June 2003.
  
- 3) That the respondents acknowledges that the respondents' decision failed to give proper, adequate and intelligible reasons in relation to: (1) the test which the Reporter applied per statement 13 of the Grounds of Appeal; (2) the consideration of the parties submissions per statement 18 of the Grounds of Appeal; and (3) the assessment of housing land supply per statement 19 of the Grounds of Appeal.
  
- 4) That accordingly, the respondents acknowledge for the reason stated in paragraph 3) hereof, the decision was not within the powers of the 1997 Act and that for this reason alone the decision may properly be quashed by the Court and ought to be remitted back to the respondents for a fresh decision.
  
- 5) To find the respondents liable to the appellants in the expenses of the appeal up to and including the date of concession of the appeal namely 10 October 2019.

IN RESPECT WHEREOF

{redacted}