

***CROFTERS COMMISSION***

***BOARD MEETING***

***5 MAY 2010***

## CROFTERS COMMISSION

A BOARD MEETING WILL BE HELD IN GREAT GLEN HOUSE,  
LEACHKIN ROAD, INVERNESS ON  
WEDNESDAY 5 MAY 2010 AT 10.00 AM

### A G E N D A

#### 1 APOLOGIES

#### 2 APPROVAL OF DRAFT MINUTES OF: 12<sup>th</sup> November 2009 and 11<sup>th</sup> February 2010

#### 3 MATTERS ARISING FROM PREVIOUS MEETING

#### 4 POLICY

4.1 Croft Occupancy Initiative: Community Consultation *(Paper attached)*

4.2 Policy Consultations *(Paper attached)*

4.3 Appeals & Stated Cases *(Oral Report by  
Donald)*

4.3 Stud Farm Development *(Oral Up-date by  
Nick)*

#### 5 AOB

**BOARD MEETING - 5 MAY 2010**

**PART 1 - APOLOGIES**

**BOARD MEETING - 5 MAY 2010**

**PART 2 - APPROVAL OF DRAFT MINUTES OF 12<sup>th</sup> NOVEMBER 2009 AND  
11<sup>th</sup> FEBRUARY 2010**

**CROFTERS COMMISSION  
DRAFT MINUTES OF THE BOARD MEETING OF THE CROFTERS COMMISSION  
HELD IN GREAT GLEN HOUSE, INVERNESS  
ON THURSDAY 12 NOVEMBER 2009**

Present: Mr Drew Ratter (Convener)  
Mr David MacLeod (Commissioner)  
Mr Angus McHattie (Commissioner)  
Mr Ronnie Eunson (Commissioner)  
Mr Murdo MacLennan (Commissioner)  
Mr Robin Currie (Commissioner)

Mr Nick Reiter (Chief Executive)  
Mr Donald Smith (Solicitor)  
Mr Gordon MacDonald (Head of Corporate Services)  
Ms Fiona McEwen (Change Manager)  
Mrs Anne Williamson (Serving Crofting Officer)  
Mrs Christina Macinnes (Serving Crofting Officer)  
Ms Ailsa Chisholm (Serving Crofting Officer)  
Mr John Toal (Strengthening Crofting Manager)  
Mr Uilleam Smith (Serving Crofting Manager)  
Mrs Betty MacKenzie (Minute-Taker)

One member of the public attended the meeting

**PART 1 – APOLOGIES**

There were apologies from:

Dr Isobel MacPhail (Commissioner);  
Mr David Balharry (Head of Serving Crofting);  
Mr Hugh MacKintosh (Area Manager);  
Ms Jane Thomas (Area Manager); and  
Mr Archie Macnab (Area Manager)

**PART 2 – APPROVAL OF MINUTES OF 20<sup>TH</sup> AUGUST 2009**

The Board approved the Minutes subject to the following amendments:

- **Matters Arising – Policy 5.1 Gaelic Language Plan:** Amend the spelling of Sabhail Mor Ostaig throughout the minute to **Sabhal Mor Ostaig** and the new Gaelic spelling of Commission (Coimisean) to be inserted.
- **Part 5 – Policy 5.1:** Dates for Board Meetings and Quorum Meetings to be e-mailed to Commissioners. At least one of the Policy Meetings should be held outwith Inverness, possibly in Argyll.

<p><b>Action:</b> <i>Betty to arrange for Commissioners to be sent a copy of the dates for next year's meetings.</i></p>
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- **Part 6 – Item 2:** To note Mr MacLennan's concern was in relation to family assignments where the new tenant may be an absentee.

### **PART 3 – MATTERS ARISING FROM PREVIOUS MINUTES**

**Nov 2008 – Item 5.1:** The meeting was advised that John Watt from Highlands & Islands Enterprise would be attending the Assessors Conference on 19<sup>th</sup> November to give an up-date on Crofting Community Development and HIE.

***ACTION: Mr MacKintosh to circulate Minutes of Meeting with HIE to Commissioners.***

**Part 5 – Audit Committee Guidance:** Mr MacDonald advised the final Year End Financial Report may not be ready to go before the Board in May of next year due to Scottish Government accounting timetables and it was more likely to be June. The Board agreed that once the accounts are finalised, they will go before the Governance & Efficiency Group.

***ACTION: Mr MacDonald to arrange a meeting of the Governance & Efficiency Group once the Year End Accounts were finalised.***

**Item 5.1 –** Mr Reiter confirmed Jane Thomas was dealing with this matter and had it in hand.

### **PART 6 – AOB**

**Item 1 –** Mr Ratter informed the meeting he had written to Mr Henderson to confirm our procedure would be amended so the Commissioner(s) who chaired the Hearing would now take the Decision on the case.

**Item 4 –** Mr Ratter and Mr MacLennan held a successful meeting on the Isle of Barra. A further meeting has still to be arranged with the West Harris Community Group. Mr MacLennan advised the buy-out was likely to be finalised mid to end January 2010. It was agreed to wait until the buy-out had been finalised before arranging a meeting.

***ACTION: Mr MacKintosh to arrange meeting at end January 2010 with West Harris Community Group. Mr MacLennan and Mr Ratter also to attend the meeting.***

### **PART 4 – CROFTING SERVICES: REGULATORY BUSINESS**

#### **4.1.1 Highland – Apportionment**

Croft:	8 Durnamuck
Grazings Name:	Durnamuck
Applicant:	Mr Rodney Minton
Reason for Application:	Stock Management
Extent applied for:	29 ha
Case Number:	4.21.17288

Mrs Macinnes introduced the case and explained the case now came before Commissioners as a shareholder had submitted objections following the Quorum decision to propose to approve the application.

After discussions, Commissioners **agreed** that no additional information had been submitted in the objection and confirmed **approval** of the application.

## **MINUTE OF QUORUM DECISION FOR NOTING**

### **4.1.2 Highland – Apportionment**

Grazing: Knockarthur, Rhilochan & West Tannachy,  
Rogart

Case Numbers: 4.21.17115

Commissioners **noted** the Quorum's decision.

### **4.1.3 Highland – Decrofting**

Croft: 26 Strath, Gairloch

Applicant: Mr Kenneth MacLean

Reason for Application: To provide the sites for two dwellinghouses  
extending to 0.146 ha and 0.137 ha

Case Numbers: 4.86.17492 & 4.86.17494

Mrs Chisholm introduced the case and explained why it came before Commissioners to consider the applications to develop sites for dwellinghouses.

Mr Ratter informed the meeting that although Ms MacPhail could not be present at the meeting, he had discussed the case with her by telephone and she advised there was a high need for affordable housing in the area. Mrs Chisholm confirmed to the meeting that planning consent had been granted, subject to agreement, to provide affordable housing on the rest of the croft.

The agreement between the Applicant and Highland Council was a binding agreement and could not be amended by the Crofters Commission.

Mr Uilleam Smith advised the meeting that when the applicant had obtained the croft, he had planned to erect fencing and buildings along with building up his stock. There was also one previously decrofted site that had not yet been developed.

Commissioners discussed the case at length and agreed to **approve** the application, subject to the following conditions:

- That full planning permission is granted;
- The development should commence within one year of the granting of the Direction; and
- The grazing share associated with the croft should be renounced to the landlord so it could be re-let, if the remainder of the croft is to go under housing.

## PART 5 – POLICY

### 5.1 RESPONSES TO THE GAELIC LANGUAGE PLAN

Mrs Williamson introduced the Paper and informed the meeting that twelve responses had been received, the majority of which were very supportive but there were two main areas of concern. These were:

- The Commission relocating to Great Glen House (GGH) with SNH. SNH will also be required to produce a Plan next year – how will both plans fit together? For example, the Commission is undertaking to have their reception manned by a Gaelic speaker.
- The Commission indicating it might advertise posts with Gaelic being a desirable skill prejudiced against those with no Gaelic.

Mrs Williamson also reminded Commissioners the Plan was due to be submitted to the Bord at the end of November.

Mr Ratter stated the Commission was a champion of Gaelic. This meeting itself had six Gaelic speakers round the table, all employed by the Commission and the majority of crofters were located in strong Gaelic areas.

Mr Eunson indicated that the Shetland dialect is dying out and it was encouraging to see Gaelic having so much credibility attached to it. The members who make up the Crofters Commission are supportive of the language.

Mr Reiter indicated that in relation to advertising posts with Gaelic as desirable, he did not see that this would discriminate but if necessary, a successful candidate should be willing to learn Gaelic in an appropriate timescale. Mr Reiter is to discuss this with Human Resources Division in Edinburgh and the PCS.

Mr MacLennan declared an interest in this Paper as he sits on Bord na Gaidhlig. Mr Ratter invited him to comment. Mr MacLennan thought the amended Gaelic spelling for Commission (Coimisean) should be inserted into the Plan before it is formally submitted to the Bord. He also considered the Commission should take a robust position when negotiating with SNH. The Plans were about growing the Gaelic language not simply accommodating it and careers for people with Gaelic should remain in the Plan.

Mr Currie was supportive of the work SNH are doing to support the Gaelic language. They are in the process of producing literature on Gaelic place names and the Commission should consider seeking funding to produce a similar style document on crofting. Mr MacLennan indicated there were always students looking for projects. Mr Reiter said he would investigate this.

Commissioners agreed Mr Reiter and Mrs Williamson would redraft the Plan. It would then be e-mailed to Commissioners for agreement prior to it being submitted to the Bord.

<b>ACTION:</b> Mr Reiter to establish the implications of advertising posts with a desirable quality with HR and discuss with PCS.
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<b>ACTION:</b> Mr Reiter to investigate the possibility of funding to produce a booklet in Gaelic on crofting.
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**ACTION:** Mrs MacKenzie to pass a copy of the new logo with Coimisean instead of Ughdarras to Mrs Williamson.

**ACTION:** Mrs Williamson to meet with Mr Reiter to go through the Plan and make amendments. Anne will then circulate to Commissioners for agreement.

#### **PART 6 – ANY OTHER BUSINESS**

Mr MacDonald advised the meeting that the draft Minutes of the Governance & Efficiency Committee that came before them at the previous meeting have now been approved.

**CROFTERS COMMISSION  
DRAFT MINUTES OF THE BOARD MEETING OF THE CROFTERS COMMISSION  
HELD IN GREAT GLEN HOUSE, INVERNESS  
ON THURSDAY 11 FEBRUARY 2010**

Present: Mr Drew Ratter (Convener)  
Mr Angus McHattie (Commissioner)  
Mr Ronnie Eunson (Commissioner)  
Mr Murdo MacLennan (Commissioner)  
Mr Robin Currie (Commissioner)  
Ms Isobel MacPhail (Commissioner)

Mr Nick Reiter (Chief Executive)  
Mr David Balharry (Head of Serving Crofting)  
Mr Hugh MacKintosh (Strengthening Crofting Manager)  
Ms Jane Thomas (Serving Crofting Area Manager)  
Mrs Betty MacKenzie (Minute Taker)

**1 MAPPING POLICY**

- 1.1 Drew Ratter invited Hugh MacKintosh to introduce the Paper.
- 1.2 The Commission has, in the past, requested applicants to submit plans of their croft with all regulatory applications. The intention was that the GIS Team would record croft boundaries and over time a record of most croft boundaries would be built up. Due to resource limitations digitising of all maps is not taking place.
- 1.2 In cases of Assignment, Sublet and Transfer by Executor, applications plans are requested by the Commission but plans are not crucial for these applications as if the application is approved, it will not result in a change of status of the land, or a change to the croft boundaries. It is therefore hard to justify this additional cost to applicants when the plans are not being used as part of the decision making process.
- This has also resulted in an inconsistency in the approach taken by the Area Teams. Some return the application if a plan is not to the required standard and in the majority of cases the plans submitted are of a low standard, while others continue to process the application, as the plan is not a pre-requisite for taking a decision.
- 1.3 After a lengthy discussion, Commissioners **agreed** to adopt the mapping policy with a review to be undertaken in December 2010.

**Applications where plans will be required:**

Apportionment  
Decrofting – Statutory House Site & Garden Ground; Part Croft and Whole Croft  
Division  
Letting (where only part of the croft is being let)  
New Croft  
New Common Grazing

## Applications were plans will not be required:

Assignment  
Sublet  
Transfer by Executor  
Let of Whole croft

<b>ACTION:</b> David Balharry to arrange for the Mapping Policy Paper to be reviewed by Commissioners at the December 2010 Board Meeting
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## 2 ABSENTEE/OCCUPATION

2.1 Murdo MacLennan declared an interest in this Agenda item and left the meeting.

2.2 Hugh MacKintosh explained that, at present, only cases where the ROC shows a crofter to be absent for 10 years and more are being taken forward. However, there are situations where members of the local community are highlighting to the Commission that absentees, who may or may not have been absent for more than 10 years, are causing frustrations to crofting community development and there is demand for the tenancy. At this point the Commission would, subject to resource being available, contact the absentee for their plans to return. If the absentee markets the sale of their tenancy, the Commission can assume that this is them having no intention of returning.

2.2 Commissioners were asked to agree, in the circumstances above, that a period of 6 months is reasonable for the absentee to identify a new tenant themselves. If they fail to identify a new tenant in that period of time the Commission, subject to resources, would proceed with absentee action.

Commissioners **agreed** that 6 months was a reasonable period of time for an absentee, who has advertised their croft for sale, to identify a new tenant and if they failed to do so the Commission should proceed with absentee action, subject to resources being available.

2.3 Commissioners asked if Assessors had been sent a copy of the list of absentees who had either not responded or had refused to accept delivery to our absentee letter, as Assessors had indicated they may be able to assist with providing current addresses for absentees.

<b>ACTION:</b> David Balharry to check with Arthur MacDonald if Assessors have been sent a list of absentees.
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2.4 Commissioners also enquired about demand for crofts and if a list of interested parties was being maintained. David Balharry advised a review of the ROC was to be undertaken to make sure addresses were as current as possible. Hugh MacKintosh is preparing a Paper on Demand, which will be brought to the Policy meeting in June for Commissioners to consider.

<b>ACTION:</b> Hugh MacKintosh to prepare a Paper on Demand for Commissioners to consider at the Policy Meeting in June.
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**BOARD MEETING - 5 MAY 2010**

**PART 3 - MATTERS ARISING FROM PREVIOUS MEETING**

## **PART 4 - POLICY**

### **REPORT TO BOARD MEETING - 5 MAY 2010**

#### **CROFT OCCUPANCY INITIATIVE: COMMUNITY CONSULTATION**

**Report by: John Toal**

#### **1 PURPOSE**

To clarify, in the context of croft occupancy, the procedure that the Commission will use to determine that absentee action is in the interest of crofting communities. In doing so, consistency is maintained by adhering as much as possible to the process used in other regulatory functions.

#### **2 BACKGROUND**

In discharging its role as an independent regulator and impartial tribunal, the Commission no longer stimulates responses by fostering representation from crofting communities. This departure from a paternalistic approach also has implications for other elements of Commission procedure.

The Crofting Act obliges the Commission “to determine that it is in the general interest of the crofting community of the district in which a croft is situated that the tenancy should be terminated and let to some other person.” However, there is no guidance in the legislation as to how the Commission should gauge what is the interest of the crofting community.

#### **3 OPTIONS**

##### **3.1 Write to all crofters in the crofting community**

This approach will provide all of the crofting community with the opportunity to comment. However it will be resource intensive. Such a process will not necessarily provide any uniform view and could inevitably lead to follow-up work. The issue of whether absentees themselves should be consulted in such a process also arises.

##### **3.2 Publicise the proposal to terminate a tenancy and consider any representations**

The public notification of all proposals to terminate tenancies is not legally required and if the consistent approach is to adhere to what is required within the terms of the Act, a process for public notification of proposals to terminate a croft tenancy is not appropriate.

There is also an issue as to whether this is permissible within the Act. The Act only requires that the right to representation is afforded to the landlord and the absent crofter. Our legal advice is that if we were to adopt such an approach, we may need to desist if challenged by either the landlord or tenant party.

However this approach would provide the opportunity for representation to be made on each case. In addition, a more open and public approach to enabling representation at this stage has the advantage of transparency and allows for direct communication with crofting communities. It could also provide some indication of what interest there might be in obtaining the tenancy of a croft.

### **3.3 Decide that occupation of crofts is in the general interest of the crofting community**

The Commission could adopt, as a general principle, that it is in the interest of crofting communities that crofts are occupied. It would then be for the absentee to provide evidence that it would not be in the interest of that crofting community for the croft tenancy to be terminated.

Individual absentees could also provide testimonials or representations from the community to the Commission on their own behalf. The Commission would investigate these, as necessary and consult with Area Assessors in the process.

If uncertainty remains at this stage the Commission could, with the absentee's consent, publicly notify a crofting community and consider any representations made. The Commission could also consider directing a Hearing.

## **4 SUMMARY**

The logic for direct consultation with those forming or representing the crofting communities or allowing for representation from public notification is to determine whether pursuing a particular absentee case would be in the interest of that community. The first option, in particular, is resource intensive and may not, in itself, provide anything conclusive.

The second option has legal considerations, but could be employed, with consent from the absentee, at a later stage for a smaller number of cases. In addition, or as an alternative, the Commission could direct a Hearing.

The proposed process provides the opportunity for the absentee to state their value, despite their absentee status, to a community within the questionnaire they are asked to complete. The Commission will, if necessary, carry out further investigations. However, the onus will be on the individual absentee to specify any contribution being made to a particular community.

Procedurally it would appear that the Commission need not directly solicit representation from within the crofting community in determining that a croft tenancy should be terminated. An absentee crofter will be given the opportunity to provide evidence that termination is not in the interest of that community. It is for the Commission then to consider the merits of the evidence, using the various processes available to determine its position.

## **5 RECOMMENDATION**

In determining whether the possible termination of a tenancy is in the interests of a community, it is recommended that the Commission considers relevant information provided and carries out appropriate further investigations as required. Ultimately this may entail, with the absentee's consent, public notification of the Commission's proposal to terminate the tenancy. The Commission also has the option to direct a Hearing where there remains any uncertainty.

**REPORT TO BOARD MEETING – 5 MAY 2010**

**POLICY CONSULTATIONS**

**Report by: Nick Reiter**

**1 Purpose**

- 1.1 To seek the Board's agreement as to how the Commission will deal with policy consultations.

**2 Considerations**

- 2.1 An element of the Commission's statutory function is "*..... promoting the interests of crofters .... and of keeping under review matters relating to crofting*".
- 2.2 The Commission regularly receive consultation documents on a wide range of issues. Some of these consultations are directly related to crofting interests whilst others may have a tangential bearing. The Commission's resources are finite and allocations have to be made for all work contained in the Operational Plan; that work being directed in pursuit of the Commission's agreed aim with an appropriate prioritisation.

**3 Resource Implications**

- 3.1 During the course of the period 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2010, the Commission contributed to seven consultations. Six of these were CAP related and one electronic tagging.
- 3.2 The consultations come in to many points of the organisation. Some come to Commissioners, Chief Executive or named individuals who may be known to the consulting organisation from previous contacts or work.
- 3.3 Whilst the Commission may have an interest in a range of issues, it must prioritise where it focuses its resources and ensure that these are planned for and available in the context of the Operational Plan. There also needs to be a mechanism in place to ensure that the line advanced in any consultation response is aligned with the Commission's agreed strategic aim and policy direction.

**4 Communications Implications**

- 4.1 Nothing proactively. Commission responses to consultations will continue to be posted on the website.

**5 Decisions required**

- 5.1 Commissioners are asked to agree that any consultations received be forwarded to the Chief Executive, who will in turn refer them to the relevant member of the Management Team to consider if it is appropriate for the Commission to engage in the consultation process and that resources are available to carry out the work.

**6 Further Action**

- 6.1 A Guidance Note will be circulated to all staff advising of the Board decision on this matter.

**BOARD MEETING - 5 MAY 2010**

**PART 4 - POLICY**

**4.3 Appeals & Stated Cases**

*(Oral Report by Donald)*

**BOARD MEETING - 5 MAY 2010**

**PART 4 - POLICY**

**4.4 Stud Farm Development**

*(Oral Up-date by Nick)*

**BOARD MEETING - 5 MAY 2010**

**PART 5 - ANY OTHER BUSINESS**