

CROFTING COMMISSION

MINUTE OF THE OPEN SESSION OF THE CROFTING COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 8 MAY 2013

Present:	Susan Walker	(Convener)	
	Colin Kennedy	(Commissioner)	
	Donnie Ross	(Commissioner)	
	Arnie Pirie	(Commissioner)	
	IG Macdonald	(Commissioner)	
	Kathleen Sinclair	(Commissioner)	
	Murdo MacLennan	(Commissioner)	
	Sandy Cross	(Commissioner)	
	William Swann	(Commissioner)	
	David Balharry	(Acting Chief Executive)	
	Donna Smith	(Head of Information Systems)	
	John Toal	(Head of Policy & Duties)	
	Arthur Macdonald	(Duties Team manager)	
	Jane Thomas	(Minute Taker)	
	Gordon MacDonald	(Head of Finance) (Item 5)	
Catriona Maclean	(CEO from 10.5.13)		
Doneil MacLeod	(BBC)		

1 APOLOGIES AND WELCOME

There were no apologies and Susan Walker welcomed Doneil MacLeod to the Open Session, as a member of the press.

2 DECLARATION OF INTERESTS

Colin Kennedy advised the Board he would declare an interest as or when items arose.

3 APPROVAL OF DRAFT BOARD MINUTE OF 6 MARCH 2013

The Minute of the Board Meeting of 6 March 2013 was approved subject to the following amendment:

Page	Item	Paragraph	Amended/Additional text should read
3	5a	1	Under 'Scheme of Financial Delegation' add names, Murdo MacLennan, Colin Kennedy and Susan Walker to sentence beginning, "This should be replaced by the Convener and two Commissioners ..."

4 MATTERS ARISING FROM PREVIOUS MEETING

On Page 4, Kathleen Sinclair sought confirmation that the changes to the Plan listed under item 7 had been incorporated. This was confirmed by John Toal.

The Action Points from the previous meeting on 6 March 2013 were reviewed.

No/Date	Action	Responsibility	Complete/Update Date
01/06.02.13	Susan Walker written to Colin Kennedy as an applicant regarding his complaints.	Susan Walker	08.05.13 – Ongoing. Susan Walker provided a factual update, explaining that we have legal advice to the effect that this should not be dealt with while there is a case in court. David Balharry has forwarded Colin Kennedy's concerns to sponsor division. 06.03.13 – Susan advised that an e-mail is to be sent to Colin Kennedy.
02/06.02.13	It was agreed that a fuller discussion on Conflict of Interest should take place at a future Board Meeting.	David Balharry	08.05.15 – Discharged. On meeting agenda. 06.03.13 – The proposed training on Conflict of Interest was discussed. Richard Frew clarified that the Code of Conduct applies to both appointed and elected Commissioners and will apply to both whether they sign up to it or not. He advised that David Barnes would be writing to the Commission to clarify the situation for elected Commissioners. The issue of training was deferred to the next Board meeting to await receipt of the letter from SG clarifying the position.
03/06.02.13	Additional information to be included in the paper being prepared for the next Board Meeting.	Gordon MacDonald	08.05.13 – Unclear what this referred to. Susan Walker requested that action points be set out clearly so the action can be identified. 06.03.13 – Ongoing, additional information to be included at next meeting needs to be specific.
06/06.02.13	David Balharry and Joseph Kerr to advise potential Advocates that we may require their service.	David Balharry/ Joseph Kerr	08.05.13 – Ongoing. 06.03.13 – Ongoing. Additional Advocates being considered.
10/06.02.13	John Toal to carry out a full review and draft more detailed individual policies and procedural guidance.	John Toal	08.05.13 – Discharged. 06.03.13 – Ongoing. Paper for May meeting.
11/06.02.13	Legal opinion of whether apportionments should be processed under section 58(a) to be sought from Gail Jamieson at MacLeod & MacCallum, Solicitors.	Joseph Kerr	08.05.13 – Discharged. 06.03.13 – Ongoing. Legal opinion being sought.
12/06.02.13	Newsletter to be e-mailed to Assessors with a meeting to be arranged in each area in Spring.	Jane Thomas	08.05.13 – Discharged. 06.03.13 – Ongoing. Newsletter being prepared.
14/06.03.13	Current Financial Scheme of Delegation to be circulated to Commissioners	Gordon MacDonald	08.05.15 – Discharged.
15/06.03.13	Instrument of Delegation to be amended to take account of amendment to processing of duties cases.	Joseph Kerr	08.05.13 – Ongoing.
16/06.03.13	Casework meeting in April to trial video/teleconferencing.	Arthur Macdonald	08.05.13 – Discharged.
17/06.03.13	Paper on Definitions of Ordinarily Resident and Sustainable Development to be e-mailed to Commissioners for consideration.	John Toal	08.05.13 – Discharged.

5 GOVERNANCE

a GOVERNANCE DASHBOARD

1. Finance

Murdo MacLennan asked how much liability the Commission is carrying for legal work undertaken but not invoiced for at the year end. He was advised that this figure would come from Joseph Kerr.

Sandy Cross gave an update of points from the Audit Committee Meeting of 7 May 2013. Audit Scotland is likely to visit during the first week of June. Under the Terms of Reference for the Audit Committee, two out of three members must be elected. The Board agreed this condition could be deleted as it is not workable. The Annual Accounts will be presented to the Board for signing off this year. Jane Thomas confirmed the accounts requirements are part of the project planning for the production of the Annual Report.

2. Outstanding cases

Noted

3. Complaints

Noted

4. MSP Correspondence

Noted

5. Consultations/Invitations Received

Noted

6. Risk Register

Item IT Code of Conduct – probability risk reduced to 3.

Donna Smith advised to separate out staff from Commissioners within Item 5, on interests and reduce probability to 4.

Item 4 Code of Conduct – agreed this should be left at current level and reviewed at next meeting.

Item 6 Compliance – Colin Kennedy wished to discuss. It was agreed this topic would be discussed in Closed Session, at close of the Open Session business and the risk re-considered if necessary afterwards.

Sandy Cross noted the Audit Committee wished to see a reduction in the number of items on the Risk Register.

b. FINANCE 2013-14 BUDGET APPROVAL

Gordon MacDonald took Commissioners through the Paper on the budget. In answer to a question from Murdo MacLennan, he advised that Gaelic translation is included in the core costs of the organisation.

On approval of the detailed budget, the Board agreed this should be considered by the Audit & Finance Committee, followed by Board approval either by e-mail or at a Board Meeting, depending on the timing.

After a discussion on the options for funding the proposed Inward Investment Programme, it was agreed to proceed with Option 3, allowing Catriona Maclean time to consider the issue in detail, with regards to the possibility of drafting a robust business case to SG for further funds.

c. REVIEW OF DECISION-MAKING (FROM 6 MARCH 2013)

The Paper was noted. Commissioners accepted the problem was recognised and had an assurance that it would not be repeated.

6 ASSESSORS LOCAL CONFERENCES

a. Format and content of Conferences

Susan Walker thanked Kathleen Sinclair for pushing this issue forward. Jane Thomas took Commissioners through the tabled Paper. It was agreed that Lewis & Harris should be taken as one area, with Barra, North & South Uist forming another area. Once this is taken into account, the Board agreed the schedule for the local conferences outlined in the Paper.

It was agreed that if time allowed a presentation or discussion on SRDP/CCAGS, this should be dealt with by SGRPID staff. Jane Thomas confirmed that Registers of Scotland would be involved in at least the first two conferences, to deliver workshops on the Crofting Register. She was asked to ascertain how long Registers of Scotland required for the delivery of the workshops, to ensure there will be sufficient time to cover grazings issues. If not, a decision will have to be taken on which takes precedence at a particular meeting.

Donna Smith confirmed that RoS had set up a Stakeholders Forum, which had yet to meet but proposed summer road-shows, to include Agricultural Shows, were still planned.

It was agreed that we should request that RoS share the costs of the local conferences and that the workshop sessions should be opened up to community landlords, landowner groups and, if there was sufficient space, grazings committees.

7 POLICIES & PROCESSES

a. Role of Assessors in Regulatory Casework

Arthur Macdonald introduced the Paper. Commissioners recognised there are differing levels of interaction with Assessors and welcomed the aim of the Paper, which was to identify a standard means of involving Assessors in regulatory casework.

It was agreed that wherever possible, comments from Assessors should be made in writing and that subjective comments are not acceptable.

It was agreed that the new protocol as outlined in the Paper would be tried and staff would emphasise to RPID staff that Assessor comments should only be sought on specific questions. RPID staff should then read any comments received from Assessors, as part of the case reporting process, back to them over the telephone, for verification purposes.

b. Item 7b was taken in Closed Session.

8 POTENTIAL COMMISSION FUTURE ACTIVITY

i. Annual Review of Commission

Susan Walker suggested that the Commission spend a day looking at what has been achieved over the last year and what still has to be done; what the Board has done well and what has been particularly challenging.

It was agreed to use the scheduled meeting in June as a Review Day, and to take any urgent business only if absolutely necessary. It was agreed this day would include a self-assessment, which Catriona Maclean said she would be happy to provide some materials for.

ii. Promotion to Minister – Annual Meeting with Ministerial Teams

Members discussed this idea, which had come from Donnie Ross. William Swann explained that joint meetings with other Boards was already on the agenda for HIE. It was agreed that the Minister should be sounded out for an opinion on this idea.

iii. Evidence-based decision making and soumings

Donnie Ross explained the background to this. David Balharry handed out maps produced from SNH data, showing which common grazings they believed to be in poor environmental condition. He explained that where a grazing has an environmental designation, the Commission is obliged to consult SNH.

It was agreed to produce a Paper looking at who (i.e. which agency) is responsible for what on areas of common grazings, to show where the legal authority lies, looking at obligations under environmental designations as well as clarifying the Commission's role in adjusting soumings. In the meantime, work on the new grazings regulations would be put on hold.

iv. Placement of new staff outside Inverness

It was agreed that a Paper should be presented to the Board before the end of the year, considering the options for locating new staff in the Western Isles.

v. Creation of new crofts in Lochaber, Badenoch & Strathspey and Morayshire

Donnie Ross introduced this item, explaining that this was aimed at creating opportunities for young people. It was agreed that, while it is not easy for the Commission, as a regulator, to promote the creation of new crofts, we should provide clear guidance for groups such as the SCF to use. Guidance should therefore be produced, including legal guidance on the creation of new crofts.

9 DATE OF NEXT MEETING

The next meeting would be a Review Day, to be held on 12 June 2013.

10 AOB

IG Macdonald asked if the Board agreed that one of their meetings should be outside Inverness this year, as had happened last year. It was agreed that this should be arranged and the preferred location was Lochaber.

This concluded the Open Session.

CROFTING COMMISSION

MINUTE OF THE OPEN SESSION OF THE CROFTING COMMISSION MEETING HELD AT RAMADA ENCORE ON 12 JUNE 2013

Present:	Susan Walker	Convener
	Colin Kennedy	Commissioner
	Donnie Ross	Commissioner
	IG Macdonald	Commissioner
	Kathleen Sinclair	Commissioner
	Sandy Cross	Commissioner
	William Swann	Commissioner
	Catriona Maclean	Chief Executive
	Ian Bryce	Business Manager
	Jane Thomas	Minute-taker

1 APOLOGIES AND WELCOME

Apologies were received as follows:

Apologies were received from Murdo MacLennan. Arnie Pirie had indicated that he would arrive around 10am.

2 DECLARATION OF INTERESTS

In relation to Agenda Item 5, Murdo MacLennan had declared an interest in Item 5a and Colin Kennedy declared an interest in 5d.

3 APPROVAL OF DRAFT BOARD MINUTE OF 8 MAY 2013

The Minute of the Board Meeting of 8 May 2013 was approved with no amendments.

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the meeting on 6 March 2013 were reviewed:

01/06.02.13 – all Actions had been discharged.

As responsibility for further Action Points listed under 6 March 2013 lay with staff who were not present, it was left to the Chief Executive to progress any items still outstanding.

Review of Action Points from the meeting on 8 May 2013:

18/08.05.13 – Chief Executive updated Commission regarding the number of Appeals outstanding with the SLC (11) and the level of potential liability, explaining these are mainly legacy cases and discussion with Sponsor Division is ongoing.

21/08.05.13 – Convener had discussed the possibility of an annual meeting between the Commission and the Ministerial Team with Sponsor Division.

5 PAPERS FOR RATIFICATION

a. Consent to be absent – uninhabited islands

The Commission approved the recommendation in the Paper, with the proviso that consent would not be limited to a fixed period but would be subject to periodic review.

b. Part Tenanted crofts

The Commission agreed to defer a decision on this Paper, requesting a further Paper on this issue be brought to the August Board meeting.

c. Late Objection

The Commission declined to allow the late objection. Kathleen Sinclair abstained.

d. Amendment of Register of Crofts

The Commission agreed to allow the RoC to be updated, recognising the enlargement of the croft.

6 DATE OF NEXT MEETING

7 August 2013 – Great Glen House

7 AOB

i. Chief Executive referred to Schedule 1 Section 12(3) of the 2010 Act, which allows for the co-option of members to committees, who are not members of the Commission. The Commission agreed in principle to the Chief Executive utilising this provision of the Act.

ii. The Commission was concerned at the length of time being taken to conclude issues connected with the Hearing in North Ballachulish. It was agreed that a telephone conference should be set up for Monday 17 June with Murdo MacLennan, Colin Kennedy and IG Macdonald.

This concluded the business of the Open Session.

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 7 AUGUST 2013

Present:	Susan Walker	Convener
	Colin Kennedy	Vice Convener
	Donnie Ross	Commissioner
	IG Macdonald	Commissioner
	Kathleen Sinclair	Commissioner
	Murdo MacLennan	Commissioner
	Sandy Cross	Commissioner
	William Swann	Commissioner
	Catriona Maclean	Chief Executive
	Donna Smith	Head of I.S.
	Gordon Macdonald	Head of Finance
	John Toal	Head of Policy & Duties
	Joseph Kerr	Head of Regulation
	Jane Thomas	Head of Communications & Minute-Taker
	Asif Haseeb	Audit Scotland

1 APOLOGIES AND WELCOME

Apologies were received as follows:

Apologies were received from Arnie Pirie, Commissioner.

The Chief Executive confirmed the Senior Management Team were all present and would attend meetings to allow a full report back to the Commission staff on substantive items.

The Convener welcomed Asif Haseeb to the meeting, explaining his role as Auditor, in relation to Item 6 on the Agenda.

2 DECLARATION OF INTERESTS

No interests were declared. The Convener reminded Commissioners they could subsequently highlight an interest if this arose in discussions during the meeting.

APPROVAL OF DRAFT BOARD MINUTE OF 12 JUNE 2013

The Minute of the Meeting of 12 June 2013 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
6	4	1	Convener had sent response to Inkster's before meeting and had forwarded her reply to Commissioners. Sentence to be amended to reflect this.
6	3	3	Sentence to make clear that, until replaced, the current Rules of Procedure remain in place.

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meeting on 12 June 2013 were reviewed:

- 4 Matters Arising – William Swann updated the Commission regards proposed discussions on crofting issues with the Board of Highlands & Islands Enterprise, explaining that he would bring this up at their next meeting.
- 7i AOB The Chief Executive informed the Commission that, as a result of utilising the provision in the Act to co-opt members to committees which was approved on 12 June, Derek Flynn had joined the Short Term Working Group reviewing Policies and Procedures.

The Convener asked for the Minute to record that, following the Board meeting on 8 May 2013, IG Macdonald and William Swann had divided Commissioner Swann's casework area up, with IG Macdonald now covering six more parishes and that this arrangement was working well.

Decision	The Commission agreed that Derek Flynn should be invited to a future Board meeting in his capacity as a member of the Short Term Working Group reviewing Commission Policies & Procedures.
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5 PAPERS FOR RATIFICATION

a. Standing Orders

The Chief Executive explained the Paper, previously e-mailed for decision, had been agreed, with three amendments to be made, as follows:

Item 9.1 –The wording on 'Agenda Items' to be amended to note that late items can be brought up under AOB but that substantive items should be included in the main body of the Agenda.

Item 17.2 – Election of Vice Convener to be held at the second meeting of the Commission, rather than the first meeting.

Item 19.3 – The Chief Executive had discussed the practical implications of the item on 'Declaration of Interests' with Sponsor Division and, as a result, the wording of 19.3 would be changed to allow Commissioners who are crofters to take part in discussions on matters relating to crofting.

The Commission approved the amendments and the Convener thanked those who had worked to provide the Commission with an up to date and comprehensive set of Standing Orders, which would now govern the way meetings are conducted.

Decision	The Commission agreed the updated Standing Orders, with amendments to the wording to be made, as per this Minute, to items 9.1, 17.2 and 19.3.
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b. Role Description for Board Members, Convener, Vice Convener

The Chief Executive confirmed the descriptions used in the Paper, which had previously been e-mailed for decision and agreed, were based on those provided to Commissioners at the time of their appointment.

Commissioners discussed the role of Vice Convener, expressing support for an enhanced remuneration for this post. It was agreed that the current situation would be reviewed in 6-8 months and that the Chief Executive would bring a Paper to the Board on this issue within a year.

Decision	The Commission agreed the amended Role Description for Board members, Convener and Vice Convener and requested a review of the current position regarding remuneration for the Vice Convener in 6-8 months.
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c. Local Development Plan Consultations and Meetings

Head of Communications summarised the Paper, which had previously been e-mailed for decision and agreed. The Paper was approved without amendment.

Decision	The Commission agreed the proposed method of engagement with Planning Authorities on Local Development Plans.
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d. Late Objection

The Chief Executive clarified that consideration of the Paper, previously e-mailed for decision, was to focus on whether the Commission accepted the reasons for the late submissions, rather than considering the objections.

Decision	The Commission agreed to accept the reason for a late submission of an objection from Mr Cameron but refused to accept the additional objection.
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6. EXTERNAL AUDITOR'S REPORT AND APPROVAL OF ANNUAL ACCOUNTS

On behalf of the Audit & Finance committee, Sandy Cross reported on the outcome of the committee's meeting of 1 August 2013, which had been attended by Mr Haseeb and where the committee had considered the Auditor's report and Accounts. A copy of the report will be circulated to Commissioners.

Mr Haseeb addressed the Commission and reflected that the report represented a clean audit, that this was the first year such an audit had been carried out and this always highlighted issues to be resolved. One of these had been an overspend due to accumulated staff leave and flexi time carried over from one budgeting year to the next and costs associated with IT equipment. The Sponsor Division had been made aware of this and there was a clear timetable for next year, with suggestions for improvements in areas such as Risk Management, the Risk Register and Corporate Governance to come forward to the Senior Management Team. There is a need to link the Commission's Corporate Plan to the budget and for a formal Service Level Agreement with SNH to cover shared services. The Chief Executive confirmed this is being worked on.

Mr Haseeb was pleased that there had been good meetings with the relevant officers in the Commission and the Chief Executive thanked him for the collaborative approach adopted with staff. The Commission approved the Annual Accounts, which would now go to the Auditor General and the Convener added her thanks to that of the Chief Executive.

In relation to Corporate Governance, the Commission discussed the need for a new Corporate Plan, now that the Crofting Commission Plan had been approved by the Minister, with the Chief Executive confirming there was a Corporate Plan, approved by the previous Commission, in place until spring 2014. It was agreed that there should be a Planning Day for the Commission, to focus on a new Corporate Plan. This would allow the Commission to agree the priorities to be identified in the Corporate Plan, which would have to articulate the required outcomes for the Commission's work.

Mr Haseeb then left the meeting.

Decision	The Commission approved the Annual Accounts. The Chief Executive agreed to arrange a Planning Day to allow for the preparation of a new Corporate Plan.
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7. ANNUAL REPORT 2012-13

Sandy Cross confirmed that the Audit & Finance Committee had considered the Annual Report and are content with the financial element of the report, as per the previous item.

The Convener emphasised the need to begin collating information and collecting data for the next Annual Report as soon as possible. The Chief Executive explained the possible impact on timescales for the completion of the report, caused by it being amalgamated with the Accounts, as per Item 6. Head of Finance clarified that the Management Statement Financial Memorandum states the Annual Report and Accounts have to be one document but the Act does not stipulate this. It was agreed that this issue could be re-visited.

Decision	The Commission approved the Annual Report 2012-2013.
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8. SHORT TERM WORKING GROUPS

The Convener explained why the Short Term Working Groups had been set up and asked Commissioners who are involved in various groups to give an update on work completed.

Murdo MacLennan agreed to sit on the **Legal Advice** group.

IG Macdonald provided Commissioners with an update on the work completed by the group reviewing **Complaints Procedures**. Papers from the meeting and a Minute are available on the intranet and positive progress had been made.

It was agreed that Commissioners may wish to view the Notes taken at all the STWG meetings and staff would facilitate this and also consider improvements in the way information is stored, to enable easier access by Commissioners.

On hearing how HIE now use iPads for Board Members, which are used to access all Board related Papers, the Chief Executive confirmed this is being considered for the Commission.

Colin Kennedy provided Commissioners with an update on the work of the **Policies & Procedures** group. Commissioners discussed the major task being undertaken by this group, with the Convener explaining that an additional sub-group has been set up to look at application forms.

It was agreed that, once issues have reached a certain point, they would be brought back to the Board for consideration, with some issues for information and others for decision.

In response to a question on copies of the Rules of Procedure, which some Commissioners have in 'book' form, the Chief Executive agreed to consider how best to provide the Rules to Commissioners.

IG Macdonald gave an update on the work completed by the group preparing various forms and consultations, on the **Annual Notices, Duty to Report and new Grazings Regulations**, with the Convener confirming that as soon as the re-draft of the Annual Notice is ready, this will be brought to the Board.

In relation to the work of this group, Commissioners discussed changes to the wording which had been necessary in the new Grazings Regulations, regarding setting the souming for the grazing when it is on an area with an Environmental Designation. The Convener wished to thank Donnie Ross for highlighting this important issue.

The Chief Executive and officers gave an update on the work of some of the other working groups, which are not led by a Commissioner. Commissioners were pleased to note the work being undertaken on recruitment, reflecting that appointing and retaining good staff is key to the organisation being able to deliver against its Plan. Murdo MacLennan volunteered to join the Recruitment Working Group. There is a need to reinforce the connection between Commissioners and staff and the Chief Executive hoped the planned Learning Day on 2 October would be part of this. The Convener commented that the working groups, involving Commissioners and staff working together to improve the work of the Commission were a positive development and that there were still opportunities to volunteer for these groups.

9. PART CROFTS

Head of Policy & Duties presented the Paper, explaining that it followed on from a previous decision on whole crofts and that further legal advice had been sought on part crofts.

Commissioners discussed the on-going aspects connected to the letting of part crofts, with agreement that applications to decroft were less of an issue. It was agreed that, without a test case there is no definitive authority. The Chief Executive suggested that Commissioners could agree in principle to accept the recommendations in the Paper, until the issue on letting is crystallised. It was agreed that a further policy debate is required but that competent applications to decroft and let part crofts could be accepted by the Commission meantime.

Commissioners reflected that this was possibly one of a number of issues where a review of current legislation is required, with the Chief Executive explaining that the Commission has been asked to lead on such a review. The Convener felt this reflected positively on the Commission. Commissioners agreed that many of the issues where legislative reform could be required are being highlighted in the work of the STWG on Policy & Procedures.

It was agreed that the Head of Policy & Duties will bring forward a Paper for the September Board meeting, so that there can be a policy debate to allow Commissioners to come to a conclusion. The Paper should also address the need for consistency in decision-making and consider whether there is a need to change the scheme of delegation with regards to divisions as well as letting of part of a croft.

Decision	The Commission agreed to accept competent applications for consideration, to decroft and let part crofts, with a Paper to be prepared for 11 September on Letting Part Crofts, including vacant crofts.
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Following a refreshment break, before re-commencing discussion of Agenda Items, the Convener reminded staff and Commissioners of the need for decisions to be made which are consistent with the approved Plan. It should be emphasised to staff that the Interim Plan is no longer in place and that a system of checks needs to be developed to improve consistency of decision-making, in line with the Plan.

10. REVISED INSTRUMENT OF DELEGATION

Head of Regulation introduced the item, which recommended a revision to the Instrument of Delegation, to standardise the way applications are dealt with, where there is no specific guidance in the Act. Agreeing the recommendation would be an interim measure until the work of the Policy & Procedures Review Group has been completed.

Decision	The Commission agreed to revise the Instrument of Delegation to remove the distinction between different application types in relation to consideration of late objections.
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11. LEGAL UPDATES – HEARINGS

Head of Regulation explained that issues related to Hearings are being discussed as part of the work of the Policy & Procedures STWG and that the Paper was brought to the Commission to discuss legal advice received on who could give evidence at a Hearing.

Commissioners discussed the distinction between the ‘Right to be Heard’ and a Hearing, it being agreed that the former was a ‘natural’ right and the latter is a judicial process. It was agreed that the weight given to evidence at a Hearing was a crucial issue, which the Chair of the Hearing must make clear.

Commissioners agreed that, except in Decrofting cases, a Hearing was a discretionary function of the Commission and, as such, was a tool available to the Commission, as a regulatory body, to help it better carry out its functions. Hearings can be a valuable source of new evidence in complex cases.

It was agreed to accept the recommendation in the Paper, until the STWG on Policy & Procedures reports on Hearings and to remind Chairs to make it clear at a Hearing that although it will allow parties to speak, following a hearing, it will make a determination as to the weight that should be given to the evidence presented.

Commissioners then went on to discuss legal advice received and to question the status of the advice in relation to apportionments. As he had an Interest, Colin Kennedy left the room during this discussion.

The Convener was concerned that the advice received in relation to Hearings had included reference to apportionments, when the firm of solicitors who provided the advice is engaged in a contentious case at the Land Court. There was a concern that this could represent a conflict of interest. It was agreed that any firms used to provide legal advice to the Commission should be very careful to withdraw if there is a conflict of interest. It was agreed that the particular section of the solicitor's letter did not represent legal advice. It gave an opinion on the style adapted by the Commission in its Directions and Notices. This section should be removed, with a note explaining the reasons for its removal placed on file.

Colin Kennedy was then asked to return to the meeting.

Decision	The Commission agreed to retain the current policy on Hearings until the STWG on Policy & Procedure reports to the Board on this issue. It was further agreed that staff will remind legal firms of the need to ensure there are no Conflicts of Interest when dealing with cases.
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12. LETTER FROM RBS

Murdo MacLennan explained the background to this item. Commissioners are aware of the difficulties faced by some crofters (particularly young crofters) in securing mortgage funding. This is another issue where a legislative remedy covering securities is perhaps needed. The Convener reflected that this had been included in the draft Bill but had not made it into the 2010 Act, and that it would be possible to report to the Minister if there was a desire for this section to be reconsidered during any future work on crofting legislation.

Commissioners agreed that the best approach was to follow the model used in negotiations on the future SRDP, with partners collaborating in a multi-agency group, including SCF and NFUS.

Decision	The Commission agreed that Murdo MacLennan and Susan Walker should establish links with partner bodies to research the issue and report to Scottish Government on the Crofter Housing Grant. Murdo MacLennan to take the lead on this issue.
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13. DATE OF NEXT MEETING

The next meeting will take place in Great Glen House on 11 September 2013.

14 AOB

- i. The Convener provided Commissioners with an update on the situation regarding the owner-occupier crofters whose applications to decroft were held in abeyance, pending the passing of the Crofting Amendment Act 2013. She would be writing to the Minister with an update and was delighted that staff and Commissioners were processing these cases as a matter of urgency.

Commissioners agreed that a press release should be prepared, with a quote from Area Commissioners, to increase the relevance to local audiences.

- ii. Commissioners expressed concern about the registration process for the Crofting Register, emphasising the need for communication with Community Landlords. It was agreed through the Chair, that David Cameron's details should be passed on to Registers of Scotland, with a view to Community Land Scotland joining the RoS Stakeholder Forum. It was also confirmed that Head of IS would bring a Paper to the Board's next meeting on registration.
- iii. The Convener informed the Commission that, as indicated in a Special Meeting held on 6 August, Donnie Ross will stand down from the Commission after the local Assessor's meeting on 21 August 2013. This would therefore be Mr Ross's last Board meeting.

The Convener wished to record her thanks to Mr Ross, which was seconded by all Commissioners and the Chief Executive.

The business of the meeting was then concluded.

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 11 SEPTEMBER 2013

Present:	Susan Walker	Convener	
	Colin Kennedy	Vice Convener	
	Arnie Pirie	Commissioner	
	IG MacDonald	Commissioner	
	Kathleen Sinclair	Commissioner	
	Murdo MacLennan	Commissioner	
	Sandy Cross	Commissioner	
	William Swann	Commissioner	
	Catriona Maclean	Chief Executive	
	Ian Bryce	Business Manager	
	Joseph Kerr	Head of Regulation	
	John Toal	Head of Policy & Duties	
	Donna Smith	Head of IS	
Jane Thomas	Head of Communications & Minute-taker		
Morag Menzies	Shadow Minute-taker		

1 APOLOGIES AND WELCOME

Apologies were received as follows:

Apologies were received from Gordon MacDonald. Arnie Pirie arrived from his flight at 9:40am.

2 DECLARATION OF INTERESTS

No interests were declared. Colin Kennedy indicated that he would declare an interest if this became necessary during discussions on agenda items.

3 APPROVAL OF DRAFT BOARD MINUTE OF 7 AUGUST 2013

The Minute of the Meeting of 7 August 2013 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
2	4	3	Amend "five" parishes to six
4	7	2	Add Management Statement before "Financial Memorandum" and delete "Management Statement" before Accounts
7	14i	1	Replace "Chief Executive" with Convener

4 MATTERS ARISING FROM PREVIOUS MEETING

The Decisions from the previous meeting on 7 August 2013 were reviewed:

- William Swann confirmed he is involved in discussions with Head of Strengthening Communities in HIE regarding funded research into the contribution crofting makes.
- Chief Executive confirmed Derek Flyn has been invited to the Commission session reviewing the work of the STWGs on 1 October 2013.
- The Convener confirmed she had written to Argyll & Bute Council to highlight crofting considerations in relation to Planning Policy and the Chief Executive will be discussing this with Highland Council. It was agreed that meetings should be set up with the other Planning Authorities.
- Chief Executive explained that a workshop to consider priorities for the Corporate Plan would be arranged to coincide with the November Board meeting, with a view to a well-developed Plan coming forward to the December Board meeting.
- The Annual Report is on course to be presented to parliament in the last week of September.
- The Convener confirmed that the Annual Notices, Duty to Report consultation and new grazings regulations consultations are close to being ready for circulation to Commissioners.
- The Convener tabled a copy of a positive letter sent from the Minister, in response to a letter from the Convener to him, detailing action taken on cases following Royal Assent to the Crofting Reform (Amendment) Act 2013.
- The Convener and Murdo MacLennan will meet shortly to arrange the first meeting of the multi-agency group being set up to consider the question of crofter housing grants.
- David Cameron's details had been passed on and, as a result, the Convener hoped that Registers of Scotland would re-consider the location for meetings of their stakeholder forum, or make other arrangements to ensure the engagement of the community land sector.
- The Convener confirmed that Donnie Ross has formally resigned and two related press articles were tabled. Chief Executive explained that the Minister is to write to Mr Ross and that the Commission should not comment publically until after this has happened. Sponsor Division is looking at arrangements for a replacement and will try to complete arrangements as soon as possible. They are checking a legal issue with the Public Appointments office, who will have to approve the replacement.

Decision	The Commission to develop a programme to increase understanding of planning and crofting issues within Planning Authorities.
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5 PAPERS FOR RATIFICATION

The Convener explained that a decision on the e-mailed Paper forwarded to Commissioners with proposed dates for 2014 meetings would have to be deferred until November, as Cal Mac's Winter Timetable was not currently available.

6 VACANT CROFTS – INCLUDING POLICY ON LETTING PARTS OF CROFTS

Head of Policy & Duties provided background information on the issue summarised in the Paper, referring in particular to the assumption that the Commission would not wish to add complexities to situations requiring resolution and would wish to prevent fragmentation of crofts, in accord with the intentions of the 2010 Act.

The Convener wished to be clear that the Paper dealt with new situations and was not retrospective. In answer to queries regarding historic situations, where crofts are now technically vacant but have houses and gardens on them, some of which have not been decrofted, Head of Policy & Duties suggested that this is a big issue and one that the STWG reviewing Policy and Procedures should look at. This was agreed.

It was agreed that this is a very complex issue, particularly when multiple owners are involved and that staff must be alert to these cases and a system developed for dealing with them and that a further Board Paper is required.

The Commission agreed the Recommendations in the Paper but asked that the wording be rewritten, to ensure there is no ambiguity and that a section from the Policy Plan be inserted, so that it is clear that discretion can be used where a strong case is made to justify a holding of a size smaller than 1ha with a share in the common grazings or 3ha without a share.

Decision	<p>The Commission agreed the recommendations in the Paper, with the proviso that the wording, as a Policy Statement, is revised to exclude any ambiguity and a section inserted from the Policy Plan, covering the discretion of the Commission.</p> <p>It was agreed that the complex issue of historic situations which have now resulted in crofts being technically vacant will be referred to the STWG reviewing Policies and Procedures and subsequently, a Paper prepared for the Board.</p>
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7 LETTING CRITERIA –VACANT CROFTS

Head of Policy & Duties gave an overview of the current situation, explaining that the Paper set out a framework for selecting tenants, based on the principle that letting must be equitable and transparent. It was explained that though scoring sheets had been included as examples, the Commission may wish to more heavily weight some factors, such as new entrants to crofting. The process used would be subject to Freedom of Information requirements.

The Commission discussed various examples and considered how judgement would be needed when viewing applications, especially around issues such as qualifications versus experience, agreeing that, as a public body, an open process was required.

The Commission expressed reservations on the issue of scoring candidates and wished to see examples of procedures used by other bodies, such as NTS and the sift process used by Scottish Ministers. It was agreed that Essential and Desirable Criteria should be developed and, on a suggestion from the Chief Executive, it was agreed that a STWG be set up to consider this. It was agreed that this group should start from the Outcomes desired and work back from that point, developing Essential and Desirable Criteria and considering from that the question of weighting.

Sandy Cross, Susan Walker and Colin Kennedy agreed to sit on this group and conduct the work by e-mail. It was agreed that examples of procedures used by community landlords would be forwarded to them for consideration.

Decision	The Commission agreed to establish a new STWG to consider Essential and Desirable Criteria for selection of candidates to a tenancy and asked to see examples of procedures used by other bodies and the sift process used by Scottish Ministers.
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8 REGISTRATION OF CROFTS

Head of IS explained the context for the Paper and informed the Commission that Head of Regulation is leading a group looking at the implications for regulatory processes.

Concerns include disquiet over the cost of registration and advertising, which is not within the Commission's remit to amend, complexities caused by multiple owners, the lack of information some crofters have regarding their croft and the standard of maps being supplied.

Only nine successful registrations have been processed so far but we must plan on the basis of what happens after 30 November whenever a trigger point is reached. It was confirmed that at each trigger point, a fee is payable and while Registers of Scotland will receive the fee, the Commission role has to be completed with no additional resources.

It was confirmed that, in relation to advertising, the same rules apply as for regulatory cases, i.e. the advert must appear in a newspaper circulating in the local area. It was agreed that Commissioners will be sent a list of the approved newspapers.

Head of IS explained the type of map required and that this had been the biggest issue so far but would hopefully settle down. Chief Executive stressed that Ministers were clear in their decision that the Register should be kept by RoS and not the Commission.

Though it is not possible to know the impact on our regulatory work from 1 December, options have to be planned for. The Commission agreed the Recommendation in the Paper and requested the development of an options paper.

Decision	The Commission agreed that an options paper is developed considering the possible impact on resources as a result of compulsory registration.
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9 PROTOCOL FOR DEALING WITH REGULATORY APPLICATIONS BY STAFF OR COMMISSIONERS

Colin Kennedy declared an interest and left the room.

The Paper was introduced by Head of Regulation who explained the purpose was to agree a protocol for dealing with regulatory applications from Commissioners and staff. The Commission must be seen to be impartial and unbiased and the public perception must be that no privileged position has been used.

It was agreed that such applications should come to the full Board for a decision. It was further agreed that the decision should be made at a Board meeting, rather than by e-mail and that, when dealing with cases from Commissioners and members of the Senior Management Team, these should be public meetings but where any other staff are involved, the Board meeting could be Closed. The Chief Executive will discuss this with the unions and the wording of the Protocol refined subsequently.

Colin Kennedy re-joined the meeting.

Decision	The Commission agreed to the Recommendation in the Paper with the proviso that cases should not be decided by e-mail and that SMT/Commissioner cases will be at a public Board meeting and other staff cases could be decided at a Closed Session, subject to discussion with the unions.
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10 PUBLIC RECORDS ACT

Head of IS introduced the Paper, explaining that it is hoped we can sign off a Records Management Plan by March 2014, though as nothing like this exists at present, there are challenges.

Although a lot of the detail required is operational, it was hoped that a Commissioner would be involved to contribute. Murdo MacLennan volunteered, as he has been involved in a similar exercise recently.

It was agreed that Records Management should be added to the Risk Register, along with Data Protection.

On the question of resources, as the Chief Executive confirmed this work was another pull on staff resources, the Commission reflected that this is a recurring theme, with more and more issues requiring staff time to plan and implement measures being required externally, as well as those required by the Act. The Chief Executive confirmed she is well aware of this and has been discussing it with Sponsor Division. There were still a number of unknowns but she would continue to keep this dialogue open.

Decision	The Commission agreed to the Recommendation in the Paper, with Murdo MacLennan volunteering to join a project group to develop a Records Management Plan.
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11 SHORT TERM WORKING GROUPS

The Chief Executive gave an update on arrangements for presentations on the work of the STWGs, which is scheduled for 1 October 2013. The staff lead for each group will give a presentation to Commissioners, with recommendations which will be discussed on the day, with a view to them being ratified at the Board meeting in November.

Copies of papers and the presentations will be sent out so that any Commissioners who cannot make the workshop will see them. The Convener will Chair the event and the Chief Executive facilitate. The majority of staff have indicated they wish to attend.

As the work of the Policy and Procedures group includes so much, there was a discussion on how to circulate all of the associated papers. It was agreed that Commissioners should be given the option of having the full set of papers printed off and sent out or accessed by e-mail or via the intranet.

Chief Executive confirmed that the groups which have not started yet will commence their work once some of the other groups have been wound up.

Decision	The Commission agreed to decide whether to access papers from the Policy & Procedures STWG by e-mail, intranet or hard copy. NB – post meeting it was decided that it would be best if all Commissioners received a hard copy of the papers.
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12 DATE OF NEXT MEETING

The next meeting will take place on 6 November 2013 in Strontian.

13 AOB

i. Casework Meetings

It was agreed that improvements are needed in the planning and arrangements for Casework meetings and that the Chief Executive and Business Manager should develop a more efficient system, so that more advance planning is undertaken. This will assist staff and Commissioners. Various suggestions were mooted and it was agreed these would be considered and reported back.

Decision	The Commission agreed the Chief Executive and Business Manager will, in consultation with the Convener, develop new arrangements for Casework meetings and this new protocol will be introduced as soon as possible.
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ii. Interested Parties

This was considered at a STWG on 10 September and brought to the Commission for decision. There are 3 issues:

1. Section 58A cases where an objection is received from a shareholder in a general grazings (member of the crofting community) but who is not from the township associated with the application. It is proposed that this objection should be considered. This was agreed.
2. The Instrument of Delegation was re-worded in August to extend the provision to consider late objections to all application types, and not limited to those applications processed and determined under Section 58A. The further question arose as to whether the section of the Instrument of Delegation dealing with objections from parties not specifically listed as having an interest in the case should be extended to include non-Section 58A applications e.g. decrofting. However as the appeal provisions relating to decrofting are specific on who can appeal and does not make reference to anyone else who the Commission has an interest in the case, it was agreed that it would not be appropriate to amend the Instrument of Delegation to make reference to non-Section 58A cases.
3. Letters of Support – the Commission discussed the issue of whether or not letters of support should be accepted in cases, as well as objections from interested parties.

There was a wide ranging discussion, including what was in the Act, the situation at Hearings and that, under Section 58A 7 (c), (d), (e) the Commission must have regard to the interests of the crofting community in the locality of that land, the sustainable development of the crofting community and the wider public interest.

Chief Executive asked the Commission to consider whether letters of support could be accepted as a matter of principle and then decide what weight, if any, to give to the letters depending on their nature and relevance. It was accepted that this could result in an appeal to the Land Court; however, that refusal to accept letters of support could also lead to an appeal to the Land Court. The majority of Commissioners felt it could be shown that the Commission had a duty to and was acting in good faith in accepting the information, under Section 58A 7 (c), (d), (e).

It was agreed that legal advice was not required.

Colin Kennedy took another view but was willing to be bound by the decision reached by the Commission, which was to agree to accepting letters of support from members of the crofting community, as defined by the Act, where they contain relevant information pertaining to the case.

Decision	The Commission agreed to allow valid objections from shareholders in a grazings who are not necessarily from the township associated with the application. The Commission agreed to accept letters of support in cases where the information is relevant and the letter is from a member of the crofting community as this is defined by Section 58A 7 (c) (d) (e) of the Crofting Act 2010.
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iii. Machair LIFE+ Conference

The Convener provided an update on a conference she and other Commissioners had attended in the Western Isles, which was delivered by a partnership of CNES, RSPB and SNH, under the EU LIFE programme for biodiversity projects.

The business of the meeting was then concluded.

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT THE SUNART CENTRE, ARDNAMURCHAN HIGH SCHOOL, STRONTIAN ON 6 NOVEMBER 2013

Present:	Susan Walker	Convener
	Colin Kennedy	Vice Convener
	IG Macdonald	Commissioner
	Kathleen Sinclair	Commissioner
	Marina Dennis	Commissioner
	Murdo MacLennan	Commissioner
	Sandy Cross	Commissioner
	William Swann	Commissioner
	Catriona Maclean	Chief Executive
	Ian Bryce	Business Manager
	Donna Smith	Head of IS
	Gordon MacDonald	Head of Finance
	John Toal	Head of Policy & Duties
	Joseph Kerr	Head of Regulation
	Morag Menzies	PA to the Convener, Minute-taker
	John King	Registers of Scotland
	Joyce Wilkinson	Member of the public. Assessor for Arisaig area

1 APOLOGIES AND WELCOME

Apologies were received from Arnie Pirie, Jane Thomas and Arthur MacDonald.

The Convener opened the meeting by saying that it was good to be in Strontian and how useful the meeting with Assessors and Clerks had been the previous evening.

The Convener welcomed our new Commissioner Marina Dennis to her first Board Meeting and assured her that all the Commissioners were available to help her at any time.

2 DECLARATION OF INTERESTS

Murdo MacLennan declared an interest in agenda item 9 and Colin Kennedy declared an interest in agenda item 11.

3 APPROVAL OF DRAFT BOARD MINUTE OF 11 SEPTEMBER 2013

The Minute of the Meeting of 11 September 2013 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
2	4	Bullet point one	Instead of saying 'regarding budget support for crofting communities' it should read 'regarding funded research into the contribution crofting makes'.

Marina Dennis, Commissioner, referred to the question of crofter housing grants on page 2, item 4, bullet point 8. Murdo MacLennan advised that it concerned two aspects: government support for crofter housing being at a minimum level just now, and private sector funding from banks, which is non-existent at the moment. Mr MacLennan has been in touch with other agencies and will be discussing with the Chief Executive how to take this forward.

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meeting on 11 September 2013 were reviewed:

- The Convener gave an update regarding the third bullet point about planning issues. She had a useful meeting with a planning officer in Orkney recently who was very positive about ideas suggested to him e.g. creating new crofts as a solution to getting young people involved in land and houses. The Crofting Commission is a statutory consultee in the planning process and it is proposed to set up a Planning Summit, which would involve all the planners from the Highlands & Islands area, to allow us to bring any issues out into the open and discuss how we can deal with things in a better way.

A discussion took place regarding various issues with the current planning process.

- The Convener asked if we had any reports regarding the Annual Report being presented to Parliament. The Chief Executive confirmed that the Annual Report went forward but we have not heard anything so far.
- The Convener hoped the Commission will get a good response to the Duty to Report consultation and New Grazings Regulations consultation and the closing date for replies is 22 November 2013. She asked that if anyone has any contact with grazing committees, to encourage them to respond by the deadline date.
- The Convener, Chief Executive and Murdo MacLennan are having a meeting today to discuss taking forward the housing issue.
- The Convener, Colin Kennedy, Sandy Cross and Uilleam Smith have been working on the letting criteria and are almost at the point of going to the Commissioners for comment. The Convener is very happy with the progress made so far.
- The Convener advised that she is very happy that the protocol for dealing with regulatory applications by staff or Commissioners is now in place. The Commission take this issue very seriously and are taking a decision on two applications today.
- The Head of IS gave an update on the Public Records Act. She has recently met with all staff and is doing an information audit on responses. The Head of IS and Murdo MacLennan are going to a 'Register General and Keeper of the Records of Scotland' Conference in Glasgow on 3 December 2013 to discuss the Records Management Plan. They will have a scoping exercise and will give an update at the December Board meeting and then bring a Paper to the February Board meeting.
- The Convener advised that a meeting of the Scottish Land Court Appeals Group had not taken place yet as it had been difficult finding a date to suit everyone. The Convener asked if it would be possible to use the online tool 'doodle' to check everyone's availability. The Head of IS will look into this.
- The Geo-Pilot group is still to meet. The Convener suggested that this meeting should take place in Skye as it involves the Convener, IG Macdonald and William Swann. The Chief Executive may attend this meeting as well.

- A rota for Commissioners to attend Casework Review Meetings has started with the intention that all Commissioners will attend the same amount of Casework Meetings in the year. It will be managed so that there is a mixture of Commissioners at each meeting until such time as everyone has the same amount of experience.

5a BOARD MEETING DATES FOR 2014

The following dates were agreed for Board Meetings in 2014:

BOARD PAPERS TO BE POSTED BY (2014)	BOARD MEETING DATES 2014
Tues 4 February 2014	Wed 12 February 2014
Tues 18 March 2014	Wed 26 March 2014
Tues 6 May 2014	Wed 14 May 2014
Tues 17 June 2014	Wed 25 June 2014
Tues 29 July 2014	Wed 6 August 2014
Tues 9 September 2014	Wed 17 September 2014
Tues 28 October 2014	Wed 5 November 2014
Tues 2 December 2014	Wed 10 December 2014

William Swann, Commissioner, advised that he would not be able to attend the June 2014 meeting.

A discussion took place regarding where and when the Board would have a meeting outwith the office in 2014. It was agreed that the September 2014 meeting will take place in Shetland.

Decision	The dates for next year's Board Meetings were approved and it was agreed that the September 2014 meeting will take place in Shetland.
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5b REASON FOR LATE OBJECTION – 5B FERNIELEA

Decision	The reason for the late objection was rejected
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5c STWG PRESENTATIONS – Minutes from 1 October 2013 Meeting

The minutes were noted and approved. It was suggested that as this was such a useful meeting, it would be good to have another one in 6 months' time. This was agreed.

Decision	The minutes were noted and approved. It was suggested that as this was such a useful meeting, it would be good to have another one in 6 months' time. This was agreed.
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6 AUDIT REPORT

Sandy Cross, Commissioner, gave an update on the work of the Audit & Finance Committee which met on 5 November 2013. They covered various points from internal and external auditors which were adopted. They reviewed a number of standing documents in relation to governance and control including the scheme of financial delegation. They discussed committee terms of reference which are reviewed and updated, and they are going to recommend a marginal addition to the process of items being e-mailed around.

Guidance on standard anti-fraud and whistle blowing procedures recommended for adoption will be sent to the Commission. These papers will go out within 10 days with a set date for comments.

The provision of shared IT and payroll related financial management software was discussed. The Chief Executive and Head of Finance will discuss annual costs with SNH. This will provide the Commission with a clear idea of what they are paying each year. The Chief Executive is also going to discuss back-up and disaster recovery with SNH and recommend an interim risk management policy is adopted. The risk register requires a number of changes.

The Head of Finance gave an overview of the Management Accounts. The forecast is that the Commission is on budget. There has been a salaries underspend due to a number of permanent posts being unfilled. The cost of regulatory advertising is down and T&S spending is reduced. Legal costs represent an overspend. The Commission are proposing to purchase IT equipment and additional scanning equipment in the current financial year.

The Commission have had authorisation from Sponsor Division to offset our IT and legal overspend against our underspend with regards to salaries.

The Chief Executive reported that due to a change in personnel, there is now a member of staff who is able to develop most of our new IT system in house which will save us between £350,000 and £500,000 over 3 years. It is hoped that the first part of this work will be done by May 2014.

The Convener, Chief Executive, Murdo MacLennan and Joseph Kerr are on a committee to discuss the procurement of legal advice and to analyse what will give the Commission best value for money. A Paper will be brought to the February Board Meeting regarding this.

The Chief Executive and Head of Finance are working together on some basic modelling in terms of the budget.

The Convener advised that under the Chief Executive's delegated authority the Chief Executive attends a panel which deals with virement decisions, attended by the Convener, Colin Kennedy and Murdo MacLennan, Commissioners who are not part of the Audit & Finance Committee.

Sandy Cross reported that there has been a lack of transparency regarding the costs of occupancy of Great Glen House and the Commission has been trying to get a more definite figure so that it will know what it is going to be paying SNH from year to year. The Commission have been seeking guidance from the Scottish Government.

Murdo MacLennan advised that the previous Commission had no say in the move to Great Glen House. They were told by the Scottish Government that it was happening.

He also asked that the Scheme of Delegation be formally reported to the Board by way of a Paper and the Chief Executive agreed that this would be done.

A discussion took place regarding the importance of Finance reports being accurate and stating the exact reason for any underspends etc. This was duly noted.

The Convener thanked the Commissioner members of the Audit & Finance Committee for their work.

7 GRAZINGS MAPPING

The Convener welcomed John King from Registers of Scotland and advised that the Head of IS would present this Paper.

The Scottish Government agreed to fund £100,000 pa for 4 years from April 2012 for the first registration of common grazings. The Act stipulates that the Commission must consult with landlords and grazing committees where a committee exists, and where a committee does not exist the Commission must consult with shareholders and landlords. The Commission are currently targeting regulated grazings and so far have engaged with 168 common grazings. The Commission send out the prepared map and pack for verification and ask for it to be returned within 8 weeks. If there is no response, a reminder letter goes out advising that the Commission will allow another 3 weeks and if no reply is received the Commission will proceed and register the common grazings. To date this process has not been completed.

So far 31 common grazings have been registered and the majority of those are in Skye.

There are several reasons for the lack of progress:

- A lack of engagement by shareholders
- Repeated extension requests
- Maps back and fore from different parties
- Because of length of time, regulatory applications may have gone through which cause more changes.

The Minister would like to see more common grazings registered.

A discussion took place regarding the various options.

At 10.45am Murdo MacLennan left the room.

A lot of the delays lie with landlords. Sandy Cross will try to find out what the problems are and see if he can resolve the issues.

Marina Dennis suggested that the Commission speak to representatives of SRBPA and Sandy Cross agreed to do this.

The Commission is very keen to see progress with registering common grazings and have agreed the following:

- With existing applications where the Commission have had some response it will allow 8 weeks for a reply, then if there is no reply the Commission will send a reminder letter by recorded delivery advising that another 4 weeks will be allowed but only if a good reason is provided for the delay. If the Commission hear nothing after 4 weeks, the common grazings will be registered.

- With existing applications where there has been no response, the Commission will allow 8 weeks for a reply, then if there is no reply a reminder letter will be sent by recorded delivery advising that another 4 weeks will be allowed for a reply, highlighting the benefits of replying and the disadvantages of not replying, but only if a good reason is provided for the delay. If nothing is heard after that, the application will be withdrawn and go to the bottom of the pile.
- The Commission will write out to all regulated common grazings inviting them to be registered, highlighting the benefits of registering and engaging with their landlords at an early stage, and then deal with the ones willing to be registered on a first come first served basis.
- The Commission agreed to develop a media campaign to engage with grazings committees, crofting communities and landlords to ensure that they are aware of the change in procedure that will be undertaken, and the potential benefits.

Decision	<ul style="list-style-type: none"> • With existing applications where the Commission have had some response it will allow 8 weeks for a reply, then if there is no reply the Commission will send a reminder letter by recorded delivery advising that another 4 weeks will be allowed but only if a good reason is provided for the delay. If the Commission hear nothing after 4 weeks, the common grazings will be registered. • With existing applications where there has been no response, the Commission will allow 8 weeks for a reply, then if there is no reply a reminder letter will be sent by recorded delivery advising that another 4 weeks will be allowed for a reply, highlighting the benefits of replying and the disadvantages of not replying, but only if a good reason is provided for the delay. If nothing is heard after that, the application will be withdrawn and go to the bottom of the pile. • The Commission will write out to all regulated common grazings inviting them to be registered, highlighting the benefits of registering and engaging with their landlords at an early stage, and then deal with the ones willing to be registered on a first come first served basis. • The Commission agreed to develop a media campaign to engage with grazings committees, crofting communities and landlords to ensure that they are aware of the change in procedure that the Commission is going to undertake, and the potential benefits.
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8 CONSENT TO BE ABSENT APPLICATION

The Head of Policy & Duties presented this Paper which deals with an application for consent to be ordinarily resident other than on, or within 32 kilometres of, his croft at 13 Scarp by Commissioner Murdo MacLennan.

Mr MacLennan is the lead crofter on the island. The croft is worked for sheep management on a communal basis. He does not intend to return to live on the croft.

All the other crofts on the island are tenanted and no-one lives on the island.

After discussion, the Commission agreed to approve the application with no conditions, on the grounds that the application is in line with Crofting Commission policy on uninhabited islands, which allows for a periodic review, and in order to maintain sustainability of crofting on this particular island.

Decision	The Commission agreed to approve the application with no conditions, on the grounds that the application is in line with Crofting Commission policy on uninhabited islands, which allows for a periodic review, and in order to maintain sustainability of crofting on this particular island.
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9 APPRAISING THE PERFORMANCE OF THE COMMISSION BOARD

The Business Manager presented this Paper.

Since the current Board came into being there has not been a structured appraisal system in place to provide an annual overview of performance either individually or collectively. The appraisal system proposed will follow an annual cycle which fits into the Scottish Government and Civil Service framework.

It is proposed to start the appraisal process next year. There will be an interim assessment and an end of year assessment.

The policy proposes the adoption of a 360-degree review, which would enable the Commissioners to ask other staff and Commissioners for feedback on themselves. This information would be confidential.

The Convener queried whether elected Commissioners could become appointed Commissioners at the end of their period in office.

The Chief Executive said that after informal discussions with Sponsor Division, she was under the impression that appointed Commissioners could be re-appointed for a second term.

She agreed to find out if this would be possible providing performance was satisfactory and individuals want it, and also if elected members could apply to be appointed members after a period of election. She will also find out how long a second term would be for.

Decision	The Commission accepted the recommendations in the Paper.
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10 CHS & GG DECROFTING APPLICATION

Colin Kennedy, Commissioner, declared an interest and left the room.

The Head of Regulation presented this Paper, which is an existing croft house site and garden ground decrofting application for 0.122 ha, submitted by Commissioner Colin Kennedy for consideration by the full Commission.

There are no access concerns and if the application is approved it will need two Directions as the area that Mr Kennedy purchased is not the area that has been fenced and so the area to be decrofted is part owned and part tenanted. It is a competent application.

After discussion the Commission agreed to approve the application on the grounds that the application is made in respect of part of the croft which consists only of the site of the existing dwellinghouse and that the extent of the garden ground is appropriate for the reasonable enjoyment of the dwellinghouse.

It was agreed that it should be pointed out to the applicant that he is not 100% tenant of this croft due to the fact that there is an area that has been purchased but not decrofted, north of the croft house site and garden ground site.

Decision	The Commission agreed to approve the application on the grounds that the application is made in respect of part of the croft which consists only of the site of the existing dwellinghouse and that the extent of the garden ground is appropriate for the reasonable enjoyment of the dwellinghouse. It was agreed that it should be pointed out to the applicant that he is not 100% tenant of this croft due to the fact that there is an area that has been purchased but not decrofted, north of the croft house site and garden ground site.
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Colin Kennedy returned to the room at 11.45am.

11 REGISTRATION & ROS

John King from Registers of Scotland gave a presentation on the work of Registers of Scotland and that was followed by a presentation by Joseph Kerr, Head of Regulation, on the Crofting Reform (Scotland) Act 2010: Crofting Register: First Registration of Crofts.

Murdo MacLennan returned to the room at 12.15pm.

12 DATE OF NEXT MEETING

11 December 2013 – Great Glen House

13 ANY URGENT BUSINESS

- Arnie Pirie, Commissioner is taking a sabbatical for a year from January 2014. During that year he will spend time on training and getting up to speed with all of the skills that are required to be a Commissioner.
- IG Macdonald, Commissioner would like the Commission to consider a press release on how potential crofters can register an interest in obtaining a tenancy.
- Following on from that, the Convener asked that when the Commission terminate a tenancy that contact details for the landlord be made available to the public.
- Colin Kennedy, Commissioner asked if it would be possible for people to register their interest in a croft directly onto our website. The Convener asked that as this was a more complex issue, that it is taken to another Board Meeting.

- A discussion took place regarding planning and crofters' concerns on the role played in some SGRPID area offices. There were no concerns expressed in the Western Isles. The Convener asked if the Chief Executive could have a think about how best to take this forward.
- A discussion took place regarding Crown Immunity and whether the Commission were insured for any decisions taken. It was agreed that as long as the decisions are based on legislation and policy then the Commission is insured. The guidance will be circulated to Commissioners again for their information. The Chief Executive will bring a Paper to the Board regarding this.
- Marina Dennis, Commissioner brought up the fact that there is no right of appeal against CCAGS decisions. The Convener agreed to take this forward.
- The Convener asked if the SMT would look at the idea of changing the Instrument of Delegation on Division and consider if these cases should go to a Casework Review Meeting first. The reason for this is because single Commissioners seem to be struggling with making decisions and then applicants are not happy with decisions that are being made. Clearer policy is required. The Chief Executive agreed to bring a Paper to the Board.
- The Convener asked that when an absentee is being investigated and then a regulatory application is received, that case should go back to the Duties Casework Review Group before a decision is taken on the regulatory application, rather than the regulatory application being decided by a single Commissioner. The Chief Executive said she would discuss with the SMT and would e-mail the Commissioners with their decision.
- The Convener asked if we could think of different terminology to regulated or unregulated common grazings e.g. common grazings with a committee and common grazings without a committee. The reason for this is because people have raised recently that they think unregulated means that shareholders can do whatever they want with their common grazings, which is very worrying. The Chief Executive said we will try to do that.

The Convener thanked everyone who had attended the meeting and particularly those who had prepared the Papers.

SOME INFORMATION HAS BEEN REDACTED FROM THIS MINUTE. THIS HAS BEEN DONE TO COMPLY WITH THE DATA PROJECTION ACT AND WHERE ADVICE HAS BEEN PROVIDED, WHICH IS COVERED BY LEGAL PRIVILEGE

CROFTING COMMISSION

**MINUTE OF THE COMMISSION MEETING
HELD AT GREAT GLEN HOUSE ON 11 DECEMBER 2013**

Present:	Susan Walker	Convener
	Colin Kennedy	Vice Convener
	Arnie Pirie	Commissioner
	IG Macdonald	Commissioner
	Kathleen Sinclair	Commissioner
	Marina Dennis	Commissioner
	Murdo MacLennan	Commissioner
	Sandy Cross	Commissioner
	William Swann	Commissioner
	Catriona Maclean	Chief Executive
	Ian Bryce	Business Manager
	Arthur MacDonald	Head of Regulation (temporary)
	Donna Smith	Head of IS
	Gordon MacDonald	Head of Finance
	Jane Thomas	Head of Communication
	John Toal	Head of Policy & Duties
	Joseph Kerr	Head of Regulation & Legal Team
	Morag Menzies	PA to the Convener, Minute-taker
	Uilleam Smith	Member of staff
	Alan MacLeod	BBC Alba

1 APOLOGIES AND WELCOME

No apologies were received. The Convener thanked Commissioners and staff for their hard work this year.

2 DECLARATION OF INTERESTS

IG Macdonald declared an interest in agenda item 8.

3 APPROVAL OF DRAFT BOARD MINUTE OF 6 NOVEMBER 2013

The Minute of the Meeting of 6 November 2013 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
4	Audit Report	1	Amend to read 'Guidance on standard anti-fraud and whistle blowing procedures recommended for adoption will be sent to the Commission.'
4	Audit Report	2, line 5	Amend to read 'and recommend an interim risk management policy is adopted.'
4	Audit Report	4, line 1	Amend to read 'to offset our IT and legal overspend'
8	Audit Report	8, line 2	Amend to read 'Chief Executive attends a panel which deals with virement decisions'
5	Grazings Mapping	4, second bullet point	Amend to read 'Repeated extension requests'
9	AUB	5	Remove 'the Convener was at a meeting recently with SGRPID staff' and replace with 'The reason for this is because people have raised recently that they think unregulated means that shareholders can do whatever they want with their common grazings, which is very worrying.'
8	AUB	5	Replace 'played by SGRPID area offices' with 'played in some SGRPID area offices. No concerns have been expressed in the Western Isles.'

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meeting on 6 November 2013 were reviewed:

- The Chief Executive advised that there will be a feedback session from the STWG Policy & Procedure group on 11 February 2014, the day before the next Board Meeting.
- Sandy Cross advised that he has had discussions with Scottish Land and Estates regarding landlords who have not replied to the Commission in the registration of common grazings process. The Commission agreed that they do not want to name the landlords who have not replied but they want to send a clear message to them about the importance of replying. Sandy will feed this message back to landlords.
- A discussion took place regarding the replacement of the chairperson for the Audit & Finance Committee as Sandy Cross is resigning as a Commissioner from the end of January 2014 and will no longer be chairperson of the Audit & Finance Committee. William Swann agreed to chair the meetings on an interim basis and Murdo MacLennan agreed to be an additional Commissioner on the Committee on an interim basis until Sandy's replacement is appointed, and then the Commission can discuss who will become the chairperson permanently.
- The Convener and the Chief Executive are meeting Roy McLachlan of SGRPID next week to discuss crofters concerns regarding planning issues.
- The common grazings registration reminder letters have just been sent out with a reply date of 6 January 2014. Some grazing committees in Shetland have reported to Kathleen Sinclair that they are being asked for duplicate information.

Decision	Kathleen Sinclair and Head of IS to discuss requests for duplicate information from grazing committees.
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5 PAPERS FOR RATIFICATION

The Papers were approved subject to the following observations:

a) AFC Update

- a.1. The Chief Executive wanted to articulate that she had received permission from Sponsor Division for the Convener to give standing apologies to the Audit & Finance Committee Meetings and that the vice chairperson will chair the meetings.
- a.2. The Commission agreed that 'The Scheme of Financial Delegation' should say that the Audit & Finance Committee papers **will** go to the Board.
- a.3. The Commission agreed that there should be further clarification given regarding 'Acceptance of Tenders' in The Scheme of Delegation on page 16.
- a.4. The Commission would like a different name given instead of '3C', in table showing 'Level of Authority'.
- a.5. The Commission agreed that the words 'if required by the Commission' on page 19 under the heading 'Meetings' should be removed, as the Head of Internal Audit has a right to attend the Audit & Finance Committee Meetings.
- a.6. A discussion took place about the approved Audit & Finance Committee minutes being referred to the Board following the AFC meeting, and it was agreed that this should be amended with 'or following approval by e-mail circulation', as it could be 3 months before the minutes are referred to the Board.

b) Crown Immunity

- b.1. A discussion took place about concerns regarding Crown Immunity [REDACTED] and it was agreed that the Chief Executive will seek clarification from Sponsor Division of the wording 'those of persons they know' in the Sponsor Department response of 23 August 2012 on page 36, and the words 'in good faith'.
- b.2. The Commission agreed that a letter should be written to the Land Court to point out that any decisions made by individual Commissioners are on behalf of the Commission, and that the Commissioner involved should not be named as having made a decision. The Chief Executive will liaise with the Head of Regulation, the Convener and William Swann and construct a letter to the Land Court about this issue.
- b.3. The Commission agreed that they need to look at the Policy Plan again and add things that are missing from the plan. It is proposed that a Policy Plan Meeting will take place around the March 2014 Board Meeting and the Business Manager will plan this.

c) Formal Ratification of Virement - no comments made.

d) Instrument of Delegation

- d.1. A discussion took place about elected and appointed Commissioners and it was agreed to change the wording of the Instrument of Delegation to reflect what is written in the Act: The majority are to be elected unless such a majority cannot be maintained.

6 OBJECTION FROM SOMEONE WHO IS NOT A MEMBER OF THE CROFTING COMMUNITY

The Head of Regulation presented this Paper. Under the Instrument of Delegation, this objection must come to the whole Board for a decision.

The objector is not a member of the crofting community but they do have an interest in the croft. The Commission agreed that they needed to see the letter of objection or expression of interest, before they can make a decision. After discussion, the Commission agreed that the letter should go to the relevant Commissioner, who cannot consider it as a letter of objection as the objector is not a member of the crofting community, and that it will be treated as an expression of interest.

Decision	The Commission agreed that the letter should go to the relevant Commissioner, who will advise the objector that they cannot consider it as a letter of objection as the objector is not a member of the crofting community, and it will be treated as an expression of interest.
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7 ASSIGNATION APPLICATION

IG Macdonald declared an interest in this application and left the room at 10.50am.

Arthur MacDonald presented this Paper. The applicant wants to assign his croft to his daughter who is currently an absentee, but who has given an indication that she will be resident on the croft by June 2014. There have been no objections to the application. The application was approved.

Decision	The application was approved on the following grounds: Section 5AA of the Crofters (Scotland) Act 1993 (“The Act”) stipulates that a crofter must be ordinarily resident on, or within 32 kilometres of, that crofter’s croft. While the proposed tenant, ██████████ currently resides ██████████, the Commission is satisfied that ██████████ proposals for taking up residency on the croft in June 2014 are acceptable in terms of paragraph 66 of the Commission’s Policy Plan which states that “<i>the proposed assignee may live elsewhere pending the assignation, but the Commission will need to be satisfied that the assignee intends to fulfil the residency duty within a reasonable time</i>”. The Commission also approved ██████████ interim croft management arrangements, covering the period of ██████████ absence from the croft, as these plans will ensure that the croft continues to be well maintained. Section 5C of the Act states that a crofter has a duty to cultivate and maintain the croft. The Commission is satisfied that ██████████ has demonstrated an appropriate knowledge of crofting and has developed acceptable plans for actively working the croft. In reaching a decision on such applications, the Commission must have regard to the interests of the crofting community in the locality of that land in terms of subsection 58A(7)(c) of The Act. In considering this factor, the Commission took into account ██████████ family connections with the croft and crofting community and took the view that the introduction of a younger person with family into the township would be in the interests of the crofting community as it will enhance population retention.
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8 CRITERIA FOR LETTING CROFTS

Uilleam Smith presented this Paper. The purpose of this Paper is to invite the Board to consider a process which will guide the Commission on how to deal with applications to let crofts where the landlord has failed to do so within the required time limit, and in particular, deal with any of the 38 croft tenancies that the Commission has terminated since January 2012 which remain unlet.

This process will apply to landlords of vacant crofts and owner-occupier crofters, and is the process to find a new tenant. The Chief Executive and Convener are meeting Roy McLachlan of SGRPID next week to discuss the production of reports to evaluate the permanent improvements to the crofts for these cases.

This process is a follow on from the termination process and there will be no need to come back to the Board with each application. The Convener asked for the decision procedures to be recirculated to the Board.

The Commission agreed that a courtesy letter should be sent to each landlord, advising them that as no action has been taken by them to find a new tenant, the Commission are now taking action to fill the tenancy. SGRPID will be asked to recommend an annual rent for the crofts, based on the previous rent, and if the new tenant is not in agreement, they can request a review by the Land Court.

The Commission agreed that grazings committees should be consulted in this process.

A discussion took place regarding the use of this procedure and Commissioner Sinclair asked for confirmation that this procedure was just for tenants and not for owner occupier crofters. The Convener advised that currently it was only being used for tenants but, as confirmed by the Head of Policy & Duties, the same process would eventually apply to owner-occupier crofters. The Convener confirmed that the use of this procedure would be discussed at the Policy & Procedure Review Group.

It was agreed that the wording of question 9(b) of the application form should say 'If you have other croft land, how do you use it?', and that question 14(b) should say 'Please provide information on any crofting community activities that you already participate, or intend to take part in'. The process was agreed by the Board and Uilleam Smith was thanked for all his work preparing this Paper.

Decision	The process to assist the Commission's selection of tenants when letting crofts was approved.
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[Redacted content]

[Redacted content]

[Redacted content]

[Redacted content]	[Redacted content]
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10 RECORDS MANAGEMENT PLAN

Murdo MacLennan gave an update to the Board about the Records Management Conference that he attended on 3 December 2013 with the Head of IS.

Before any records are destroyed, the Commission must be aware that the Land Court may have a need for them at some point in the future and they need to consider whether some other organisation could look after some of our historical records for us e.g. the Archive Centre.

There is a reputational risk if the Commission do not manage their records correctly. The Commission need to have a good plan in place for this to work, and a cultural change is required.

Resources are required to deal with this plan and staff and Commissioners will need training on the new procedures. The Commission need to decide which documents they need to keep, which documents they do not need to keep, and what will happen to the documents that they do not need to keep.

The Head of IS advised that she had meetings with all the staff recently to establish all the Commission's records, and she is now classifying all the different documents into a business classification scheme. Donna Smith has been named as the person with senior management responsibility for the plan and Gerry McGarry has been named as the records manager for the plan.

A policy statement has been drafted and work on retention and destruction policies is due to start soon. The Head of IS will seek advice from the Scottish Council on Archives and an important issue to consider is what to do with the old croft files.

The Chief Executive advised that the Commission could request a voluntary audit be done on its Records Management processes by the Information Commissioners Office, and that is probably something it will consider in the future. Concerns were expressed about the destruction of paper files and an option could be that all the files are scanned and then archived.

The Convener suggested that the Information Commissioner is invited to meet with the Board to give advice and that nothing is destroyed in the meantime, and this was agreed.

Decision	The Information Commissioner is to be invited to meet with the Board to give advice about the Records Management processes and no records are to be destroyed in the meantime. A final Records Management Plan will be presented to the February Board meeting.
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11 CORPORATE PLAN

The Business Manager presented this Paper to the Board, following the Business Planning Meeting in Strontian. The Corporate Plan is still in progress but is now more compact. A narrative is being produced to accompany the Corporate Plan and it is hoped to bring the finalised Plan to the Board in February.

A discussion took place regarding the Audit & Finance Committee objectives and the expectation that the plan would be implemented by the end of the year. The Head of Finance advised that this would not be possible as resources details would be needed before a budget process could be finalised. The Commission agreed that it was important to advise the AFC of the reason for the delay and the Head of Finance will take this forward.

The Chief Executive advised that she has been in discussions with Sponsor Division regarding the provision of additional resources and has been asked to submit a plan which will be presented to Sponsor Division's Finance Team. In order to put the Corporate Plan in place, timescales need to be put in place on the assumption of how many extra staff we might be granted. The timescale for this is likely to be in the budget year 2014-2015.

The Commission wished to thank the Chief Executive for all her work on the bid for resources, and for her vision in taking the Commission forward.

Murdo MacLennan, Commissioner and Alan MacLeod, BBC Alba left the room at 11.55am.

**12 CLOSED SESSION - WHOLE CROFT DECROFTING APPLICATION –
(DISCUSSED IN PRIVATE)**

Arthur MacDonald presented this Paper. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] advice should be sought from the Scottish Crofting Federation, local council, local community council or local housing association.

Once the information is received, the application should go to the Regulatory Casework Review Group to make a decision.

The Convener stressed the need for Commissioners to go back to the Casework Officers if they feel there is not enough information to take a decision on an application.

13 RESOURCE IMPLICATIONS OF THE ANNUAL RETURNS

The Chief Executive covered this issue in agenda item 11.

14 DATE OF NEXT MEETING

11 February 2014 – at Great Glen House for feedback from the Policy & Procedure STWG, and Legal Training. Evening meeting in Lochardil House Hotel at 7.30pm.

12 February 2014 – Board Meeting at Great Glen House.

15 ANY URGENT BUSINESS

- The Convener advised that solicitors Keith Graham and Derek Flynn have been attending the Policy & Procedure STWG and giving advice on the sump. They are also working on the sump for the Crofting Law Group. The Convener would like to propose that the Crofting Law Group be asked if they would work together with the Policy & Procedure STWG on the sump. This was agreed by the Commission.

Decision	The Commission agreed that the Crofting Law Group will be asked if they will work together with the Policy & Procedure STWG on the sump.
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- The Convener advised that the Scottish Crofting Federation have printed an unfavourable press release about the Duty to Report form. [REDACTED]
[REDACTED] It was noted that 32 grazings committees who were asked to comment on the Duty to Report forms, have actually filled the forms in instead.
- William Swann wanted to clarify the issue with the Land Court using body corporate and named individual Commissioners in decisions. He said that if the Land Court refer to individuals, the individual is entitled to legal representation, and he would like this clarified.
- Sandy Cross asked what the status was with the SNH Service Level Agreement and the MOTU. The Chief Executive and Head of Finance advised that they were almost ready for signing and it is hoped that this will be completed before the Christmas break.
- Kathleen Sinclair asked if Assessors could claim expenses to attend a local meeting that she would arrange herself. The Commission agreed that they could.
- Kathleen Sinclair asked Arthur MacDonald to explain the following: An Assessor made contact with Animal Health in order to try to get access to records to find out who owned livestock that were straying onto his land. Animal Health told the Assessor that they could not give him the information unless he had some status within government, but they would allow the Crofting Commission access to the information. It was agreed that the Commission would not get involved as this is a civil issue, not a Commission issue.

[REDACTED]

- The Convener advised that it was Sandy Cross's last Board Meeting and she thanked him for his exceptional work, especially with the Audit & Finance Committee.
- The Convener advised that Arnie Pirie was taking a sabbatical for a year, and she wished him well and asked him to keep in touch.

The Convener thanked everyone for attending the meeting.

SOME INFORMATION HAS BEEN REDACTED FROM THIS MINUTE. THIS HAS BEEN DONE TO COMPLY WITH THE DATA PROTECTION ACT AND WHERE ADVICE HAS BEEN PROVIDED, WHICH IS COVERED BY LEGAL PRIVILEGE

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 12 FEBRUARY 2014

Present:	Susan Walker	Convener
	Colin Kennedy	Vice Convener
	IG Macdonald	Commissioner
	Kathleen Sinclair	Commissioner
	Marina Dennis	Commissioner
	Murdo MacLennan	Commissioner
	Catriona Maclean	Chief Executive
	Ian Bryce	Business Manager
	Donna Smith	Head of IS
	Gordon MacDonald	Head of Finance
	John Toal	Head of Policy & Duties
	Joseph Kerr	Head of Regulation & Legal Team
	Mary Ross	Member of staff
	Morag Menzies	PA to the Convener, Minute-taker
	Anne Williamson	Member of staff (from 11:15 hrs)
	Calum MacLean	BBC Alba
	Uilleam Smith	Member of the public

1 APOLOGIES AND WELCOME

Apologies were received from William Swann and Jane Thomas.

The Convener welcomed everyone to the meeting, especially Mary Ross, the new Regulatory Manager.

2 DECLARATION OF INTERESTS

Colin Kennedy, Murdo MacLennan and the Head of Regulation & Legal Team declared an interest in agenda item 10b.

3 APPROVAL OF DRAFT BOARD MINUTE OF 11 DECEMBER 2013.

The Minute of the Meeting of 11 December 2013 was approved.

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meeting on 11 December 2013 were reviewed:

- The Convener and the Chief Executive met Roy McLachlan of SGRPID in December to discuss crofters concerns regarding planning issues. There are points that need to be followed up and this issue will be brought to a future Board Meeting.
- There is to be a meeting on 13 February 2014 between IS staff and the Convener and IG Macdonald to discuss problems relating to registering crofts and common grazings.
- The Chief Executive advised that she had sought clarification from Sponsor Division regarding Crown Immunity and in particular the wording 'those of persons they know' and 'in good faith'. She has not had a response from Sponsor Division yet but hopes to have this before the next Board Meeting.
- The Business Manager advised that following on from the STWG Policy & Procedure Feedback Meeting yesterday, 11 February 2014, it was clear that the Policy Plan needed to be looked at again so it is planned to have a meeting to discuss both the Policy Plan and the Corporate Plan on 7 March 2014 and a Paper will be brought to the March Board Meeting. This meeting will possibly be combined with the next meeting of the Policy & Procedure STWG. If any changes are made to the Policy Plan, they will have to go out for consultation before being approved by the Minister.
- The Head of Policy & Duties gave an update on progress regarding the Commission letting vacant crofts. Reports from SGRPID have been requested for six crofts and the process will continue once these reports have been received.
- The Head of IS gave an update on the Records Management Plan. The Information Commissioner has been invited to visit the Commission but no response has been received so far. The Commission have now had a formal request to submit their Records Management Plan by 31 May 2014. A draft plan should be in place by the end of February 2014, followed by an Improvement Plan.
- The Head of Regulation & Legal Team advised that David Findlay, Solicitor had been very helpful in drafting a letter to the Land Court regarding the Land Court referring to individual Commissioners in decisions. The Commission is awaiting a response from the Land Court.
- The Head of Regulation & Legal Team advised that legal advice has been sought from one of the Commission's panel of solicitors regarding the issue of the relationship between division and grazing shares. Once that advice is received it will be circulated to the Commission and staff.

5 PAPERS FOR HOMOLOGATION

- (a) Amending the protocol for dealing with Commissioner Applications

Decision	The Paper to amend the protocol for dealing with Commissioner Applications which recommends that all regulatory applications submitted by Commissioners are heard under the heading 'Exclusion of Press and Public' and once a decision has been made by the Commission, the press and public (and the relevant Commissioner) will be allowed to be present to hear the outcome of the decision and the reasons for the decision was approved.
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6 UPDATE FROM FINANCE AND AUDIT

The Convener advised that following Sandy Cross's resignation from the Commission, William Swann was the Vice Chairperson of the Audit & Finance Committee Meetings and Murdo MacLennan has joined the Committee temporarily, pending the appointment of the new Commissioner.

Murdo MacLennan reported that at their recent meeting on 10 February 2014 there were a number of matters outstanding. Papers were not available to committee members and it was agreed that these matters should not be delayed until the next financial year. It is proposed to have another meeting of the Audit & Finance Committee before the end of March. There is potentially an underspend which has only just appeared in the last month, but it is hoped that this money can be used before the end of the financial year. Mechanisms are in place to prevent this happening again.

The Chief Executive advised that appeals and the award of expenses is always an unknown quantity. It is hoped that the MOTU and the Service Level Agreement with SNH will be finalised by the end of the financial year.

The Convener asked the Commissioners to think if any of them might be interested in becoming a member of the Audit & Finance Committee.

7 ANY ACTIONS OR HOMOLOGATION FROM STWG

The following procedures were discussed at the STWG Policy & Procedure Feedback Meeting in Great Glen House on 11 February 2014 and come to the Commission for homologation:

1. Section 3A New Crofts

Decision	Homologated
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2. Section 4 Enlargement of Crofts

Decision	Homologated
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3. Section 4A Exchange of Crofts or Parts of Crofts

Decision	Homologated
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4. Sections 5AA & 26 Tenant Crofter: Residency Duty

Decision	Homologated
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5. Sections 5C & 26 Tenant Crofter: Duty to Cultivate & Maintain

Decision	Homologated
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6. Section 8 Assignment

Decision	Homologated
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7. Section 9 Division of Tenanted Croft

Decision	Homologated
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8. Sections 9 & 10(4A) Division of Croft by Executor of Deceased Crofter

Decision	Homologated
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9. Section 10 Bequest of Croft Tenancy

Decision	Homologated
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10. Section 11 Intestacy

Decision	Homologated
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11. Section 11(4) – 11(8) Intestacy (Termination by Commission where croft has not been transferred by Executor within statutory time period)

Decision	Homologated
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12. Section 21B Consent to be Absent from Croft

Decision	Homologated
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13. Section 23 Letting of a Vacant Croft

Decision	Homologated
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14. Section 23 Commission Letting of a Croft

Decision	Homologated
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15. Sections 24 & 25 Decrofting Whole or Part of a Croft

Decision	Homologated
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16. Sections 24 & 25 Decrofting of House Site & Garden Ground

Decision	Homologated
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17. Sections 24 & 25 Decrofting of Feus

Decision	Homologated
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18. Section 24(2) Decrofting of Vacant Croft - following notice from landlord after Commission termination of tenancy under sub-section 26H(1)

Decision	Homologated
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19. Section 27 Subletting of Croft

Withdrawn

20. Section 29A Letting of an Owner-Occupied Croft

Decision	The Commission agreed that a full discussion was required to look at whether it is appropriate to include the words 'non-croft land' in application forms and have consistency across all application forms. A Paper is required to look at the implications of including these words and legal clarification should be sought.
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21. Section 29A Letting of an Owner-Occupied Croft – 'Short Lease'

Withdrawn

The Convener advised that the Policy & Procedure STWG was reviewing all the main regulatory application functions carried out by the Commission. There is still a lot of work to be done on the less commonly used functions. The reason for the review is to provide clarity to decision makers, applicants, agents and staff of our policies and processes.

8 UPDATE ON APPOINTMENT OF NEW COMMISSIONER

The Convener advised that the new Commissioner was required to have landlord's interest.

The Chief Executive advised that the job description was being prepared and the public appointments process would be followed. The Convener will be on the interview panel along with a member of the Scottish Government and an independent member. It is hoped that a new Commissioner will be appointed as soon as is reasonably possible and that they will have financial skills.

9 BUSINESS PLAN PAPER

The Chief Executive introduced this Paper.

The Commission must decide on its priorities for the next 3 years.

Decision	The Commission agreed that the key priority is ensuring that all crofters and owner-occupiers are complying with their duties. To do this the priority for this year is to: <u>Develop and initiate the Annual Notice programme.</u> The other essential priorities this year are: <ul style="list-style-type: none">• Obligations under the Records Act• Supporting the registration process• Streamlining and processing regulatory applications• Grazings registration and linked to this, the review of regulations A key to success is legislative reform and the Commission will continue to work with partners to deliver this.
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	<p>Year 2 will continue to be legislative reform:</p> <ul style="list-style-type: none"> • Process regulatory applications • Duty to report • Geo pilots <p>Year 3 will involve further development of the above, more collaborative working and increased action in new crofting areas.</p> <p>A final Business Plan with initial Key Performance Indicators and linked budgets will be brought to the March Board Meeting.</p>
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In reaching this decision, the Commission asked the Chief Executive to alert the Scottish Government to the need for sufficient resources to carry out its functions and for the Policy Plan to be amended.

10a

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

	[Redacted]
	[Redacted]
	[Redacted]

10b

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

11 DATE OF NEXT MEETING

26 March 2014 at Great Glen House

12 ANY URGENT BUSINESS

- Kathleen Sinclair asked if there was going to be an Assessors Conference this year and the Chief Executive advised that this would be discussed at the next Board Meeting.
- Murdo MacLennan requested a review of Land Court cases for the last year to be available for the March Board Meeting. The Chief Executive will speak with the Head of Regulation & Legal Team to arrange for David Findlay, Solicitor to do some interpretation of Land Court decisions along with an intensive publicity campaign. The Head of Regulation & Legal Team has compiled a list of Land Court decisions for the last year which he will circulate to Commissioners by e-mail.
- The Convener asked if there could be a follow up to the Legal Training that the Commissioners received on 11 February 2014, with a critical review of actual decisions already made. The Chief Executive advised that the Legal Training would be ongoing.
- Colin Kennedy asked what was happening with the Fearnamore and North Erradale cases. The Head of Regulation & Legal Team gave an update.

Fearnamore: the case paper has been served, comments have been received and this case will be going to the next casework review group for a decision.

North Erradale: the Commission is still in discussion with the Land Court as the Commission decided to challenge the aspect of the decision relating to the unofficial use of the land and the fact that the Commission had to take European Convention on Human Rights considerations into account. The Land Court has asked for a formal report to be sent to the court.

Decision	The Commission agreed that David Findlay should be asked for legal advice on the North Erradale case.
	The Commission agreed that any decision that is returned to the Commission for consideration on appeal from the Scottish Land Court should be decided by the full Board.

The meeting concluded at 13:30 hrs.

SOME INFORMATION HAS BEEN REDACTED FROM THIS MINUTE. THIS HAS BEEN DONE TO COMPLY WITH THE DATA PROTECTION ACT AND WHERE ADVICE HAS BEEN PROVIDED, WHICH IS COVERED BY LEGAL PRIVILEGE

CROFTING COMMISSION

**MINUTE OF THE COMMISSION SPECIAL MEETING
HELD AT GREAT GLEN HOUSE ON 13 FEBRUARY 2013 AT 1200HRS**

Present:	Susan Walker	Convener, Chair
	IG MacDonald	Commissioner
	Kathleen Sinclair	Commissioner (T/C)
	Marina Dennis	Commissioner (T/C)
	William Swann	Commissioner (T/C)
	Catriona Maclean	CEO
	Heather Donnachie	PA to CEO, Minute-taker

1 WELCOME

The Convener opened the meeting, and thanked the Commission for attending at such short notice.

2 PROCESS FOR THIS SPECIAL MEETING OF THE BOARD

The Chief Executive confirmed that the Board Meeting held on 12 February 2014 was quorate until Commissioners Kennedy and MacLennan declared an interest in the last item, leaving only four Commissioners. This being the case, the discussions on the Arinagour Apportionment applications were just that – discussions, and not a decision.

As per the Commission’s Standing Orders at point 12.4 “No item of business will be transacted at a meeting of the Commission if, in consequence of the provisions of (disability of Members from voting on account of an interest in contracts etc, less than a quorum of the Commission is entitled to vote on that item.”

Relying on Section 7.3 of the Commission’s Standing Orders the Convener asked the Chief Executive to call a Special Meeting of the Board.

“In the case of a Special Meeting called at the request of the Convener of the Commission, where it appears to the Convener that the item of business demands special urgency, the Chief Executive may call the meeting without giving the seven days noticed specified in 7.1 above, provided every effort is made to contact Members to give them as much notice as possible before the meeting.”

3 APOLOGIES

Mr Kennedy was called on his home telephone and a message was left on his mobile number, satisfying condition 7.3 of the Standing Orders in that *“every effort be made to contact Members to give them as much notice as possible before the meeting”*.

The Board agreed that according to the conditions of the Standing Orders, today’s meeting was quorate.

4 DECLARATION OF INTEREST

During the discussions on the Arinagour Apportionment applications on 12 February 2014, both Commissioners Kennedy and MacLennan had declared an interest and absented themselves, and there were no material differences today.

There were no other declarations of interest.

5 CASE FOR CONSIDERATION

Wide ranging discussions were held on the two applications for apportionment for Commissioner Kennedy, based around the facts presented in the Paper and the provisional decision to approve both was unanimous, on the following grounds.

Decision
<i>In relation to Application 1</i>
At their meeting on 13 February 2014, the Commission made a provisional decision to approve the application by Mr Kennedy, who is an active crofter, for an apportionment of the Arinagour Common Grazings, extending to 8.07 ha for the purpose of croft diversification.
In reaching this decision the Commission, as directed by the SLC, excluded the areas coloured purple on the attached map for Mull View Cottage, Seaview and Bayview and extending to 0.054 ha, 0.044 ha and 0.092 ha respectively.
The Commission further decided that no fencing condition be included in this approval.
As this application was submitted prior to the amendment in 2007 to the Crofting (Scotland) Act 1993 (as amended), this apportionment will be permanent.
A condition of this approval is that any existing public or private access, on any adopted or unadopted road or access to any services be preserved.
<i>In relation to Application 2</i>
The Commission had first to consider the competence of the application.

Normally the apportionment application would be signed by the landlord, however in this particular case the applicant could not persuade the landlord to engage in this process. In line with procedure the Commission served the application on the landlord who made no comment. In order not to disadvantage the applicant in such circumstances, the Commission were asked to consider the evidence the applicant supplied that he held this share.

The decision of the Commission was that it was persuaded by the evidence. That evidence being the documentation regarding the sale of the property, the letter from [REDACTED] dated 15 May 1992 and the letter from [REDACTED] dated 1 January 2008 both stating that the applicant had such a share.

They also took account that the SLC had determined that the applicant has one crofting share but did not find a concluded position on the remaining shares. Further, that the application had been served on the landlord and advertised in the public domain in the locality of the grazings and no comments, representations, submission, nor objections from the landlord were received.

There is no grazing committee or grazing constable in place and no other shareholders.

As the Commission considered the application competent, they considered it on its merits and proposed to approve the application for a 15-year period for stock management purposes. With regards to the other developments proposed by the applicant, the Commission noted that these are at an early stage. The evidence normally expected to accompany such proposals and detailed in our guidance note at 7 and 8 on the application form as being required to be submitted with any application, was not currently available.

However the Commission decided that, should the applicant gain the necessary consents for his proposals, he may then apply to the Commission for a review of the term granted, requesting either that it be extended or made permanent. Any application for a review of the term of the apportionment or parts of the apportionment will be considered on its merits and in line with current Commission policy.

The proposed decision to approve also includes a condition that the outer boundary to the south and west be fenced.

A further condition of this proposed decision is that any existing public or private access, on any adopted or unadopted road or access to any services be preserved.

The applicant's total souming will be reduced from 35 sheep to 22 sheep.

At 1245 hrs, the Convener closed the meeting.

SOME INFORMATION HAS BEEN REDACTED FROM THIS MINUTE. THIS HAS BEEN DONE TO COMPLY WITH THE DATA PROJECTION ACT AND WHERE ADVICE HAS BEEN PROVIDED, WHICH IS COVERED BY LEGAL PRIVILEGE

CROFTING COMMISSION

**MINUTE OF THE COMMISSION MEETING
HELD AT GREAT GLEN HOUSE ON 26 MARCH 2014**

Present:	Susan Walker	Convener
	Colin Kennedy	Vice Convener
	IG Macdonald	Commissioner
	Murdo MacLennan	Commissioner
	William Swann	Commissioner
	Marina Dennis	Commissioner
	Kathleen Sinclair	Commissioner arrived at 09:35 hrs
	Catriona Maclean	Chief Executive
	Ian Bryce	Business Manager
	Jane Thomas	Head of Communications
	John Toal	Head of Policy & Duties
	Joseph Kerr	Head of Regulation & Legal Team
	Gordon MacDonald	Head of Finance
	Donna Smith	Head of IS
	Morag Menzies	PA to the Convener, Minute-taker

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting. No apologies were received.

2 DECLARATION OF INTERESTS

Commissioners Colin Kennedy and Murdo MacLennan declared an interest in the Arinagour Paper which was discussed on 12 and 13 February 2014.

The Head of Regulation & Legal Team declared an interest in Paper 5b.

3 APPROVAL OF DRAFT BOARD MINUTE OF 11 FEBRUARY 2014

The Minute of the Meeting of 11 February 2014 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
1	3	2	Amend text from 'by Commission officers at' to 'by Commission officers under delegated authority at'

APPROVAL OF DRAFT BOARD MINUTE OF 12 FEBRUARY 2014

The Minute of the Meeting of 12 February 2014 was approved.

APPROVAL OF DRAFT BOARD MINUTE OF 13 FEBRUARY 2014

The Minute of the Meeting of 13 February 2014 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
13	3	2	Amend text from 'Messages were left on Commissioner Kennedy's home and mobile number' to 'Mr Kennedy was called on his home telephone and a message was left on his mobile number.'

4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meetings on 11, 12 and 13 February 2014 were reviewed:

- The Head of Regulation & Legal Team advised that regarding the last Action Point on page 3, there are already separate part croft and whole croft decrofting applications.
- ██████████ confirmed that ██████ had been advised by Sponsor Division that with regards to Crown Immunity and Commissioner liability, their understanding was that any litigation would be brought against the Crofting Commission and not individual Commissioners, but if the Commission wanted more assurance they should seek legal advice.
- The Head of Policy & Duties reported that with regard to the Commission letting vacant crofts, several reports have been received from SGRPID but unfortunately they don't always meet our requirements and no maps have been provided by SGRPID. It is possible that the Commission will have to look into the possibility of contracting independent surveyors to carry out the work required for the Commission. The Chief Executive and the Convener are due to meet Roy McLachlan on 2 May 2014 and they will discuss this issue with him. The Convener asked the Head of Policy & Duties to come back to the Board with updates regarding the letting of vacant crofts process.
- A discussion took place about the possibility of increasing the range of services on offer by producing maps for applicants. While this is a long term consideration, the Chief Executive agreed to look into this.
- Kathleen Sinclair advised that the SGRPID office in Shetland was currently working on an in-house exercise where they are telephoning all crofters in Shetland and inviting them in to their office where they will discuss the croft boundaries in view of mapping the individual crofts. It was agreed that this was an excellent idea.
- A discussion took place regarding the Land Court referring to individual Commissioners in decisions. It was agreed that the Chief Executive should arrange to meet Barbara Brown, Clerk to the Land Court, where the Commission's concerns could be discussed. The Chief Executive will liaise with Commissioner William Swann to clarify the agenda for the meeting.
- The Head of Regulation & Legal Team advised that, following on from seeking legal advice ██████████ about the issue of the relationship between division and grazing shares, 80% of the answers are ready and it is hoped that all answers will be provided soon.

- The Convener advised that a good number of applications had been received for the new Commissioner post and interviews will take place in early April 2014.
- The Chief Executive advised that due to a technicality, a special meeting of the Commission was called on 13 February 2014 to make a decision on the Arinagour Paper.
- The Head of Regulation & Legal Team advised that there had been a recent meeting regarding the North Erradale case with the Convener, the Chief Executive, David Findlay, Solicitor and the Head of Regulation & Legal Team. Previously it had been agreed that the Commission would not appeal against the Land Court decision but there was a question over the reference to ECHR. It was decided not to pursue that at this time. The case has now gone back to the Crofting Services Officer dealing with that area, and all the parties involved have been written to, giving them the opportunity to make further representation.

5a ASSESSORS MEETINGS

This Paper was e-mailed to Commissioners but as one Commissioner had concerns about it, it now comes to the full Board for discussion.

The Assessors Meetings that took place throughout 2013 were discussed and Commissioner IG Macdonald advised that Kyle of Lochalsh had not been a good venue for the Wester Ross Assessors as some of them had to travel a considerable distance to get there. It was agreed that in future, staff should ask the area Commissioner for advice about where to hold an Assessors Meeting before arranging it.

It was agreed that no decision could be taken today on this Paper and that a new Paper should be brought back to the May Board Meeting to look at the role of Assessors, what support the Commission should give to them, and where and when the Commission should hold Assessors Meetings.

5b CLOSED SESSION – INDIVIDUAL ASSESSOR APPLICATIONS (DISCUSSED IN PRIVATE)

Two Assessor applications have been received, one for the Barra & Vatersay area and one for the East Inverness (Urquhart/Urray) area and must be decided by the full Board.

The Chief Executive presented the Paper and the first application from [REDACTED] for the Barra & Vatersay area was discussed. The Commission approved the application.

Decision	The Assessor application from [REDACTED] for the Barra & Vatersay area was approved.
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The second application from [REDACTED], a former member of staff of the Crofting Commission, for [REDACTED] was discussed but it was agreed to defer the decision and that a Paper should be brought to the May Board Meeting to look at cases where former members of staff apply for Assessors roles and to consider public perception and the possible question of bias. It was agreed that Scottish Government guidance should be consulted on conflicts of interest.

It was suggested that an exclusion period for ex-members of staff be applied for the role of Assessor, and this will be considered in the new Paper.

Decision	The Commission agreed to defer the decision on the second application and that a Paper should be brought to the May Board Meeting to look at cases where former members of staff apply for Assessors roles and to consider public perception and the possible question of bias. It was agreed that Scottish Government guidance should be consulted on conflicts of interest.
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There was a discussion about the process for appointing Assessors. It was agreed that the process used whereby an application was sent to the Area Commissioner, had been developed to deal with a large volume of applications at one time, but that it was probably not needed for small numbers of applications. The Chief Executive advised that Assessor applications must be decided by the full Board. It was also agreed that the process for appointing Assessors would be considered in the Paper to come to the Board in May.

It was agreed that the Chief Executive will write to [REDACTED] after consultation with the Convener, Marina Dennis and IG Macdonald, advising him that his application has been deferred and explaining the reasons why.

6 BUSINESS PLAN

The Business Manager presented this Paper and pointed out that there have been a few changes made to the Business Plan e.g. an Introduction, Aims, Priorities and Milestones, and he then gave an explanation of the changes. The Business Manager would like to thank Commissioner William Swann for the advice that he gave about Milestones on page 17. Year One will be used to develop the measures that the Commission requires to take forward. It is hoped to publish the document in a more user friendly way for the public.

Commissioner Colin Kennedy wanted to formally record that the Business Plan was an excellent piece of work.

Concerns were expressed about measures and the importance of not having items in the Business Plan that could not be measured. It was agreed that this would be a challenge but that some of the measures will be achieved in co-operation with other agencies. A sentence will be added to the Successful Outcomes page clarifying this point.

The Commission wanted to point out that HIE already have the budget for developing crofting.

The Convener asked for some minor amendments to the wording on page 9, from 'Opportunities to New Entrance into Crofting' to 'Create Opportunities to New Entrants into Crofting'. The Commission agreed that an amendment can be made regarding housing and that the Business Plan can be used as a working document.

It was agreed that on page 8 under the heading 'Learn from Scottish Land Court Decisions' the word 'successful' should be added to say 'fewer successful appeals'.

The Paper was approved and the Commission wish to thank the Business Manager for all his work in preparing this Paper.

Decision	The Paper was approved by the Commission.
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7 REVISED POLICY PLAN

The Convener advised that Sponsor Division had been consulted regarding whether the Commission had to go out to full consultation with the revised Policy Plan but they confirmed that the Commission only need to write to the Local Authorities and HIE as stated in the legislation.

The Chief Executive advised that there is only one change to the Plan regarding subletting so once the Local Authorities and HIE have been written to, the Policy Plan will be sent to Sponsor Division and put onto the Commission Website.

The Convener advised that the Commission needs to think about how it notifies all its constituents about the revised Policy Plan so the Head of Communications will liaise with the Chief Executive about this and circulate their suggestions to the Commission.

Murdo MacLennan was asked to find an appropriate quote for the beginning of the document.

Decision	Commissioner Murdo MacLennan will provide a quote to be entered at the beginning of the Policy Plan.
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The Head of Policy & Duties presented the Paper and advised that all the wording in red had been seen before by the Commissioners but the wording in blue shows all the new changes made. It was pointed out that on page 37, paragraph 42 should also be shown in blue. There has been a rejigging of some subjects e.g. all Duties type work is together, Regulatory subjects are together and also Common Grazings.

The Commission agreed that on page 37 paragraph 43, a reference should be put in about access to the foreshore.

A discussion took place about the need for consistency regarding dealing with access and it was agreed that the Commissioners would like further guidance and training about this issue. They would like a peer review of access decisions to learn from each other to ensure that all the Commissioners are taking the same decisions. The Chief Executive advised that she would arrange training for the Commissioners.

The Paper was approved and the Commission thanked the Head of Policy & Duties for all his work producing this Paper.

Decision	The Paper, with suggested amendments, was approved by the Commission.
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8 INSTRUMENT OF DELEGATION

The Head of Regulation & Legal Team presented this Paper and explained that he went through the Instrument of Delegation and the Policy Plan and made sure that the Instrument of Delegation was updated to reflect the Policy Plan.

It was pointed out that on page 76, fourth box down, this should be changed to Closed Session instead of Open Session and a form of words will be constructed to explain this change.

All reference to 0.1 ha and 0.2 ha has been removed from decrofting application forms as per the Policy Plan, and in order to prevent every case having to be referred to Commissioners for decision, it has been proposed that a triage of staff, which comprises of the Head of Regulation & Legal Team, Mary Ross the Regulatory Manager and the Crofting Services Officer for each area be appointed to look at each case to decide if there are any areas of concern that would mean a case needs to be passed to a Commissioner for decision. If a case looks straightforward, the triage would take the decision under delegated authority.

The Commission agreed to this recommendation as long as the Commissioners are advised of all decisions that are taken for their own areas, and the Head of Regulation advised that they would be notified of all decisions.

Decision	The Commission agreed that a triage of staff would look at each decrofting application and if there are areas of concern, they will pass the case to a Commissioner. If the case is straightforward the triage of staff will make a decision on the case under delegated authority. Commissioners will be advised of all decisions taken for their own areas.
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A discussion took place regarding page 62, Decisions delegated to the Crofting Commission Full Board, and what should happen when a case comes back from the Scottish Land Court. The Commission asked for a Paper to come to the next Board Meeting.

Decision	The Commission asked for a Paper to come to the next Board Meeting.
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A discussion took place regarding page 61 and the wording at part 2 'they will escalate the decision making process to the Board'. It was agreed that more information was required and the Head of Regulation & Legal Team will come back to the May Board Meeting with revised proposals for the wording of the Instrument of Delegation because at the moment it reads as if all decisions go to the full Board.

Decision	The Commission approved the Paper subject to the points noted above.
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9 POLICY FOR HANDLING EXISTING DUTIES CASES

The Head of Policy & Duties presented this Paper and explained that it is about making the transition from the previous absentee process, Section 22, to the new residency duty process, Section 26. There are currently 188 cases that were started under the Section 22 absentee process and 66 of those cases are at the stage of proposals to terminate the tenancies.

The option is whether to transfer the cases coming up for review to the new process, or whether to transfer all 188 cases currently under the Section 22 process into the new Section 26 process.

Concern was expressed about the huge amount of staff time and work that had gone into the Section 22 process and this work would be lost as staff would have to start the new process from scratch again.

After discussion it was agreed that the Commission should write out to all 188 cases, clearly explaining the changes that are proposed, giving each person the option of continuing with the old system or transferring to the new system, and giving them a timescale to reply.

Decision	The Commission approved the Paper and agreed that the Duties Team should write out to all 188 cases, clearly explaining the changes that are proposed, giving each person the option of continuing with the old system or transferring to the new system, and giving them a timescale to reply.
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Commissioner IG Macdonald stated that he hopes that the numbers of staff in the Duties Team will rise rapidly in the near future.

The Convener asked the Head of Policy & Duties to convey the Commission's thanks to him and his team, including previous members of the team, for the very hard and professional work that they have all carried out. They recognised that staff might feel frustrated after all the work they have done. However it is hoped that this effort will be easily transferrable to the new process.

10 AUDIT & FINANCE COMMITTEE UPDATES

Commissioner William Swann presented this Paper. He gave feedback about the Internal Audit Report and said the Commission had received a good report on Core Financial Systems with two low risk recommendations which the Head of Finance is putting into place.

Regarding the Internal Audit Report on Strategic and Operational Planning, the Audit & Finance Committee are aware that the Commission have had a lot of change recently e.g. the change from Crofters Commission to Crofting Commission and the change of Chief Executive. They have seen a copy of the draft Corporate Plan and are content with the progress with that. Therefore the Commission has been put in a 'No Major Weaknesses' category.

It was recognised that a detailed Risk Register cannot be produced until the Corporate Plan is finalised and therefore the Risk Register will be one of the next jobs that can proceed.

Concern was expressed about legal costs and the fact that the Commission cannot predict how many appeals it may receive and it has been agreed that the Chief Executive will contact Sponsor Division regarding legal costs, [REDACTED] if it were to receive a large number of appeals that were out-with its control.

The Standing Financial Instructions were approved and recommended by the Committee and the Service Level Agreement with SNH has been finalised and approved, and signed off by the Chief Executive.

The Chief Executive gave an update about the bid for more staff resources. Sponsor Division are putting forward a recommendation to the pressures group this week, asking for additional resources to assist with administering the Annual Notices. It is hoped to have a decision within a number of weeks.

The Head of Finance presented details of the budget for the coming year, shown on page 4 of the Paper, and a spreadsheet showing a summary of the budget for 2014-2015, shown on page 13.

The Commission approved the Budget for 2014-2015.

Decision	The Commission approved the Paper and the Budget for 2014-2015
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Following discussions with Auditors and Audit Scotland, Commissioner Swann confirmed that the main role of the Board is to ensure good governance. However the Board also have a regulatory role and he questioned whether the remuneration reflected this. The Chief Executive advised that she is in discussion with Sponsor Division on this matter.

The Convener thanked Commissioner William Swann for chairing the Audit & Finance Committee meeting and also Commissioner Murdo MacLennan for standing in, pending the appointment of a new Commissioner.

11 RISK REGISTER

The Head of Finance presented this Paper, to agree an approach to preparing a revised Risk Register, taking into account previous internal audit recommendations regarding the format of the register and, in particular, integrating the Risk Register fully with the new Corporate Plan.

It is proposed that the Management Team take the key objectives within the Corporate Plan, consider the key high level risks around it and take the updated Risk Register back to the June Board Meeting for approval.

The Commission agreed the proposal.

Decision	The Commission agreed the proposal that the Management Team take the key objectives within the Corporate Plan, consider the key high level risks around it and take the updated Risk Register back to the June Board Meeting for approval.
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The Convener advised the Commissioners who attend the Audit & Finance Committee that if they are arranging any Audit and Finance training, they make sure the other Commissioners are invited to that training as well.

12 EXCLUSION OF PRESS AND PUBLIC

This item was dealt with earlier at item 5b as there were no press or public present.

13 DATE OF NEXT MEETING

14 May 2014 at Great Glen House.

14 ANY URGENT BUSINESS

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
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- Commissioner IG Macdonald gave some background to an assignation application for the croft 4 Fearnamore. The Commission's decision was appealed to the Land Court and the Land Court put it back to the Commission. A letter was sent out to the applicant and an objector, asking them if they wanted to request a hearing. The objector said he did not want to request a hearing but the applicant said that he did wish to request a hearing. He said that he thought that it would be good for the Commission to see the access 'on the ground' and his plans for the croft and for housing.

If a Hearing is granted, the Commission need to consider legal advice that they received where it is the Commissioners who attend the Hearing that make the decision. This is at odds with current Policy, that the full Board should make the decision when a case returns from the Scottish Land Court.

Although the applicant has requested a Hearing, any decision to grant this request was for the Commission.

The Head of Regulation & Legal Team advised that a Hearing only happens at the discretion of the Commission and that there are only three functions under the legislation which can have a right to be heard and Section 58A processes, including assignation, is not one of them.

This problem has only arisen because it is a case started under the Crofters Commission, and this would not happen with a case under the Crofting Commission.

The Commission decided that they had enough information to make a decision without holding a Hearing.

Decision	The Commission decided that they had enough information to make a decision on the case without holding a Hearing.
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- Commissioner IG Macdonald advised that the list of outstanding cases that was normally sent out to Commissioners hadn't come this month and he would like to know why. The Chief Executive advised that it took about three days of staff time to produce that report and it has been found that some of the information provided on the report was incorrect. Mary Ross, Regulatory Manager is working on producing a better report but the new CADs system will not be up and running until August 2014 and the Commissioners were asked if they could accept that they might not receive the information on outstanding cases until then.

The Commissioners agreed to this but in the interim, staff will look into trying to find a way of producing this report more quickly and effectively.

- Commissioner Murdo MacLennan advised that he attended a Goose Conference in Islay recently on behalf of the Commission. He also asked that locating staff in the islands and feedback from Land Court cases should be considered. The Chief Executive advised that she is looking into both of these issues. Commissioner MacLennan advised that he had also visited Jura recently and he was delighted to see how well the young crofters had done in rebuilding houses following subdivisions which had created several new crofts.
- Commissioner Colin Kennedy wants the issue of SGRPID being a croft landlord and also the reporting officer on behalf of the Commission, to be looked into urgently as this is a very important issue. It was agreed that this issue will be brought to a future Board.
- The Convener asked if the Commissioners could be introduced to the new members of staff in the office at the next Board Meeting. This was agreed.

The meeting closed at 13:05 hrs.