

The Highland Council

9 March 2017

Agenda Item	12
Report No	HC/6/17

A Consultation on the Long Term Management of the Crown Estate in Scotland.

Report by Director of Development and Infrastructure

Summary

This paper introduces the Scottish Governments consultation on the long term management of the Crown Estate in Scotland, highlights key proposals and provides a copy of the Council's draft response for members to consider.

The Council is invited to consider the consultation document, and approve the draft response.

1. Background

- 1.1 Crown Estate (CE) rights form a major component of land ownership in Scotland and include the seabed, 50% of the foreshore, 37,000 hectares of rural estates, salmon fishing rights, shooting rights, and mineral rights. Assets are currently managed by the Crown Estate Commissioners who administer these rights on a UK basis.
- 1.2 The CE Commissioners have a legal duty to maintain the value and the return obtained from CE. In 2015/16 the gross revenue from CE assets in Scotland was worth £14m with a property value of £271.8m. The net revenue is estimated to be £6.6m although no audited accounts are produced for Scotland or per Local Authority area which details revenue and costs.
- 1.3 Scottish Ministers have long supported the need to reform the management of the CE assets in Scotland and intend to introduce legislation which will put in place a new framework for the management of CE assets. The management framework can only take place once the transfer of functions from the UK Treasury (the Transfer Scheme) has occurred. It is anticipated that the UK Government will complete the transfer scheme through UK parliament so that the Scottish Parliament has legislative competence by April 2017.
- 1.4 Ownership of the estate will remain with the Crown; it is the management of the revenue generated from the assets that will be transferred. Scottish Ministers have committed to giving coastal and island councils the net revenue from the marine estate out to 12 nautical miles.

2. The Consultation

- 2.1 The consultation on the Long Term Management of the Crown Estate was published on 4 January and closes on 29 March 2017. The full document is available on <http://www.gov.scot/Publications/2017/01/8661/downloads>
- 2.2 The consultation seeks views on how the CE in Scotland should be managed and what reforms are needed, provides an opportunity to contribute to the long term

management of the Crown Estate in Scotland and how revenues should be used.

2.3 The document is divided into 4 sections: (1-3 of which are addressed in our response)

1. Vision – covers departures from existing framework (Crown Estate Act 1961) including whether to retain or modify the commercial duty; clarify what is meant by good management and alignment with Scottish Government policies;
2. Managing the Crown Estate Assets for Scotland and Communities – sets out three management options: **national** (retain management of all assets at national level, essentially status quo), **local** (devolve management of all assets to Local Authority/Community) or **hybrid** (consider on a case by case appropriate management options);
3. Securing the Benefits for Scotland and Communities – discusses operational and governance arrangements, revenue and other financial implications of management options proposed; and
4. Assessing Impact – impacts on business, environment, equality and privacy

2.4 The Council is asked to consider the consultation document and approve the draft response (**Appendix 1**). The Highland Council draft response has been prepared in consultation with officers in Development and Infrastructure, Chief Executive's Office and Community Services. Views have also been sought from a member cross party working group held on 21 February 2017.

3. Key Points

3.1 The Council is fully supportive of the devolution of the CE to Local Authorities and Communities and welcomes the commitment to implementing the principles of the Smith Commission in relation to the devolution of the Crown Estate in Scotland. However, at this point in time it is difficult to be specific on how assets, revenues and capital investment should/could be managed until full details of the Highland Portfolio and wider Crown Estate assets are made available (including liabilities and risks) from the Scottish Government. Further clarity is also required on whether the Crown Estate is to be managed as an Estate in land or Estates in land (managed as one estate by one manager, or as a number of estates with different/multiple managers).

3.2 To make an informed decision the Council requests the following information:

- details of any contracts, including leases, licences, agreements etc. affecting these assets, annual revenue receivable under these contracts and the basis on which this was/is receivable. Any liabilities attached to these assets, including, but not restricted to, financial liabilities. Any costs incurred in relation to these assets over the past 5 years;
- the resources required to manage the assets, including staff. The Council recognise that there may not be specific resources allocated to these assets. If this is the case then an estimate of the required resources based on the experience to date of Crown Estate Scotland; and
- details of the Transfer Scheme once available.

3.3 The Council wish to see CE revenues generated in Highland ring-fenced to the local area.

- 3.4 The Council recognise the need to manage the wider CE portfolio and strongly recommend that further detailed proposals for how this could be achieved are drawn up and consulted upon at a later stage.
- 3.5 The Council would like to see the Coastal Community Fund devolved and managed at a local area level.
- 3.6 The Council supports the need for pilot projects to explore different approaches to devolution. Each area and pilot should be given equal consideration and assessed on its merits. Pilots will be a useful way of:
- informing fragmentation concerns raised within the consultation; and
 - quantifying management costs/benefits of transfer which will inform decision making going forward.
- 3.7 Separating out some of the questions between marine or terrestrial sites would have been beneficial as responses vary depending on the asset.

4 Implications

- 4.1 Resource: There are no immediate direct resources or financial implications for the Council linked to this paper. However it is apparent that devolution of the Crown Estate to Local Authorities/Communities will have significant implications (staffing, management, site management, liabilities, income etc.) and this will form the basis of a future paper to the Council for consideration if progressed.
- 4.2 Legal, Equality, Risk and Rural:
- 4.2.1 There are no immediate legal or risk implications for the Council arising from this report. However as stated above devolution of the Crown Estate to Local Authorities/Communities may have significant legal and risk implications, and as such Highland Council has requested further information (section 3.1 above) to fully understand these.
- 4.2.2 The consultation also seeks views on the impact of the proposals in respect of business, environment, equality and privacy. These impacts cannot be assessed until such time as additional information in respect of the Highland portfolio and associated risks and liabilities are known.
- 4.3 Gaelic Implications: No Gaelic implications
- 4.4 Climate Change/ Carbon CLEVER Implications: There are no climate change implications arising from this paper. The consultation refers to the incorporation of 'good management 'in relation to the Crown Estate management functions. We believe this should be amended to take account of environmental implications and incorporate the overarching aims of sustainable development and climate change.
- 4.5 Rural Implications: As this is a consultation document there are no immediate rural implications. However if the Crown Estate is fully devolved to local communities then the full risks, liabilities and opportunities should be known.

Recommendations

Members are asked to comment on and approve the draft response to the Scottish Governments consultation on the long term management of the Crown Estate in Scotland.

Designation: Director of Development & Infrastructure

Date: 27th February 2017

Author: Nicole Wallace, Environment Manager



ANNEX1

Crown Estate: A Consultation on the Long Term Management of the Crown Estate in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

Organisation

Full name or organisation's name

Highland Council

Phone number

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous) – Individuals only
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Consultation Questions

Q1: Should the future approach be changed from the duty to manage the assets on a commercial basis?

YES The Council accepts the need for the Crown Estate to operate in a commercial manner but believe that a dual duty incorporating socio economic benefit, much like the forest enterprise model should be considered.

Q2: If YES, should there be a power to take account of wider socioeconomic or other benefits?

YES Highland Council strongly supports the incorporation of socio economic and environmental benefits.

Q3: If YES, which assets should be managed on a commercial basis and which should be managed differently? (Please provide details in the space below)

All assets should be managed for their commercial and socio and economic benefits. Once details of the full Highland portfolio and associated liabilities are available more specific options for management can be considered.

Q4: Should the requirement on 'good management' be retained?

YES but amended to reflect wider aims of sustainable development and impacts of climate change.

***Comment:** There appears to be no strict legal definition of "good management". At one level it may be seen as no more than standards that all organisations should observe to ensure their operations are sustainable in the longer term; a limited stewardship role and managed in a professional manner. The Crown Estate expresses its statutory duties through three core values currently - commercialism, integrity and stewardship. Traditionally the treasury has viewed "good management" being dependent on the portfolio being appropriately diversified in the property market, controls its risks and opportunities to suitable standards, and adopts a sustainable method of doing business. The duty must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.*

Q5: Should the requirement on 'good management' be amended to take account of environmental implications in relation to the management functions?

YES environmental stewardship should be at the heart of what the Crown Estate Manager does. The Council request that the detail of 'good management' is further consulted on and that the impacts of Climate Change forms part of this requirement.

Q6: Should the existing Crown Estate portfolio in Scotland be preserved in its current form?

NO Flexibility needs to be built into the portfolio to allow for wider socio/economic/environment/commercial options to be considered. Opportunities for sale /reinvestment should be explored on a case by case basis

Q7: Should Scottish Ministers' approval be required for sizeable sales?

Don't know the answer is dependent on whether the estate is to be managed as a single '*estate in land*' or as '*estates in land*', managed separately. If the estate is to be managed as a single entity then further information is required on the minimum and maximum size when Minister's approval may be needed. If the estate is to be managed as *estates in land* then Minister's approval is unlikely to be needed as the Local Authority can manage the CE locally with reference to an overarching Scottish Government /Local Authority framework.

Q8: Should the existing policy - the general presumption against selling the seabed - be maintained?

YES The Council supports the presumption of retention of the seabed as a single asset, in terms of maintaining public goods and for commercial reasons. Exceptions could be considered for small scale purchase of seabed associated with harbour or pier improvements or where wider socioeconomic or community benefits can be demonstrated.

Q9: Do you have any other views on how the management of the Crown Estate in Scotland can ensure delivery of the duties in the Scotland Acts 1998 and 2016?

(Please provide details in the space below)

The Council believes that devolution should not just stop at the Scottish Parliament but would endorse the principles from the Commission on Strengthening Local Democracy:-

- **The principle of sovereignty:** democratic power lies with people and communities who give some of that power to governments and local governments, not the other way round;
 - **The principle of subsidiarity:** decisions should be taken as close to communities as possible, and local governance has to be right shape and form for the people and the places it serves;
 - **The principle of transparency:** democratic decisions should be clear and understandable to communities, with clean lines of accountability back to communities;
 - **The principle of participation:** all communities must be able to participate in the decision making that affects their lives and their communities;
 - **The principle of spheres not tiers of governance:** different parts of the democratic system should have distinct jobs to do that are set out in 'competencies', rather than depend on powers being handed down from 'higher' levels of governance;
 - **The principle of interdependency:** every part of the democratic system has to support the others, and none can be, or should seek to be, self-contained and self-sufficient; and
 - **The principle of wellbeing:** the purpose of all democracy is to improve opportunities and outcomes for the individuals and communities that empower it.
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Q10: How can transparency on the sale and management of the Crown Estate assets be enhanced? *(Please provide details in the space below)*

- Devolve Crown Estate to the Local Authority - all subsequent actions will be reported through normal committee structures, open and transparent process.
- Process/procedures for decision making/assessments should be publicly available
- Annual reports/reviews produced and publically available
- Open Consultations – ability for Local Authorities/Communities to influence priorities/investment portfolio of CE.
- Liabilities associated with Crown Estate assets publicly available

Q11: How can the devolution of the management of the Crown Estate contribute to community empowerment? *(Please provide details in the space below)*

- Revenues devolved to Local Authorities/Communities – locally agree priorities for spend/investment
- Local control and development – ports /harbours/foreshore
- Decision making at local /national scale - Influence Crown Estate priorities/operation plans/local plans

The devolution of the management of Crown Estate in Highland would offer an opportunity to communities to consider the use of Crown assets alongside the use of other public assets that are within the scope of the Community Empowerment Act. Highland Council is encouraging communities to consider their asset requirements alongside their needs and priorities and to develop plans for ensuring they make best use of these-an “asset based approach”.

The Crown Estate assets include sites and infrastructure that are particularly important to a coastal community such as harbours, piers and jetties. All of which can be used to develop income streams that allow the development of other community projects and services e.g. wildlife cruises, moorings and pontoons.

Q12: How can the devolution of the management of the Crown Estate contribute to land reform? *(Please provide details in the space below)*

The transfer of local assets to local communities/Local Authorities will by its very nature support Land Reform objectives. Any system to offer greater control over assets to communities is welcome; however there will need to be greater transparency around the potential liabilities communities/Local Authorities might be exposed to. Improvements in the information available on Scottish Crown Estate assets, liabilities, value and ownership is essential.

Q13: How can we further improve alignment with Scottish Ministers' objectives to deliver on the national outcomes? *(Please provide details in the space below)*

Local Authorities already have a key role in promoting sustainable communities and are actively involved in community empowerment, access, land reform and marine planning. If the Crown Estate assets were transferred to local authorities, they would be well placed to ensure a coordinated approach, which recognised the importance of subsidiarity.

Q14: Do you have any views on the proposed application of the above principles to guide the long term framework for managing Crown Estate assets?

YES X

Comment: General agreement, however we note that section 3 refers to Value for Money whereas Local Authorities work to Best Value and we would prefer to see this referred in the proposed principles.

Q15: Which of the three proposed options for managing Crown Estate assets in Scotland do you prefer?

Option 1 (national)

Option 2 (local) x

Option 3 (hybrid)

Don't know

OTHER

Highland Council would like to see as much devolution as possible to Local Authorities/Communities provided the resources required to run and manage the sites are known and liabilities are accounted for. It is essential that Local Authorities and communities have the ability to influence decision making, set local priorities and influence the overall management of the Crown Estate locally.

There is a real and urgent need to understand the costs of full/partial devolution, to inform the long term management arrangements that need to be put in place for the Crown Estate.

Q16: If OTHER, what approach to management do you propose?

Q17: Should a geographic or a functional approach guide the reform of the

management of the Crown Estate in Scotland?

Don't know

Other *Please Specify:* If full devolution is being considered then a geographical approach would make sense, However if only parts of the estate are being devolved this would need to be managed on both a functional and geographic basis. E.g. aquaculture vs piers and jetties.

It also worth noting that Terrestrial sites may have a different management requirement to marine sites.

Q18: Do you have a preference for management on a geographic basis being led by either local authorities or communities?

Local authorities who in turn would facilitate further devolution to local communities/others.

Q19: Should Scottish Ministers have the power to hand responsibility for management of the estate, or parts of it, to a particular person or persons?

YES - enable further devolution of the Crown Estate which Highland Council supports.

Q20: Should Scottish Ministers have a power to vary management arrangements held by other parties over time?

YES but only in certain circumstances e.g. avoid negligent activity, to ensure best practice or where wider environmental/socio/economic benefits are being secured, or where wider estate issues are concerned. When and how Scottish Ministers should have powers to vary management arrangements should be subject to further consultation.

Q21: Should Scottish Ministers have the power to extinguish rights currently held in the Crown Estate where management of the asset can be adequately covered by other legislation?

Don't know

Highland Council request that further information is provided on the proposed rights that could be extinguished and the proposed replacement legislation.

Q22: Do you have any views on which assets should be managed at the (i) national level (ii) by local authorities or (iii) by communities? (Please provide details in the space below)

The Highland Council would like to see all assets within 12 NM transferred to Local Authorities/Communities subject to the liability issues raised above being resolved.

Q23: Should local authorities or communities be expected to make a case for

further devolution?

NO —

Highland Council do not believe that Local Authorities/Communities need to make a case for further devolution as this is implicit in current legislation, (Community Empowerment Act and Smith Commission) however Local Authorities/Communities must be able to manage the assets or be given resources to do so.

All managers must be able to demonstrate good governance.

Don't know

Q24: If YES, should they demonstrate the capability to ensure appropriate management, to maintain service delivery and to deliver increased benefits?

YES

NO

Don't know

Comment: Why is there a requirement to increased benefits, sustaining benefits may also be appropriate in some circumstances?

Q25: Replicating functions in each area is likely to lead to fragmentation of the estate which would pose significant risk to realisation of new revenue – how can these risks be avoided? (Please provide details in the space below)

Devolve directly to Local Authorities and work within an agreed framework set by Interim Crown Estate Management Body. This will ensure consistency across key functions e.g. aquaculture, ports /harbours etc. and deliver a viable, devolved CE in Scotland. Devolution by its very nature will lead to greater local involvement and empowerment not fragmentation.

Q26: Should shared services be a requirement of devolution to the local level of decision-making on property, rights and interests of the Crown Estate? (Please provide details in the space below)

Highland Council currently deliver shared services where benefits can be secured so yes shared service could be considered but should not be seen as a requirement of devolution

Q27: What are the opportunities, if any, of further devolution? (Please provide details in the space below)

- Local empowerment, involvement, decision making and control, potential to increase local economic activity, integration of planning, consenting and licensing. One stop shop. Directing activity in line with local priorities.
 - Local communities secure a stake in the asset and will have the opportunity to manage, develop and look after it.
-

Q28: What are the challenges, if any, of further devolution? (Please provide details in

the space below)

- Raising expectation that may not be realised e.g. net revenues may not be significant.
- Risk of unknown liabilities,
- Level of expertise sits with CE how will this transfer to Local Authorities/Communities.
- Resource implications – unknown at present
- Local conflict between communities – Borders/rights.

Q29: Is there a need for strategic planning and a long term investment strategy, in order to co-ordinate work to enhance the value of the estate?

YES

NO

Don't know

Q30: Do you have any views on the value of a national framework to guide local decision-making? *(Please provide details in the space below)*

Highland Council are broadly supportive of the need for a national framework to guide local decisions but the framework must link with existing national and marine planning frameworks.

Local Authorities/Communities must have the freedom to make independent decisions locally in respect of the management of the Crown Estate in line with the ethos of full devolution. The framework must not act as a straightjacket to local development.

Q31: Should there be consistent charging approaches between areas to avoid competition between different parts of Scotland?

NO

In line with the COSLA response Highland Council considers that a consistent approach to valuation but not control of price/cost may be more appropriate in terms of the right to buy legislation.

A different approach may be necessary for marine vs terrestrial assets.

Q32: Are there any other issues that should be covered by a national framework for management of Crown Estate assets in Scotland? *(Please provide details in the space below)*

- Ability to buy back at same costs where local management issues arise.
- Again terrestrial vs marine sites may need different approach.

Q33: Should the future arrangements in Orkney, Shetland and the Western Isles be considered first?

NO

Highland Council has an issue with the way this question has been phrased and believes that all areas should have the opportunity to pilot their own approach.

Highland Council is supportive of the islands pilot and recognises that lessons can be learned that will inform the future management of the Crown Estate but this should not be to the detriment of other areas wishing to pilot their approach. Each area should be given equal consideration and assessed on its merits.

Given the size of its coastline, the Highland Council would be interested in exploring the potential for undertaking a pilot project

Q34: Is a phased approach needed to introduce reforms to the management of Crown Estate assets across Scotland?

YES x –

Time is needed for Local Authorities to understand the detail/implications/liabilities of local Crown Estate assets.

Q35: Is there value in a pilot scheme prior to implementing reforms?

YES x

Q36: How can people influence decisions in relation to the management of the Crown Estate assets? (Please provide details in the space below)

Through standard democratic process of local engagement, consultation and reviews

Q37: How should the long term governance arrangements differ from the interim arrangements? (Please provide details in the space below)

Pilots will go some way to inform future arrangements. However until such time as relevant details of the Crown Estate are known too early to say.

Q38: Should the future framework include flexibility for Scottish Ministers to vary the proportion of revenue retained by the manager?

YES/NO

Highland Council would like to see the revenue generated in Local Authority areas, ring-fenced to that area. Any top slicing would need to be agreed in consultation with Local Authorities and Scottish Government and should be dependent on the manager of the estate, the associated portfolio and the costs and implications for wider estate.

The Council acknowledges the need for funds to be identified for wider estate management/research but again seeks clarity on the likely revenue and capital investment requirements of CE assets in Local Authority areas in order to address the above question.

Highland Council would like to see the coastal communities fund run and managed locally.

Q39: Should the arrangement where the capital value of one part of the estate can be used to enhance opportunities elsewhere in the estate be continued?

YES as above: Highland Council recognises the need to support capital investment across the Crown Estate portfolio but again seek clarity on the likely investment requirements of Crown Estate assets in Local Authority areas in order to address the above question and if the estate is to be managed as *estate/estates* in land.

Q40: Should the current duty of maintaining the value of the estate and the return obtained from it be continued or amended for the investment of capital proceeds?

Continue

Amend

Don't know

Q41: Should capital proceeds from a sale in one area be invested in the same area, or should there be discretion to invest anywhere in Scotland?

Invest in same area. The majority of funds should be reinvested in the local area however Highland Council recognise the need to support investment opportunities across the whole Estate and seek clarity on the likely requirements of Crown Estate assets in Local Authority areas vs the whole estate in order to address the above question.

Q42: Should it be possible for the capital or maintenance requirements for an individual asset to be funded from another part of the estate, even if management of the assets are devolved to the local level?

YES although this is dependent on if the CE is being managed as an *Estate in land* or *Estates in land*. As above: further clarify required on the likely investment requirements of Crown Estate assets in Local Authority areas and across the whole estate to address the above question.

Q43: Should funding of strategic activities from Crown Estate resources continue?

YES – open and transparent process on how funds are allocated and priorities set.

Q44: If YES, should these strategic activities be managed at the national level?

YES – but with local input.

Q45: Should the person taking on the responsibility for management of an asset normally take on the responsibility for managing the associated liabilities?

YES normally yes, but cost could be significant and as such a joint approach to large scale liabilities may need to be explored between the manager of the CE and Crown

the Scottish Government.

Q46: Should the liabilities for land restoration and residual liabilities after decommissioning of marine infrastructure be managed:

Locally

Nationally

Don't know — Needs to be approached on a case by case basis, could be managed locally with national funding.

Q47: Should the costs associated with management of liabilities be included in the overheads for estate management?

YES

NO

Don't know the cost associated with the management of liabilities could be significant and have a disproportionate impact on the revenues generated. As such and as stated above a joint approach to large scale liabilities may need to be explored between the Manager, Crown Estate and Scottish Government.

Q48: Do you have any other views on the devolution of the management or revenue of the Crown Estate? (Please provide details in the space below)

The Council is fully supportive of the devolution of the Crown Estate to Local Authorities and communities. However it is difficult at this point in time to be specific on how assets, revenues and capital investment should/could be managed until full details of the Highland Portfolio and wider Crown Estate assets are made available (including risks and liabilities) and further clarity is provided on if the Crown Estate is to be managed as an *Estate in land* or *Estates in land*.

To make an informed decision the Council needs the following information:

- Details of any contracts, including leases, licences, agreements etc. affecting these assets, annual revenue receivable under these contracts and the basis on which this was/is receivable. Any liabilities attached to these assets, including, but not restricted to, financial liabilities. Any costs incurred in relation to these assets over the past 5 years.
- The resources required to manage the assets, including staff. The Council recognise that there may not be specific resources allocated to these assets. If this is the case then an estimate of the required resources based on the experience to date of Crown Estate Scotland.

The Council wish to see the revenues generated in Highland ring-fenced to the local area

The Council recognise the need to manage the wider Estate portfolio and would welcome further consultation on how this could be achieved.

The Council would like to see the Coastal Community fund devolved to local areas.

The Council support the need for pilot projects to explore different approaches to devolution of the Crown Estate however each area and pilot should be given equal consideration and assessed on its merits. Pilots will be a useful way of:

- informing fragmentation concerns raised within the consultation
- quantifying management costs/benefits of transfer which will inform decision making going forward.

Q49, 50, 51 and 52 - The consultation also seeks views on the impact of the proposals in respect of business, environment, equality and privacy. These impacts cannot be assessed until such time as additional information in respect of the Highland portfolio and associated risks and liabilities are known.