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Kinghorn Community Land Association – submission to the review of the Land Reform Act

January 2013

I will outline Kinghorn Community Land Association's (KCLA) recent experience of the Land Reform legislation in the hope that it will provide the review group with a perspective on how the legislation has evolved over the last few years.

We originally registered 19 plots of land successfully, one in 2005 and eighteen in 2007. Four of these plots were removed from the register on the basis of a technicality after a landowner took the Scottish Government to court. After a number of re-drafts we successfully re-registered the first plot in 2010. The registration on the remaining 14 plots expired in June 2012. We met with Scottish Government officials in February 2012 and it was indicated that we needed to tighten up the applications from last time, though I'm not sure the extent of what was expected was made clear.

We have been lucky enough to receive grant funding to have feasibility work done to strengthen the outline proposals made on the original applications. We have used consultants to undertake in-depth consultation into possible land use proposals. More recently we used some of this funding to employ our consultants to revise the re-registration applications. These initial re-applications were returned in June 2012 requiring substantial changes. We did not feel that it was a good use of our funds to ask a consultant to undertake any further work so we decided to make the revisions to the maps and application forms ourselves.

Partly due to the sheer number of changes we were asked to make and partly due to family and holiday commitments we did not manage to revise these until November 2012. Even then we were only able to submit a reduced number of applications. Unfortunately before Christmas our applications were once again returned. However, despite apparently heeding the advice we were given in June the number of changes we were asked for seem to be equally as long. These comments run to around 4 sides of A4 for each application and broadly fall into 2 categories:

1. Helpful comments that would strengthen the applications
2. Pedantic and bureaucratic suggestions that appear to bring no added value to what is already presented in the applications.

We do not wish this response to be misconstrued as overtly criticising civil servants who we feel have been very helpful and supportive over the years, rather with a system that requires this amount of detail at these very early stages.

Having mobilised (and worn down) the good will of numerous well intentioned members of the community in Kinghorn who have been good enough to give up their free time over the last 7 years to actively participate on the committee of KCLA, and in the face of considerable well mobilised opposition spearheaded by landowners, we are now at the point where we are in danger of not being able to continue almost all of our registrations. We are almost completely worn down by the level of bureaucracy. For example we had plans to negotiate use of some council owned land for a community orchard but all our energies have been absorbed by form filling. Our community has supported petition signings on 4 occasions as well as participating in endless consultation exercises, and this in the face of quite effective anti-community ownership propaganda.

We understand the need for the Scottish Government to ensure that the applications are watertight and not vulnerable to legal challenge by landowners. However some of the feedback we have received asks us to enhance small details about proposed land use that we feel is not relevant. We have already scoped these in significant detail as demonstrated in the applications and supporting documentation and, should we have the opportunity to buy the land, would need to demonstrate to potential funders and to our community that our proposals were robust.

Our points about the Land Reform Act as it presently stands can be summarised as follows:

- The level of detail being requested by the Scottish Government simply to register land under the Land Reform Act is unnecessary, prohibitive, and over-bureaucratic. We are not applying to buy the land we are applying to register an interest.
- We have smart, professional people involved in KCLA who struggle amongst other commitments to complete these applications. The requests being made set too high a test on a community body and it is unfortunate that it has got to the stage where the application process is so heavily weighted in favour of land owners and their lawyers that the Scottish Government now feels that it needs to pick so many small holes before forwarding for approval to Ministers. We have been lucky enough to

employ professional expertise to support this process and still cannot get it right. What hope for those without the benefit of this expertise or for people living in deprived communities where there is not the same preponderance of educated professional people?

- Our applications were of a much lower standard five and a half years ago and were accepted by Ministers. Our proposals are substantially more sophisticated now yet are subject to a much greater degree of critical scrutiny. Even in the two years since we successfully re-registered land in 2010 the bar has been raised significantly. There is a lack of consistency between what was acceptable before (2005, 2007, and 2010) and what is acceptable now, yet the legislation has not been altered.
- The written feedback we have received from the Scottish Government has been exceptionally dispiriting after we have spent significant amounts of time away from family and leisure activities trying to work to something for the good of our communities. Some of the funds we have raised have come from public sources (for example the Lottery) in order to provide public benefit, yet a significant amount has been spent on trying to navigate the bureaucratic system. This includes the request that we repeat checks on land ownership carried out last April, which amounts to a not insubstantial sum of money (we have received conflicting advice from different civil servants on this issue). It also includes not insubstantial lawyers' fees when we were misled by a land owner into thinking we could purchase a piece of land.
- Our committee have volunteered to take something forward that we feel is valuable to the community and the community has put its faith in us. We are accountable to our community and we feel a responsibility to succeed. Yet the current mood has moved from one where we were going in the right direction to one where we feel we are letting the community down. They have supported these registrations time after time yet we are unable to progress these successfully.
- We had understood the intention of the Land Reform Act was to support communities and give them more of an advantage in seeking the purchase of land assets. Our impression is that the emphasis of legislation has swung back in favour of landowners and that they have the advantage of resources and power.
- If the Scottish Government's intention is to empower communities as enshrined by the Community Empowerment Bill then the Land Reform Act needs to be made more accessible and easier for communities to negotiate. To this end we would suggest the following improvements:
 - Application forms could be shortened considerably and simplified.
 - If the area of land we wish to register is owned by more than one party we should be able to complete this in a single application listing all the landowners in that application, instead of having to complete 19 separate applications.
 - We are supportive of the need to complete a section on outlying intentions for the land, but feel it is unnecessary to provide the level of detail being

asked for. We can only put proposals into effect if we buy the land and to do this we need to go through a more rigorous process than the registration. We would really need to show there was community benefit at the purchase stage otherwise we wouldn't get the support.

I hope that this is constructive and helpful feedback. We would be happy to provide further background information or or verbal evidence on our experience if required.

Yours sincerely

Richard Brewster

**Company Secretary, on behalf of the Board of Kinghorn Community Land Association .
10 January 2013**