Cross-Party Group on Crofting

23 February 2022

Minutes

Present

MSPs

Beatrice Wishart MSP (chair)
Ariane Burgess MSP
Jenni Minto MSP
Alasdair Allan MSP

Invited guests

Anna Sellars, SAC Consulting
Ben Law, SAC Consulting
David Findlay, Crofting Commission
Bill Barron, Crofting Commission
Gordon Jackson, Scottish Government
Michael Nugent, SG

Non-MSP Group Members

Patrick Krause (secretary)
Lynne Hendry, John Muir Trust
Rod Mackenzie, crofter
Donald Murdie, SCF
Fiona Mackenzie, UHI
Lucy Sumsion, NFU Scotland
Jamie McIntyre, Woodland Crofts Partnership
David Skene, UHI
Jacq Kelly, Registers of Scotland
Emily Dewar, Lantra Scotland
Patrick Jean-Martel, NatureScot
Abigail Campbell, Scottish Wildlife Trust
William Neilson, Crofting Commission
Darren Laing, BBC ALBA
David Cameron, Community Land Scotland
Karen Macrae, Crofting Commission
John Maughan, SCF
Sandra Lindsay, SCF
Claire Hardy, The James Hutton
Sally Reynolds, Carloway Estate Trust
Andrew Holt, Crofting Commission
Brendan O'Hanrahan
John N Macleod, Grazings Clerk
Michael Foxley, Crofter
Lena Horch, SCF
Maria de la Torre, NatureScot
Virginia Woollven, Scottish Government
yvonne white, SCF
Finlay Beaton, Crofting Commission
Alexander Murray, NFUS
Murray McCheyne, SLE crofting group
Siobhan Macdonald, SAC
James McPherson, Scottish Crofting Federation

Becky Shaw, NatureScot
Lynne MacMillan, Crofting Commission
Arthur Macdonald, Crofting Commission
Andrew Connon, NFUS
Bill Dundas, SGRPID
Iona Hyde, Woodland Trust - Croft Woodland Project
Iain Turnbull, NTS and Wester Ross Biosphere
Neil Ross, HIE
Donald MacKinnon, SCF
Ian Wilson, NFUS
Alan Balfour, Scottish Land and Estates
Malcolm Mathieson, Crofting Commission
Patricia Clark, Edward Mountain's Office
Fiona Mandeville, SCF
Donald Meek, crofter
Michelle Henley, Scottish Wildlife Trust

Apologies

David Atkinson
Rhona Elrick
Janette Sutherland
Leanne Townsend
Beatrice Morris
John Norman MacLeod
Russell Smith
Helen O'Keefe
Edward Mountain MSP
Eleanor Garty
Eilidh ross
Donald Bruce
Anne
Jacq Kelly
Richard Frew
Malcolm Burr

Agenda item 1

Welcome and apologies
The convener welcomed everyone to the meeting and apologies were noted.

Agenda item 2

Agreement of the minutes of the last meeting

Agreed

Agenda item 3

Matters Arising

None

Agenda item 4

Carbon and crofting

1. Introduction to the topic - Donald Mackinnon, chair of SCF

Donald gave some introductory remarks which included:

- Climate change mitigation targets will necessitate a change in practices in land use, particularly woodlands, peatlands and soils;
- PeatlandAction and Peatland Code are helping with peatland restoration;
- A restoration project may not generate income or carbon credits, but is the right thing to do. When there are carbon credits involved it changes the dynamic. Potentially large amounts of money so there needs to be information available;
- Who has the right to restore peatland on common grazings? Landlord or crofters? Who owns the carbon credits? We need a clear framework in place;
- An important point is that carbon credits don't have to be sold – they can be held on to as an asset;
- The new agricultural support system will necessitate carbon audits;
- Public funding versus private funding; there is an assumption that the amount of peatland restoration needed cannot be met by public funding. How to generate private funding? The increase in land value and the value of carbon credits will have to be taken into account.

2. Carbon in the context of crofting - David Finlay, solicitor to the CC

David talked about the crofting legal perspective, including:

- There are issues around crofting and carbon, involving rights of crofters, tenants and landlords, who has the right to sell carbon credits, who has the right to sell them rather than who 'owns' them;
- The relationship between carbon trading and voluntary peatland code, and provision of public goods;
- A carbon trading market is evolving very rapidly and land prices are rising;
- People talk of "the tsunami' of investment coming to Scotland for peatland restoration and tree planting";
- About 550,000 Ha of common grazings, plus croft land (inbye) itself – a substantial area of deep peat is on croft land;
- Important to not conflate carbon sequestration with carbon trading – both related but different;
- Bob McIntosh, tenant farming commissioner, urged caution to ensure no unintended consequences, e.g. access to agriculture support measures;
- The carbon market is currently unregulated and the carbon code voluntary;
- Carbon trading regulation will probably be under UK government as energy is reserved – and sequestration is in effect the reverse;
- Peatland is probably a bigger issue for crofters than woodland;
- Peatland restoration involves a great deal of physical activity on the land so a landlord could not exclude crofters;
- Some peatland restoration would improve grazing so would be a permanent improvement;
- If a landlord wants to restore peatland with the aim of selling carbon credits, they will need to go through the 1993 Act and involve the SLC as it is a development. Landlord and crofters would need to come to an agreement;

- Alternatively a landlord could resume land, compensate the crofters and continue with schemes without reference to crofters' rights;
- Alternatively the landlord could use section 5,3 of the 1993 Act to alter individual crofter's rights for a set period – has to go through the SLC and is binding on successive crofters;
- Currently the Peatland Code is the only basis under which carbon credits are being traded on the open market but other organisations are looking at this. Scottish or UK government may need to regulate it;
- Crofters need to look at all options before going down the commercial route;
- It is important to have the land validated before embarking on restoration – as it is the improvement that is measured;
- Lots of opportunities for crofters but it is their decision and they must get good advice first.

3. Carbon sequestration - Anna Sellars, Senior Rural Business Consultant in the Food & Enterprise Team of SAC Consulting

Anna gave a presentation accompanied by slides – these have been circulated. The main points included:

- Establish whether you have anything to sell - soil carbon stocks are not the same as sequestration - you can't sell this;
- Soil carbon sequestration = annual change (up or down);
- This may have value if you meet the required criteria;
- Carbon credit payments will require evidence of additionality (i.e. proof that the intervention of the land owner is responsible for any changes in soil carbon levels); evidence that carbon capture has actually occurred; what further capacity is there to sequester carbon (e.g. where is saturation point?);
- The market is not regulated –'wild west' right now, like woodland carbon credits before the woodland carbon code;
- Who knows where the carbon price will go?–sell now and you might regret it in a few years;
- Agriculture will probably want to focus on first reaching net zero itself before selling any bonus carbon credits to other industries.

4. Current carbon markets and the trading situation - Ben Law, Senior Forestry Consultant & Team Leader, Forest Management Services of SAC Consulting

Ben gave a presentation accompanied by slides – these have been circulated. The main points included opportunities:

- Carbon funding makes many projects viable that would otherwise not have been possible (even with grants) without additional investment;
- Can release capital from poorer land to allow investment in better land, better systems, farm or business improvements;
- Opportunities exist for a split sale model to be used - it is possible to sell some units up front to fund projects/investment, and then retain remainder of units for personal use / later sale as desired;
- Potential to generate a retirement income without having to surrender ownership of your land.

And risks:

- Market is still in its infancy, and changing rapidly;

- Very long commitments, and potential for many changes during this 30+ year commitment;
- Prices rising rapidly, but like any commodity, these prices may fluctuate dramatically;
- Future policy, replacement of CAP?
- Succession/Inheritance/Sale?
- Climate Change, Wildfires, Severe Weather Events;
- Carbon can only be sold ONCE;
- Do not feel pressured to sell for a penny what you may later need to pay pounds to buy back.

Round-table discussion

Comment: 'Ghost woodlands' are now eligible under the woodland carbon code. Woodland schemes (and potentially peatland schemes) on croft land need the consent of the landlord - the balance of power is wrong. This could possibly be addressed in crofting law reform. Also it needs to be recognised that a lot of peatland is in a poor state due to excess deer – something else in the power of the landlord.

Answer: land tenure is being looked at by the Land Commission – a report is due soon.

Answer: under the 1993 Act forestry is covered itself, and 'Other Developments' includes windfarms; the crofters have the right to 50% of development value. Peatland restoration should fall into this category.

Answer: the Crofting Commission will be working with conducive landlords to set a good example of collaboration with crofters.

Comment: as a landlord, we work with our estate's crofters, development projects are in partnership. Remember that development project are very long-term. Offsetting carbon is not the way to go.

Comment: my legal advice was that my woodland projects have to be done as a partnership with my landlord. Unfortunately my landlord doesn't respond to my contact. We urgently need a change in legislation to ensure partnerships work.

Question: Our grazings regulations set out our rights and responsibilities on our common grazings. These include, as well as grazing, peat cutting, seaweed gathering and woodland planting. Can we rely on the Commission to uphold these rights? It's only a matter of time before our rights are challenged by a landlord. As SG is the largest crofting landlord, shouldn't they be producing their own peatland policy for crofting land, developed in collaboration with crofters?

Answer: we are assessing common grazings on our (SG) estates, looking at health of peatlands to see if there a number of sites we can take forward for restoration. We would work in partnership with the crofters as they have occupancy of the land and rights. A challenge will be working with many shareholders, only a few of which are active. We will share our success, or otherwise, as we go so that other landlords can benefit from our experience. We are considering the best way to go forward as the carbon credit situation is still unclear but we don't want to go ahead with restoration

and then find that we could have had an income from credits. The speakers' comments have been very helpful and show that we do need to be cautious.

Answer: yes, caution paramount, and early engagement with all stakeholders essential. It is important to assess what effect changing the hydrology could have on grazing. Register the carbon before work begins – it will not be eligible in retrospect. It is important to get agreements in place early on; these are long term projects with a degree of risk – e.g. woodlands planted under the FGS have to be replaced if damaged by deer or fire.

Comment: there needs to be a push to grow structural timber to build houses – the way energy prices are going we will not be able to afford cement.

Answer: Most of UK's woodland planting is in Scotland – 80% - and we are working to increase the proportion that is structural timber. We work to the UK Forestry Standard which lays out the species % we are allowed to plant. Emphasis is on native species, which is great for biodiversity etc, but there is a lack of commercial timber being grown to replace cement / concrete / steel. This is of great concern. We import 80% of the structural timber we use, UK being 2nd only to China. A flaw in UK policy.

Comment: it seems there is a lot of interest in carbon but the mechanisms, policy, investment, id falling short of demand. It is probably a temporary situation and things will get clearer soon.

Comment: it seems the best way forward is for land managers to get projects going but get the carbon validated first, don't enter the carbon market yet, keep any credits for use later.

Comment: in Scotland we have started a lot of work in restoration so mustn't lose the momentum by getting bogged down in markets.

Comment: we get judged on emissions all the time – it is essential we base-line and measure sequestration too. And we must protect land capable of growing food. Mass planting of trees must not take away grazing – affecting the critical mass of our livestock industry, consequences for rural communities, employment and so on. Trees need to be integrated with livestock.

Donald MacKinnon finished with a brief summary, including:
A lot of work going on looking at carbon, SRUC, CC, SG, and these need to be joined up.
It is important that we continue to talk about this, get information and examples of best practice available to crofters, to minimise the risks and maximise the potential benefits of this.

Agenda item 5

Crofting administration
Crofting Commission's CEO Bill Barron updated on the work of the commission, progress made in Regulation and Land Use, and steps taken following the audit. The main points included:

- An historic day - after years of preparation the first digital application for an assignation came in today;
- The backlog of regulatory casework has grown – partly due to Covid and also because of a high turnover of staff. We had 18, 7 left, but we can increase it to 26. We are improving the process and have a big focus on training;
- There is work on strengthening the Regulation & Land Use team. It can take two years to resolve a breach of duty, but more cases are added as cases are finished. Most cases come from the census, and there are some reports from the crofting community, and some internal referral where an administrative application may expose a possible breach of duty. Cases usually are non-resident or non-cultivating, tenant and O/O crofters, and owners of vacant crofts. We will also be following up on census non-responders by phone. From the 2017-2019 census we have 245 breaches have been addressed successfully – 49 took up residence, 41 assigned the croft, 4 relets, 98 sublets and 53 got consent to be absent. 17 terminations over same period, 7 due to breach of duty and 10 succession failure.
- The audit has been in the news again. the audit was actually carried out in May last year. 41 recommendations which were extremely useful. 38 have been completed to board satisfaction. There were questions about roles and responsibilities. CC is a slightly quirky organisation in that the board is elected, so most board members change simultaneously, so no carry-over of experience; and CEO is appointed by SG – the only NDPB to do this, all others CEO is appointed by the board. We are tightening up our constitutional documents, the framework document and the standing orders, and have undergone training, so that it is clear what the roles are and who reports to whom. CEO has a manager in SG but also reports to the CC convener and job appraisal is carried out by both. The role of convener has been increased, so relationship between board and SG is stronger. There was a review of staffing requirement, so front line staff increased and senior management team increased. The audit also focussed on longer term forward planning for operations and finance, work on which is on-going. It has been a good process to go through.

Discussion

Question: Will breaches in duty be spotted in applications for administrative procedures and be dealt with before the admin is – e.g. an application comes in for a decrofting, the CC staff checks and the applicant is absent so the application goes on hold whilst the breach is dealt with?

Answer: No, we can't do that. We have to deal with the application and if a breach is suspected, this is dealt with separately. So the decrofting may go ahead whilst it can take years to deal with the breach of duty.

Question: can applications that have been in the system for longer than a set time be escalated. I know of cases at least 12 months old that should be straight forward and are still sitting.

Answer: No, the backlog is too great now, so we rely on the caseworkers to know which ones need prioritising. People can phone to ask about progress if time-critical.

Question: Will there be a review of the audit recommendations?

Answer: Yes, there is an annual audit.

Agenda item 6

Any Other Business

1. Geese. There has been the announcement of additional funds for control of greylag geese but SCF in their recent publicity have made it clear this is not enough. This group needs to keep the pressure on. It is also the five-yearly review of goose management this year, so this group needs to feed into that. Keep on CPGoC agenda. **Agreed**.

2. Paths. Ramblers Association have a ‘Hidden Paths’ project. A path on a crofter’s land, leading to nowhere, was put on the map so he has people wandering over his land now. If there are similar examples, please contact convener.

Agenda item 7

Date Of Next Meeting

11 May 2022