

Kinghorn Loch Case Study

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PREAMBLE

This case study is the first in a series being published by the Caledonia Centre for Social Development as part of the Popularising the community right to buy provisions of the Land Reform (Scotland) Act 2003. Further details can be found at www.landreformact.com.

This case study is written by Julie Farr who is a Director of Kinghorn Community Land Association 2005.

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INTRODUCTION

This case study documents the experience of the Royal Burgh of Kinghorn in using the Land Reform (Scotland) Act 2003 (LRA) to attempt to acquire part of the former Burgh Commons for the community. Kinghorn Community Land Association 2005 (KCLA) was established in March of that year, at which point it submitted a late application for an area of land bordering Kinghorn Loch. This land was used for recreational purposes and was designated as open space in the Local Plan. KCLA 2005 has an interest registered in this land but has hit barriers in activating the right to buy even though it was on the market. The Association has subsequently applied to register an interest in a further eighteen areas of land surrounding Kinghorn Loch. Many lessons have been learnt by KCLA and it is hoped that other community bodies can learn from the organisation's experience.

THE AUTHOR

Julie Farr, the author of this case study, grew up in a village on the outskirts of Glenrothes in Fife but now lives in Kinghorn with her husband. She has been involved with the organisation since the very beginning when it was a Steering Group and is now a Director of KCLA. Julie feels that Kinghorn Loch is a special place due to the diversity of habitats and wildlife that live there. She recently discovered that her gran and granddad used to walk around the loch in their courting days and it was on this site that her granddad proposed.

Julie has worked at The Ecology Centre on the banks of Kinghorn Loch since 2000. She was the second member of staff at the Centre. Since working as the Development Manager at the Centre she has moved to Kinghorn. Through her work at The Ecology Centre Julie has got to know many local people and, like them, feels passionately about the value to the community of the land around Kinghorn Loch.

BACKGROUND TO THE APPLICATION

Kinghorn Loch lies close by and to the north west of the historic Royal Burgh of Kinghorn on the north shore of the Firth of Forth. The north side of the Loch is leased by The Ecology Centre and to the east and west lie the industrial sites of Kinghorn Tannery and Alcan which, until recently, were the largest industrial employers in the area. Both factories closed in recent times with major job losses, leaving a legacy of dereliction that demands regeneration. Yet, despite this, the area is hugely attractive. It is designated by Fife Council as an Area of Great Landscape Value and has immense potential to enrich the quality of life of the community - something it has done for many centuries and which, with proper stewardship, it can continue to do.

In 1605, Kinghorn Loch and its surrounds were gifted by King James VI to the Royal Burgh of Kinghorn at its inception. Since then the Loch has played a vital role as a source of power, water, and peaceful recreation and increasingly of late as an educational and employment resource. The surrounding land has been put to uses as diverse as golf, woodland, food and fabric production, road and rail links and industrial spoil. Despite the abuses it has endured, it remains as important as ever not just to Kinghorn but to the wider community of users who now visit for environmental education, training, sheltered work placements, volunteering, canoeing, sailing, walking, picnicking, enjoying wildlife or just peaceful enjoyment of a rich, attractive and important natural environment.

The Ecology Centre (previously known as Craigenalt Farm Ecology Centre) is situated on the land north of Kinghorn Loch. The Centre leases 20 hectares of land for a peppercorn rent on a 15 year lease.

In 2003 Craigenalt Farm attempted to evict The Ecology Centre from the premises. The support for the Centre from the local people was astounding. The mothers and toddlers wanted to organise a demonstration and the women's guild wanted to make the banners! The people of Kinghorn wanted to know what was going to be done to halt this threat. Although the threat of eviction to The Ecology Centre did not necessarily mean that local people would not be allowed to utilise the land for recreational purposes as they were used to doing, it did make people think. Many people realised that they took the beauty of the area for granted and wished to act to ensure that they could have a say in decisions about its future use.

A technical assistance grant was awarded by the Scottish Land Fund to determine the possibilities for using the Land Reform Act to secure land for the community. Grant money was used to carry out a community consultation in February 2004. The consultation illustrated the importance of the land around Kinghorn Loch to the local people.

The consultant carrying out the consultation thought that a public meeting would be an important part of the study. The meeting was attended by 170 local people. The results of the consultation were summarised and at the end of the meeting people were asked to vote on whether they thought that an interest should be registered in the land around Kinghorn Loch. Of the attendees, 98% voted to register an interest in the land. People who were interested in being involved in the Steering Committee were asked to stay behind at the end of the meeting. Forty people put themselves forward for the group. This group eventually became Kinghorn Community Land Association, a Community Body and Company Limited by Guarantee.

PROCESS OF MAKING THE APPLICATION

At the beginning of February 2005, as the Steering Group very gradually evolved into Kinghorn Community Land Association, rumours emerged that a section of the land around the Loch was on the market. Pittards plc, who were the owners and operators of the local tannery (which had stopped operating a year or so before), were selling their land. The Steering Group was interested in one section of the Pittards owned land, this being a dog leg of land that bordered the Loch. Within the Local Plan this area was designated as open space.

After prolonged discussion and debate about the Memorandum and Articles, the Land Association became a Company Limited by Guarantee on 15th December 2004. An application to Register an Interest in the land at the loch had not yet been made as the members of group were still getting to know each other, were establishing their roles as Directors of a Company Limited by Guarantee (this was completely new ground to most of the Directors) and had to communicate their actions to the community. On discovering that the land was on the market, Kinghorn Community Land Association began the process of making a late application to the Scottish Executive Environment and Rural Affairs Department (SEERAD).

The first step was to gain Community Body status from SEERAD. This proved to be the first hurdle since the Memorandum and Articles of the Association did not meet the requirements of a Community Body under the Land Reform Act according to the legal department of the Scottish Executive. However, the Land Association's lawyer believed they did meet the requirements. As time was of the essence it was decided that instead of getting into a debate between lawyers the Association had two options. The first option was to call all members to an Extraordinary General Meeting (which required approximately 21 days notice) to change the Memorandum and Articles. The

second option was to establish a new company which met all the requirements demanded by SEERAD.

As time was not on our side, the second option won when put to the vote by Kinghorn Community Land Association's Directors. A retired member of the group spent hour upon hour putting together the new Memorandum and Articles using a model taken from the J & H Mitchell WS website (www.hmitchell.co.uk). It was this same legal firm that had assisted with establishing the Association's original Memorandum and Articles. A draft of the constitution of the new company was sent to SEERAD to ensure that it would gain Community Body status on incorporation.

Kinghorn Community Land Association 2005 (KCLA) was born on 21st March 2005. KCLA gained Community Body status on the same day. Its aims were still in line with the first company's but this time its constitution had caught up with the Scottish Executive's evolving interpretation of this very new legislation.

A member of KCLA contacted Pittards on 20th February 2005 to ask if the land was on the market. Pittards stated that it had gone on the market on 7 January 2005 for £3.15 million and that they wished to sell it as one lot and not broken down into separate parts.

On 23 March KCLA submitted its late application (under the terms of the Act) to Register an Interest in the land. A letter was sent to Pittards from SEERAD on 5 April 2005 notifying them of KCLA's late application and giving them until the 26 April 2005 to respond. No response was received. On 4 May KCLA received a letter from SEERAD stating that the application to Register an Interest in the land was successful. This area of land became known as K1. Fife Council's elections staff had very helpfully said that they would assist with the postal ballot necessary to test community support for the land purchase. SEERAD officials had also kindly arranged to visit Kinghorn on 19 May to discuss KCLA's late application being accepted. However, on arrival, SEERAD brought the news that they had received a letter that morning from Pittards stating that the land (K1) had been conditionally sold on 24 December 2004. This came as a huge shock to the Land Association and SEERAD especially considering that Pittards had stated in March that the land was only put on the market in January of that year!

After the Directors had taken the news on board they contacted their MSP and lawyer for advice on a possible legal challenge. Had the seller apparently backdated a sale agreement to a date prior to its being publicly advertised for sale, just to frustrate the intentions of the Act? Advice received indicated that a challenge would be expensive and not necessarily successful, particularly if an option agreement had been in place which could make a sale exempt from the Community Right to Buy. But then why did the seller market it?

KCLA decided to move on and to take a more in-depth look at how the Association could identify and help achieve the aspirations of the local

community for the Loch area. It thus embarked on a major programme of consultations amounting over the next year and half to more than 500 hours of the Board's time and 600 hours of consultees' time. The Land Association consulted most landowners around the loch informing them of what was happening and asking for their opinions. Loch users and other groups in the local community and individuals were consulted. An open information meeting was held with a participatory appraisal of the Loch area and a consultative ballot. Stakeholders and potential partners were engaged in a variety of discussions which included talks with the local authority and other agencies. KCLA also engaged with the Kinghorn public and beyond through consultations at the Craigencaft Festival, newsletters, recruiting more than 100 members of the Association and presentations to the Rotary and Community Council. These efforts culminated in a public meeting to report on what had been said and to develop a vision for the Loch and its surrounds. The resulting vision statement for Kinghorn Loch and surrounds is:

- of a beautiful, peaceful yet accessible and vibrant place
- with a sustainable balance of environmental, educational, economic, leisure and social pursuits
- enjoyed by all people of Kinghorn and beyond and
- secured by care, excellent stewardship and community ownership.

Two Directors of KCLA attended a meeting in Dunblane in early 2006 which had been organised by Mark Ruskell MSP in order for Community Bodies to share their experiences. It was from attending this event and through their previous experience that the KCLA Directors realised that it was important to Register an Interest in land as soon as possible before landowners could agree options for it (as had happened with K1).

At the beginning of 2006 it was decided that KCLA 2005 was ready to begin the process of applying to Register an Interest in 18 other plots that form the bowl of land surrounding Kinghorn Loch and which provide access to it for the town. Taking the advice of those who had attended the meeting in Dunblane it was decided that the applications should be submitted as soon as possible, with the process taking place as quickly as possible so that landowners were not alerted until it was too late for them to arrange for others to have options on the property. KCLA had learnt from its first application just how difficult dealing with landowners can be. KCLA met with Kinghorn Community Council to inform them it was submitting a number of applications but that KCLA was reluctant to divulge exactly which areas of land were included until such time as the petition was available to sign.

A weekend in June was set aside for petition signatures to be collected. KCLA 2005 had received agreement from SEERAD that one petition could be used for all the applications as long as it was accompanied by a detailed map illustrating the various sections of land. SEERAD had worked with KCLA to agree the wording on the petition to ensure that it met the Executive's requirements.

The further areas of land in which KCLA wished to Register an Interest were named K2, K3, K4 and so on up to K18. Giving them precise labels, referenced to a map, made it absolutely clear to the petitioners for over which areas of land KCLA was seeking to register an interest. Over 600 signatures were collected at the petition signing weekend. It was the intent of KCLA to submit the 18 applications as soon as possible after signatures were collected. SEERAD was not prepared to accept draft applications for comment and so the first applications for Registration of Interest in 18 plots were made in full at the end of June 2006. This was a lot of work for only a small group of Directors. At the same time KCLA wrote formally to all landowners explaining the application to register their land, advising where to get further information and inviting each landowner to open negotiations for sale by agreement outwith the registration process.

In the summer, KCLA received from SEERAD four pages of written queries about the applications as well as further queries in subsequent discussions. It took until October before the applications were finally submitted with the further details requested by SEERAD. The comments covered subjects such as asking KCLA to provide further information on land uses, strengthening the reasons why the applications are in the public interest and extending the argument about why registering an interest is compatible with the sustainable development of the community.

On receipt of the applications at the end of October 2006, SEERAD wrote to the landowners informing them of these applications.

Around this time, Kinghorn Community Council apparently received a couple of letters about the actions of the Land Association. Consequently the Community Council decided to hold a public meeting about the applications as they felt that these had been submitted without much opportunity for public debate. The reasons for this state of affairs were again explained by KCLA. A public meeting was held in late December which attracted a healthy turnout of around 100 people. Representatives from SEERAD attended, KCLA Directors and members were present, and several landowners appeared on the night. Debate took place over several hours with questions being asked of SEERAD, KCLA and the Community Council. KCLA left the meeting with a strong sense of community support for its actions.

A response to the applications was expected from SEERAD after the 64 day period stipulated in (Section 37 (17) of) the Act. This period came to an end at the beginning of January 2007. Parliament stopped business at the end of March due to the upcoming elections in May although Ministers remained in office with the power to determine the application. A new Minister was appointed in late May and KCLA received a response on Saturday 9th June stating that all 18 applications had been accepted. It took the Scottish Executive 222 days (over 7 months) to reach a decision and to inform the Kinghorn community.

TIMELINE OF DATES

Open Meeting for future of Craigencait Ecology Centre; Steering Group set up
- *March 2004*

Kinghorn Community Land Association incorporated - *15 December 2004*

Kinghorn Community Land Association 2005 incorporated – *21 March 2005*

Kinghorn Community Land Association 2005 gains Community Body status –
21 March 2005

Application to SEERAD to Register an Interest in K1 – *23 March 2005*

KCLA 2005 find out its application has been successful – *4 May 2005*

Meeting with SEERAD; K1 already optioned – *19 May 2005*

Open meeting: consultation feedback and vision statement - *21 February 06*

Petition signatures collected in Kinghorn High Street - *24 June 2006*

Initial submission of 18 applications to SEERAD – *June 2006*

Revision of applications based on advice from SEERAD – *July to October 2006*

18 Applications accepted by SEERAD to Register an Interest in additional areas of land – *30 October 2006*

Public meeting held (organised by Community Council) – *14 December 2006*

Decision from Ministers received on the applications to Register an Interest in 18 areas of land – *9 June 2007*

DECISION MAKING BY SCOTTISH MINISTERS

The application to Register an Interest in the land named K1 seemed to be fairly straightforward, even though it was a late application. KCLA was asked by SEERAD why it had taken so long to submit its application when the initial Steering Group meeting had taken place about one year previously. The answer was simple - the people involved (all volunteers) shared a common passion but knew little about setting up a company, acting as directors, representing the local community, not to mention mastering the Land Reform legislation and application process. They had had a lot to learn and it had been a steep learning curve to reach the present stage.

KCLA was delighted to hear that the Ministers had accepted its application and that there was possibly an opportunity to buy. It was then extremely disappointing to hear that the land had already been conditionally sold.

It appeared to take an excessive amount of time to receive an outcome for the further 18 applications that were made. No detailed explanation has been given for this. Indeed KCLA have considered asking SEERAD's question "why has it taken so long?"

Officials from SEERAD were, however, very helpful to KCLA, offering to attend meetings when their assistance was required.

LESSONS LEARNED - CONCLUSIONS AND ADVICE FOR OTHERS

Throughout the process of submitting the application for K1 and Registering an Interest in that area of land and then submitting applications for the additional 18 areas of land, KCLA has learnt many lessons. As the legislation is still fairly new it has been obvious at times that there is no protocol in place for how to deal with certain aspects of making an application. It is clearly unknown territory for all and everyone (including the Scottish Executive) is on a learning curve.

When submitting the eighteen applications to SEERAD the KCLA Directors quickly realised that it was not going to be a rapid process. The amount of information and detail that had to be included in the applications (especially because there were so many) was fairly extensive. Each area of land has to stand on its own merit and applications must be strong in their own right and not rely on the applications as a whole. Just going through the application process demands a lot of time and input from those who are generally working in a voluntary capacity. KCLA Directors already realise that, since the applications have been accepted, when the Right to Buy is eventually activated on any one area of land, a lot more effort to a very tight timescale will need to be injected. If land can be bought by agreement then this would be a preferred option for KCLA rather than through the Right to Buy process.

As was demonstrated through the experience with K1, conditional offers for purchase can appear from nowhere. If it has happened once, as in this instance with no questions asked, it will surely happen again. The lesson for Community Bodies is to Register an Interest in land as quickly and quietly as possible. The resources available to landed interests are generally far greater than to a Community Body. Minnows swimming with sharks comes to mind. Good timing is therefore one of the few tactics that the community can use to lever some commercial advantage in a highly competitive property market with enormously powerful commercial interests. We hope that Parliament decides from the pending review of the legislation to redress the balance concerning option agreements.

The downside to attempting to Register an Interest as quickly and quietly as possible is that the application/s may come as a surprise to some members of the community. At this stage it must be remembered that the registration process merely gives the community the *option* to buy should the land come on the market, at which point a ballot will be conducted. The community need its options in place to be in the race.

The law puts a Community Body into a potentially powerful position locally. That is the precise intention of Parliament in promoting Land Reform and Community Ownership. Working in partnership with others can deliver considerable and well recognised community benefit. However this could be seen as a threat to other existing organisations and individuals within the locality however and, when coupled with the need to protect the community's negotiating position, it may be construed as secretive and so lead to hostility and a loss of trust.

KCLA has had several difficult discussions with Kinghorn Community Council throughout the process, but we understand such tensions exist in other areas where Development Trusts have entered the local political scene. Enabling a wide sense of ownership, as well as helping local councillors or a Community Council to appreciate the commercial realities, is essential. Some of the distrust could have been avoided for KCLA if we had thought to ask for or been offered the opportunity to discuss commercially sensitive matters, i.e. potential land registrations, in camera, as specifically permitted by the Fife Scheme of Community Councils. Even then a basis of trust needs to be established. Individuals with potential conflicts of interests must be prepared to withdraw from discussions when necessary. Trying to ensure that all stakeholders, even those that you may not think have much to say, are consulted on the actions of the Community Body could keep conflict to a minimum.

The efforts by KCLA to use timing to best effect may not have paid off because of the delays in the resubmission. In hindsight, we might have been naïve in writing to owners with our intentions at the time of our original submission, given that it was four more months before SEERAD finally accepted the applications. It remains to be seen if KCLA is again frustrated by option agreements, about which we can discover nothing until land is offered for sale.

There is no doubt that 18 simultaneous applications (40% of current applications on the Register) were a major task to handle for SEERAD. However, KCLA did not expect that a response to the applications to Register an Interest would take such a length of time. The frustration for landowners blighted by prohibitions is understandable. As yet, however, one attempted breach of the prohibition has not met with the full weight of the law and nor perhaps will it be in the circumstances*. The lesson here must be for the Executive to ensure that sufficient resources are allocated to process applications timeously, lest the legislation be undermined.

From KCLA's experience, the Land Reform Act is not designed for those that lack the drive and perseverance to gain community control over property. A great deal of time and effort is necessary to achieve the goals set. Of course once the initial hurdle of acquiring the land has been conquered then it has to be managed!

On a more positive note, a variety of people from a mix of backgrounds and ages have been involved in KCLA and many new friendships have been made over the past few years. Regardless of the success of the organisation itself, the Land Association has done wonders for the spirit of community in Kinghorn.

* The breach was that a landowner was trying to sell the same area of land that KCLA had a pending application to register an interest in with SEERAD.