

# APPENDIX I

PAPER 13 - 06/485/CP

Strone Cottage  
Strone Road  
Newtonmore  
PH20 1BA

Cairngorms National Park Authority  
Ground Floor  
Albert Memorial Hall  
Baillater  
Aberdeenshire  
AB35 5QB

18th April 2010

Your ref: 06/485/CP

Dear Mr McKee,

I am writing with regard to our recent correspondence in connection with the problems we have been having obtaining a mortgage due to the Section 75 Agreement and thank you for letting us have this time to address you.

On the 26<sup>th</sup> February 2007 we were delighted to receive notification that we had been granted Planning permission to build on the croft. Alister has total commitment to the crofts belonging to him and his father and therefore the tie of the Section 75 was not a problem and we fully supported the reasoning behind this condition. We happily entered into the Section 75 Agreement because our vision for the future, for us and our family, is to live on and work the croft which has been in the family for at least 180 years.

Alister has come into crofting through the Highlands and Islands Croft Entrant Scheme. To participate in this scheme he has written a development plan of how he will progress the croft over the next few years. His scheme has been scrutinised by the Crofters Commission and signed and accepted by both parties. He has completed the work for year 1 along with the majority of year 2. (Attachment 1) Alister works most weekends and some nights through the week with his father on his croft and would love to do this on a full time basis. He also takes some of his annual leave during the week of silage making on the croft so that he can help at this busy time. The Crofters Commission backed the application for planning permission because they knew of Alister's commitment to the croft. They also welcome the introduction of young, enthusiastic blood into a crofting township and Alister's energy and skills will be a great asset in the maintenance of the common grazings. (Attachment 1a)

We are a young family currently living in 2 rooms with Alister's father. Our son, Archie, who is 2 and 3/4, is still in a baby's cot at the end of our bed. Our bedroom has an en-suite shower room with a toilet. Our living room has a makeshift kitchen and is very small. As you can imagine we were looking forward to having a house of our own and our son was looking forward to having his own bedroom.

Before we started the build we made sure that we had a mortgage secured. This was with the Halifax/Bank of Scotland. Prior to requesting any payment Alister had signed a Standard Security with the Bank of Scotland (Attachment 2). We received another letter from David Finlay at Macleod & MacCallum on 21<sup>st</sup> September 2009. He advised that they had received no loan funds but he had

spoken to 4 different people at the Halifax who confirmed the mortgage could go ahead on the basis of the Certificate of Title which they already had and the settlement date would be 25<sup>th</sup> September. (Attachment 3) They actually transferred the first payment into Macleod and MacCallum's account and then decided to withdraw their offer at the very last minute. When our solicitor spoke to the Halifax they advised that they were not willing to lend because of the Section 75 Agreement as they would not be able to sell the house if we defaulted on the payment. (Attachment 4) Our solicitor went back and forward to the Halifax for two weeks asking if they would re-survey the property taking into account the occupancy restrictions however their decision was final. We continued with the build as winter was approaching and we wanted to get the house wind and water tight so that it was not damaged in bad weather. Family and friends confirmed they would help out with the second stage payment until our mortgage had been secured. Never in our wildest dreams did we imagine what lay ahead for us.

Our Mortgage Broker called to say he had been in contact with the Ecology Building Society and things seemed hopeful. We forwarded information regarding the Section 75 Agreement and they were willing to consider the mortgage with this restriction in place. (Attachment 5) They asked for further information regarding the eco friendliness of the build and were fully satisfied that it indeed met a very high standard. However despite more correspondence over 3 months they came back to us on 22<sup>nd</sup> January and said they were not willing to lend, again due to the Section 75 Agreement. At this point Allster and I were distraught. We spoke to the National Park and the Crofters Commission who both spoke with the Ecology Building Society to try and resolve the situation and confirm that the property would still be marketable. Despite these interventions they still refused. Our solicitor put us in touch with their in-house mortgage lender. He referred us to the Royal Bank and things progressed. Again they were considering the mortgage with the restriction in place but we were turned down yet again due to the Section 75 Agreement. (Attachment 6) This was an extremely worrying time for us and caused us a huge amount of stress. I telephoned the Scottish Building Society and the Clydesdale Bank but they advised that they would not lend with this restriction in place. Had we known that we would be unable to secure the mortgage we would never have started building but the fact was we had a mortgage secured with the Halifax and that was why we went ahead.

I went to visit Fergus Ewing to see if he had any knowledge about this and perhaps to see if he could help us in any way. He too has spoken to the Royal Bank and to you regarding this in an effort to try and help us.

When we submitted the plans for the house, we knew we wanted to live there for the rest of our lives and have more of a family so we had to make sure the size of the house would meet our needs. We were not asking for the full amount of mortgage. The house was valued at £265,000 and we were looking to borrow approximately 40% of this amount. We had saved hard to enable us to make a substantial contribution towards the cost of the house and we made the first payment ourselves using these funds. We also had to pay £11,500 to SSE to underground the electricity cables which ran through the site and £7,000 for groundwork's on the site. Fortunately, Allster was in a position to do some of the ground work himself as he works full time with heavy plant.

We have absolutely no intention of building this house to sell. As mentioned above we happily entered into the Section 75 Agreement because we both see the future for us and our family based

on the croft which has been in the family for at least 180 years. Alister hopes to pass his croft on to our son. There is a plaque on Newtonmore Community Woodland Trust's wildcat trail which states *'The Mackenzie Family now work several crofts which were occupied by their Macdonald ancestors for many generations. One of the family came to Strone when he had to leave the township of Eastertown in Glenbancher as the small farms were amalgamated. His family had previously been evicted from Glenmore, below Cairngorm to make way for a deer forest'*. Alister is committed to helping in his home village which he loves. Using his skill with plant, he annually volunteers to help put up and take down the winter lights throughout the village and also with preparation of the venue of the Newtonmore Highland Games. Our local heritage is important to us and our son, Archie, attends Ceuman Beaga, a Gaelic-medium toddler group in Aviemore. He is registered to start the Gaelic-medium nursery in Newtonmore in August. Alister's granny, who lived in Strone, was one of the last native Badenoch Gaelic speakers.

The **ONLY** reason we would like to have the Section 75 Agreement removed is so we can secure a mortgage on the property and be able to run the croft Alister has dreamed of for many years following in the footsteps of his father and grandfather. We are asking for this on compassionate grounds and Alister will happily give a personal undertaking to run the croft and not to sell the house.

If we are unable to secure a mortgage on this property then we will find ourselves in serious financial difficulty. We will have to declare ourselves bankrupt and hand the house and croft over to Incomer. Having endured 7 months of uncertainty, stress, worry and additional legal cost our house is now nearing completion and our builder expects to be finished the first week in May.

We now ask you to look favourably at our situation and remove the Section 75 Agreement or substitute it with a less formal agreement in order that we can secure a mortgage, move into our family home and start to run this croft.

Yours sincerely

Elaine Paulin

Alister Donald Mackenzie

Donald Mackenzie

# HIGHLANDS & ISLANDS CROFT ENTRANT SCHEME

## AMENDED DEVELOPMENT PLAN

ALISTAIR MACKENZIE

CROFT: STRONE OF GLENBANCHOR - C/21652

File Ref: HICES/W024

ITEM	AMOUNT	UNIT COST £	GROSS COST £	RATE OF GRANT %	AMOUNT OF GRANT £	NET COST £
<b>Year 1</b>						
Access road Ditching	100 m	10.00/m 0.45 /m	8000.00 45.00	CCAG 50%	4000.00	4000.00
<b>YEARLY TOTAL</b>			<b>8,045.00</b>		<b>4,000.00</b>	<b>4,045.00</b>
<b>Year 2</b>						
Agricultural Building (incl water supply)	1		17,883.95	CCAG 50%	8942.00	8942.00
Electricity supply			11,892.20	CCAG 50%	5946.60	5946.60
Fencing	150m	4.75/m	712.50	CCAG 50%	356.25	356.25
<b>YEARLY TOTAL</b>			<b>30,488.65</b>		<b>15,246.85</b>	<b>15,246.85</b>
<b>Year 3</b>						
Aquiring livestock			2000.00			2000.00
<b>YEARLY TOTAL</b>			<b>2,000.00</b>			<b>2000.00</b>
<b>GRAND TOTAL</b>			<b>40,533.65</b>		<b>19,246.85</b>	<b>21,291.85</b>

The total cost of implementing this plan is £40,533.65. Available\* grant assistance has been calculated at £19,246.85 leaving £21,291.85 to be met by the new entrant.

The management premium available to assist with this development is calculated as £21,291.85 X 35% = £7,452.14. Therefore the maximum management premium of £3,000 is still payable on the basis of this amendment.

\* Subject to ongoing appeal for the electricity supply.

# Macleod & MacCallum

Solicitors, Estate Agents & Financial Advisers  
28 Queensgate Inverness IV1 1YN

Partners:  
Douglas R. R. Graham  
Graham P. Watson  
Alison M. Martin  
Flora J. Campbell  
Lindsay Bishop

Caroline J. M. Graham  
Morag S. MacIntosh  
Peter F. Mason  
Corra L. Irwin

Financial Consultant:  
Mike J. Davidson

Insurance Manager:  
Flora Brown

FIRST CLASS  
Alister D. MacKenzie, Esq.  
Strone Cottage  
NEWTONMORE  
PH20 1BA

Our Ref DF/AA/K.1346.0003  
Your Ref

21 August 2009

Dear Alister

**Alister Donald MacKenzie**  
New House at Strone Croft, Glenbancher, Newtonmore, Inverness-shire

I refer to the above and in terms of the Law Society of Scotland Practice Guidelines, I take this opportunity to confirm my comments to you.

As discussed you have now signed a Standard Security in favour of the Bank of Scotland.

This is a legal document giving security of the property which you are purchasing to Bank of Scotland in return for Bank of Scotland providing the mortgage loan to you. As a result if you fail to meet any of Bank of Scotland terms and conditions, they have the legal right to obtain repayment of the loan. The legal rights of Bank of Scotland include repossession and sale of the property and to remove your furniture and belongings if you do not do so.

Further, I would reiterate that, whilst the security granted by you may principally be for the mortgage amount, it is also what is known as an "all sums security". This simply means that Bank of Scotland now have security over the property, not only for the mortgage amount but for any other money owed to Bank of Scotland by you. As a result, should you have an overdraft facility with Bank of Scotland or obtain a personal loan from Bank of Scotland, Bank of Scotland are entitled to use this security over the property to insist on the repayment of the overdraft or personal loan.

If you should have any queries with regard to the foregoing please do not hesitate to contact me.

Yours sincerely

David Lindsay  
Solicitor

Law Society of Scotland accreditations:

Caroline J. M. Graham is a Specialist in Family Law and is a Family Law Mediator

Flora J. Campbell is a Family Law Mediator

Macleod & MacCallum are regulated for legal services by the Law Society of Scotland and are authorised and regulated by the Financial Services Authority



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28 Queensgate Inverness IV1 1YN

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Mike J. Davidson

**Insurance Manager:**  
Flora Brown

FIRST CLASS  
Alister D. MacKenzie, Esq.  
Strone Cottage  
NEWTONMORE  
PH20 1BA

Our Ref DF/AAK.1348.0003  
Your Ref

21 September 2009

Dear Alister

**Alister Donald MacKenzie**  
New House at Strone Croft, Glenbancher, Newtonmore, Inverness-shire

I contacted Halifax today as we have received no loan funds from them in connection with the Certificate of Title I sent them back on 28 August 2009.

After spending some considerable time discussing the matter with four different Advisers at Halifax plc, it was finally confirmed to me that the mortgage can go ahead on the basis of the Certificate of Title that was faxed to them on 28 August (and which they received by post on 2 September).

A settlement date of Friday 25 September has been agreed.

I will no doubt have to chase up Halifax again during the course of the week to ensure that they keep to this date.

If you have any queries, please contact me.

With Best Wishes  
Yours sincerely

David Findlay  
Solicitor

Law Society of Scotland Accredited:

Caroline J. M. Graham is a Specialist in Family Law and is a Family Law Mediator

Flora J. Campbell is a Family Law Mediator

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RE: Strone of Glenbanchor [IWOV-LIVE.FID80428]

From:

David Findlay

Sent: 30 September 2009 12:41:11

To: 'David Scott'

Cc:

David

**Ailster Donald Mackenzie  
New House, Croft Strone of Glenbanchor  
Cairngorms National Park Authority**

I refer to our telephone conversations and email correspondence at the beginning of the week.

Unfortunately Halifax has confirmed categorically to me that they will not lend due to the Agreement between our respective clients. I had written to Halifax explaining in detail the nature of the obligation and why, in our view, their security would still be valid, but they have come to a commercial decision not to lend in this instance.

Obviously my client is very upset as he and his partner were anticipating that loan funds would come through shortly. Their house is nearly completed and they are being chased by the builder for payment.

Would your clients consider in these circumstances agreeing to an amendment to the Agreement whereby the lender would be entitled to repossess and sell the property separately from the surrounding croft land, but where any sale not by the

David Findlay

Macleod & MacCallum

Solicitors

28 Queensgate, Inverness IV1 1YN



## A MacKenzie mortgage

From: Jon Carter [REDACTED]  
Sent: 27 October 2009 09:48:24  
To: [REDACTED]  
Cc: elatnepaulfr [REDACTED]

Hi David

Please see below response from the Ecology BS

Do you or Aister have this information they require to take this further

Regards

Jon

From: Christine Walker [REDACTED] On Behalf Of loans  
Sent: 26 October 2009 16:06  
To: Jon Carter  
Subject: RE: Mortgage enquiry

Thank you for your email

The Society would be able to consider a mortgage application with the mentioned restriction. However, we would need further information on the build – energy rating/rating standard to be achieved on completion of the build, types of material to be used.

I suggest you contact the Society to discuss further.

Regards

Christine

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From: Jon Carter [REDACTED]  
Sent: 26 October 2009 10:48  
To: loans  
Subject: Mortgage enquiry

Hi

I have a self build mortgage enquiry. The expected completed value of the property is £265,000 and my client wishes to borrow £100,000. The client owns the land and the build has already begun. The clients income is sufficient for the loan amount.



CROFTERS COMMISSION

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**HIGHLANDS AND ISLANDS CROFT ENTRANT SCHEME PARTNERSHIP**

Mr Alistair MacKenzie  
Strone Cottage  
Newtonmore  
Inverness-shire  
PH20 1BA

Our Ref: HICES//024

Date: 16 May 2008

Dear Mr MacKenzie

**HIGHLANDS AND ISLANDS CROFT ENTRANT SCHEME  
CROFT: STRONE OF GLENBANCHOR (SHARES), KINGUSSIE & INSCH, INVERNESS – C/21652**

I refer to your application under the above Scheme. The Highlands and Islands Croft Entrant Scheme Partnership (hereinafter referred to as the Partnership) have approved your request for financial assistance under the Highlands and Islands Croft Entrant Scheme.

The conditions applying to this offer are set out below. Please read them carefully and, if they are acceptable sign both of the enclosed copies of this letter and the Contract Plan Details, retaining one set for your records and returning the other set. If a signed copy of this letter is not received within one month of the date of this letter, the offer will automatically withdrawn.

**CONDITIONS OF OFFER**

**1. Stage Payments Of Management Premiums**

A Management Premium of £3,000 will be available for the implementation of the Croft Development Plan on the following basis 50% on the return of this contract letter, 25% after successful completion of Year One of the Development Plan and 25% on successful completion of the Three Year Development Plan. Payments are subject to recalculation at each stage. If the costs incurred are significantly lower than those estimated, the Management Premium will be reduced proportionately.

**2 Variations**

We reserve the right to vary this approval and amend the conditions in respect of your application. In the event of a variation being introduced the Crofters Commission will provide written notification of the proposed action and allow 21 days for you to respond.

I believe the property is being built to a high standard of eco friendliest including solid wood windows doors, etc and solar panels. My problem is this restriction shown below (email from the solicitor ). Before I complete an application and send it to you, can you confirm if this would be a problem, or if you require further information

Thanks Jon Carter

Email from solicitor :

Jon

Thanks for your email.

The lender must be advised of the following:

**"The property that is owned by Alistair Mackenzie is subject to a Section 75 Agreement, which was insisted upon by the Cairngorms National Park Planning Authority. It is important to emphasise that that the restriction on the property which is described below is to preserve the amenity and environment of the Cairngorms National Park, and in particular to prevent either over-development or ownership of houses as holiday homes when there is strong local demand for housing. Both of these objectives could be considered by a lender with environmental and social values such as the EBS.**

The restriction on the property is twofold:

- (i) the house cannot be sold separately from the immediately surrounding croftland extending to roughly 1 ha
- (ii) the house must be occupied by someone working the Croft (extending to 1ha) or his or her dependents

In our view the property is still marketable and there would be a demand for such a house and associated land on the open market, but the pool of potential purchasers would be smaller. Any lender should take the advice of a surveyor who is fully conversant with the Agreement"

If you require further info., please get in touch.

David

David Findlay

Macleod & MacCallum

Solicitors

28 Queensgate, Inverness IV1 1YN

### **3 Period Covered by Offer**

The period covered by offer, within which all Highlands and Islands Croft Entrant Scheme Management contributions must be claimed, is not later than 16 November 2011.

### **4 Special Conditions**

It is a condition of this offer that the croft will be retained and developed by you as indicated in the Development Plan. Failure to implement this plan will entitle the Partnership to immediate repayment of any advanced Management Premium.

You are also required to fulfil all requirements for grant assistance towards items included in your plan.

### **5 Provision and Retention of Documents**

You must provide the Scheme Project Officer with detailed documentary evidence of expenditure, payments (and where appropriate grant assistance relating to all works satisfactorily undertaken in implementing your plan.

In addition, you must retain all documentation supporting your application for a period of not less than 5 years and agree to permit the projects or documentation to be inspected by an Officer appointed by the Partnership.

### **6 Publicity**

The Partnership may publicise this assistance and include it in a public record of cases, both to demonstrate how its resources are used and to give examples of the types of development it is able to assist.

### **7 Liaison**

Throughout the duration of your plan you will liaise with the Scheme Project Officer Finlay Matheson.

### **8 Breach of Agreements and Disputes**

- a) Should you contravene any of the above terms and conditions without prior written permission, the Partnership shall have the right to terminate this Agreement on 7 days notice to seek repayment of any sums paid to date.
- b) Any dispute arising out of this Agreement shall be referred to mutually agreed arbiter whose decision shall be final and binding on both parties.

### **9 Legal Framework**

This Agreement shall be construed and the rights and obligations thereunder determined, according to the Law of Scotland.

Mr Alistair MacKenzie (cont'd)

16 May 2008

If the terms and conditions of this offer are acceptable to you and, please sign and return this letter and Details of Contract to the Development Team, Crofters Commission, Castle Wynd, Inverness, IV2 3EQ. A business label is enclosed for your use.


Yours sincerely

  
Miss K M Mackenzie  
On behalf of the Highlands and Islands Croft Entrant Scheme Partnership

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The Management Premium detailed above and the enclosed Contract Plan Details are hereby approved on behalf of the Partnership.

Signed: \_\_\_\_\_

  
Highlands and Islands Croft Entrant Scheme Partnership

Date: 16/05/08

AGREED AND ACCEPTED

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

ENCS: Copies of the Approval Letter and Contract Plan Details. One set to be retained and one set to be returned as instructed.

Direct:  
E-mail:



Mr. Alister Donald MacKenzie,  
Strone Cottage,  
Strone Road,  
Newtonmore,  
Inverness-shire.  
PH20 1BA.

Date: 19 th April 2010

Dear Mr. MacKenzie,

The Crofters Commission approved applications by your father to subdivide and assign part of this grazings share and part of his croft to yourself, the latter being effective from 1 st June 2007. To enable you to be on hand to work this new croft, you decrofted an area of 0.04hectare for the purpose of providing a site for your croft house.

The Crofters Commission have approved these applications since it is important that young crofters such as yourself, can succeed to the tenancies of family crofts and remain in the crofting communities where they have been brought up, and in which they will form a key part in the future(D.V.).

The provision of a house on your croft is therefore necessary for you and your young family, to work this newly formed croft, engage in communal activity on the common grazings, and to be near your father when he requires assistance with his crofting activities.

It will also provide you with a base in the community from which you are able to continue with your current employment.

I also note that you have a Scotvec certificate in Agriculture, and have completed the first stage of a sheep shearing course. As you are well aware, sheep shearing skills are much in demand in livestock rearing areas, and these skills could be of considerable benefit to yourself and other sheep keepers in the Badenoch and Strathspey area.

I hope you are successful in your efforts to settle your family in your new home on this croft, and together make a large contribution to crofting, and to the wider community in the Newtonmore area.

Yours sincerely,

Uilleam Smith

Castle Wynd Inverness IV2 3EQ

  
[www.crofterscommission.org.uk](http://www.crofterscommission.org.uk)