

# AGENDA ITEM 9

## APPENDIX I

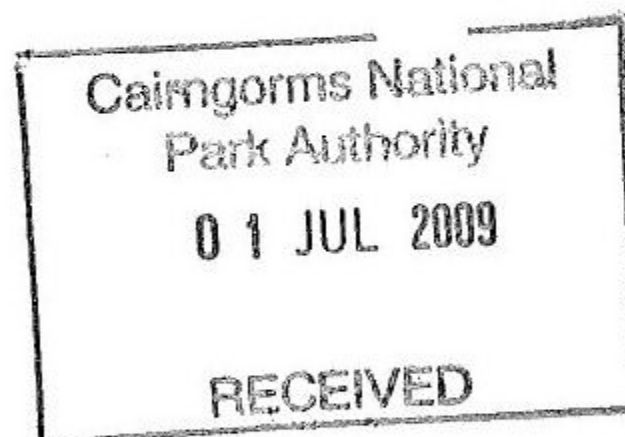
2021/0185/DET

SECTION 75 AGREEMENT  
08/423/CP

Hilary MacBean  
Cairngorms National Park Authority  
Albert Memorial Hall  
Station Square  
Ballater  
AB35 5QB

Ref: SM.DSS.NW  
Your Ref: 08/423/CP  
Date: 29 June, 2009

Also by fax : 01339 755334



Dear Hilary

**Fiona Powell**

**Section 75 Agreement – Mullingaroch Croft, Street of Kincardine, Boat of Garten**

I refer to the above and confirm that I have now received a copy of the completed Section 75 Agreement, together with the Keeper's acknowledgment confirming that the applicants have submitted the Agreement to be registered in the Register of Sasines. Our fees in respect of this matter have been paid and therefore the planning consent can now be released to the applicant.

Could you please drop me an email to confirm that this will be done, and I shall advise the applicant's solicitor accordingly.

If you have any queries then please feel free to contact me.

A copy of the completed Agreement is enclosed for your reference.

Yours sincerely

**David S Scott**  
**Associate - Ledingham Chalmers LLP**

MINUTE OF AGREEMENT

Munro & Noble  
Solicitors  
26 Church Street, Inverness IV1 1HX

between

CAIRNGORMS NATIONAL PARK AUTHORITY, established by and acting under the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 as Planning Authority in terms of Article 7(3) of the 2003 Order and Section 46 of the Town and Country Planning (Scotland) Act 1997 and having a place of business at Albert Memorial Hall, Station Square, Ballater (who and whose successors are hereinafter referred to as "the National Park Authority")

and

FIONA MARGARET POWELL, residing at One Meadow Gardens, Hopeman, Elgin IV30 5PN ("the Proprietor")

---oOo---

CONSIDERING THAT:

- (i) The National Park Authority has responsibility for determining planning applications within the National Park area in terms of Article 7 of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 and Section 46 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the Act").
- (ii) The National Park Authority is entitled in terms of Section 75 of the Act to enter into an Agreement with any person interested in their area (in so far as the interest of that person enables them to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be described by the Agreement.
- (iii) The Proprietor is the heritable proprietor of ALL and WHOLE (FIRST) the two areas of ground lying on opposite sides of the road from Nethy Bridge to Coylumbridge in the Parish of Abernethy and County of Inverness extending in all to 15.117 acres or thereby known as Mullingaroch Croft (otherwise Mullingaroch Crofts 1 and 2), Boat of Garten and being the whole subjects more particularly described in, disposed by and shown delineated in red and coloured pink on the plan annexed and executed as

relative to Feu Disposition by the Trustees of the Right Honourable Nina Caroline Ogilvie Grant in favour of Allan Alexander Grant dated 3<sup>rd</sup> 4<sup>th</sup> & 18<sup>th</sup> May and recorded in the Division of the General Register of Sasines for the County of Inverness on 27<sup>th</sup> June both months in 1979; But that under exception of (PRIMO) ALL and WHOLE the subjects in the said Parish and County more particularly described in and disposed by the Conveyance by Allan Alexander Grant with consent in favour of The Highland Regional Council dated 20<sup>th</sup> July and 20<sup>th</sup> August and recorded in the said Division of the General Register of Sasines on 25<sup>th</sup> September all months 1987; and (SECUNDO) the subjects in the said Parish and County more particularly described in and disposed by the three Feu Dispositions by Allan Alexander Grant in favour of (a) Ronald Griffiths and Shirley Elizabeth Griffiths dated 26<sup>th</sup> September and recorded in the said Division of the General Register of Sasines on 21<sup>st</sup> October both months of 1988 (b) John Weir Davison and Sheila Joyce Davison dated 26<sup>th</sup> September and recorded in the said Division of the General Register of Sasines on 3<sup>rd</sup> November both months of 1988 and (c) Reginald Frank Proud and Joan Elizabeth Proud dated 14<sup>th</sup> October and recorded in the said Division of the General Register of Sasines on 9<sup>th</sup> November both months 1988 and (d) that area of ground containing the house and garden ground of Mullingaroch Croft as shown outlined in red on the plan annexed and signed as relative to Disposition by Margaret Michie Grant in favour of the Proprietor dated 7<sup>th</sup> and recorded in the Division of the General Register of Sasines for the County of Inverness on 12<sup>th</sup> both days of November 2007; and (SECOND) ALL and WHOLE that area of ground forming Croftnacarn Lot 2, Boat of Garten in the Parish of Abernethy and County of Inverness extending in all to 17.333 acres or thereby being the subjects more particularly described in, disposed by and shown delineated in red and coloured pink on the plan annexed and executed as relative to Feu Disposition by the Trustees of the Right Honourable Nina Caroline Ogilvie-Grant in favour of Allan Alexander Grant dated 24<sup>th</sup> February and 5<sup>th</sup> & 22<sup>nd</sup> March and recorded in the said Division of the General Register of Sasines on 14<sup>th</sup> May all months in 1982; But that under exception of that area of ground in the said Parish and County extending to 0.68 hectares or thereby comprising Croftnacarn Caravan Park more particularly described in and disposed by Disposition by Allan Alexander Grant in favour of Margaret Michie Grant dated 11<sup>th</sup> and



recorded in the said Division of the General Register of Sasines on 15<sup>th</sup> both days of July 1991 ("the Site")

- (iv) The Proprietor has submitted a planning application to Highland Council ("the Council"), having a place of business at Glenurquhart Road, Inverness for planning permission for the erection of a dwellinghouse on the Site (hereinafter referred to as "the Development") and the said planning application was called in by the National Park Authority (under the National Park Authority's reference 08/423/CP) in terms of its powers under Article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 which makes reference to Section 46 of the Act.
- (v) The Proprietor is the owner of the crofting business which is conducted on the Site.
- (vi) The National Park Authority has resolved to grant full planning permission for the Development subject to certain conditions and has requested that certain other matters pertaining to the Development be regulated in a written Agreement between the parties under the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997 for the purposes of restricting or regulating the Development or use of the Site.
- (vii) The Proprietor is to erect the Development on the Site.
- (viii) The Proprietor has agreed to enter into such Agreement with the National Park Authority.

NOW THEREFORE the National Park Authority and the Proprietor DO HEREBY AGREE as follows:

**(One)      Preliminary Matters**

On recording or registration of this Agreement, the National Park Authority shall issue to the Proprietor the Decision Notice in respect of approval of the application. This Agreement (other than Clause Seven hereof) shall not come into effect until the date the Decision Notice is implemented. The word "implemented" shall be taken in the context

of this Clause to mean the carrying out of a material operation as defined in Section 27(4) of the Act.

(Two)            **Restriction on Occupancy of the Property**

The Proprietor, for herself and her successors in title, hereby undertakes that the Development, once erected, may only be occupied by someone engaged or last engaged full or part time (sufficient to demonstrate a substantive contribution to the occupant's gainful employment) in crofting work on the Site (that being work of an agricultural nature), and by a dependant of such a person residing with him or her, or by the widow or widower of such person. The term "agricultural" shall be construed according to the definition set out in section 277(1) of the Town and Country Planning (Scotland) Act 1997. In the event that the Proprietor ceases to be engaged in such work for any reason whatsoever, the National Park Authority may determine that some or all of the conditions, restrictions, obligations and others contained in this Agreement may be modified, varied or discharged.

(Three)            **Obligations in relation to Disposal of the Property**

The Proprietor, for herself and her successors in title, undertakes that the Development, once erected on the Site, may not be disposed separately from the remainder of the Site.

(Four)            **Obligations in relation to Securities**

In the event of any loan secured over the Site and any property built thereon being called up by the lender, the Proprietor or her successors in title are under an obligation to give written notification to the National Park Authority of this event.

(Five)            **Discharge**

In the event that the planning permission granted by the Decision Notice is revoked or in any way falls prior to commencement of the construction of the Development, then these presents (other than Clause Seven hereof) shall fall and be deemed *pro non scripto* and the National Park Authority shall forthwith grant a Discharge of this Agreement.

In the event of a change to the planning or other circumstances of the Site, which appears to any party to the Agreement or to their successors in title to render any of the conditions, restrictions, obligations and others contained in this Agreement no longer relevant, the parties or their successors in title shall consider whether the said conditions, restrictions, obligations and others should be modified, varied or discharged.

In considering any such modification, variation or discharge, both parties will be required to act reasonably having regard to said changed circumstances. Any variation shall be effective as from the date of recording of the relevant Deed of Variation in the relative Register of Sasines or Land Register and this Agreement shall be deemed to be amended with effect from such date. The Proprietor shall reimburse the National Park Authority in respect of all reasonable legal expenses incurred by the National Park Authority in connection with such further agreement.

**(Six)            Arbitration**

Any dispute arising between the parties hereto as to the interpretation or application of this Agreement, or any part of it, shall be referred for the purpose of arbitration to an Arbiter to be mutually agreed by the parties, and failing agreement appointed by the Sheriff of Grampian Highland and Islands at Inverness, and the decision of the Arbiter, including any award of expenses, shall be final and binding on the parties, and failing such award the cost of any such arbitration shall be borne equally by the parties.

**(Seven)        Legal Expenses**

The Proprietor agrees to reimburse the National Park Authority in respect of all reasonable legal expenses incurred by them in connection with the negotiation, drafting, adjustment, conclusion and registration of this Agreement.

**(Eight)        Validity of Provisions**

Each of the provisions of this Agreement is agreed independently of the others and in the event that any of them are held to be or become invalid or unenforceable for any reason, then the remaining provisions shall continue in full force and effect.

**(Nine)         Burdens**



The terms and conditions of this Agreement are created real and preferable burdens upon and affecting the Site and binding on the Proprietor and their successors as proprietors of the Site from time to time and as such are appointed to be recorded or otherwise to be validly referred to in terms of law in all future conveyances, Dispositions and other deeds relating to the Site.

(Ten)            Restriction on the Disposal of the Subjects

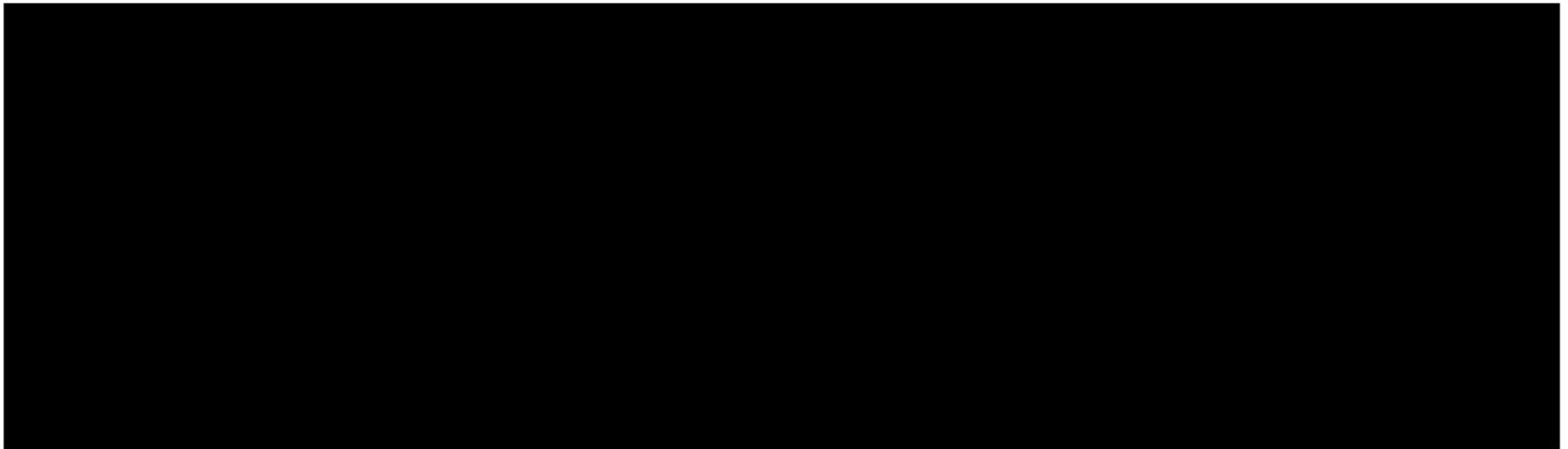
The Proprietors undertake not to convey the Site or any part thereof prior to registration of this Agreement in the Land Register

(Eleven)       Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of Scotland.

(Twelve)       Consent to Registration

The parties hereto consent to registration hereof for preservation and execution as well as for publication: IN WITNESS WHEREOF these presents consisting of this and the five preceding pages are executed by me the said Fiona Margaret Powell at Elgin on the Fifteenth day of May Two Thousand and Nine in the presence of this witness Claire Potts of Nine Baxter Place, Lhanbryde, Moray, IV30 8QE and they are executed for and on behalf of Cairngorms National Park Authority by Jane Hope their Chief Executive at Grantown-On-Spey on the Eighth day of June Two Thousand and Nine in the presence of this witness Margaret Smith of Fourteen The Square, Grantown-On-Spey.





**MINUTE OF AGREEMENT**

Under s 75 of the Town and Country Planning  
(Scotland) Act 1997

between

**CAIRNGORMS NATIONAL PARK AUTHORITY**

and

**FIONA MARGARET POWELL**

2009 / DSS

Subjects: MULLINGARROCH CROFT &  
CROFTNABARN CROFT  
BOAT OF GARTEN

ledingham|chalmers<sub>LLP</sub>

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