

Agenda

**Thirty-third Meeting
Crown Estate Scotland Board
Quartermile Two, Edinburgh and by videoconference call
18 January 2023
10am – noon**

- 1. Standing Items**
 - 1.1 Welcome and Apologies
 - 1.2 Declarations of Interest

- 2. ScotWind Option Monies**
 - * 2.1 ScotWind Option Monies - Current Position BD(2023)33.1
 - 2.2 Direct Costs attributable to ScotWind options Verbal
 - 2.3 Next steps Verbal

- 3. Any Other Business**

- 4. Dates of Next Meetings**
 - 1/2 February 2023 (strategy workshop)
 - 1 March 2023 (quarterly meeting)

*This item will be treated as closed business and the paper exempt from publication in terms of s33(1)(b) of the Freedom of Information (Scotland) Act 2002

** This item will be treated as closed business and the paper exempt from publication in terms of s29(1)(a) of the Freedom of Information (Scotland) Act 2002.

+ This item is for noting

Minutes for **Thirty-third Board Meeting** **BD(2023)33**

Meeting date **18 January 2023**

Security classification **Restricted**

This document contains commercially sensitive and confidential information and may relate to the formulation of policy.

Minutes for the meeting of the Board of Crown Estate Scotland held at Quatermile 2, Edinburgh and by video conference call on Wednesday, 18 January 2023

Present:

Amanda Bryan Chair
Katerina Brown
Dr Michael Foxley
Liz Leonard
Robert Mackenzie
Euan McVicar

In attendance:

Ronan O'Hara Chief Executive
Esther Black Director of Corporate Operations
Oster Milambo Director of Property
Alastair Milloy Director of Finance & Business Services
Colin Palmer Director of Marine
Helen Howden Governance Manager (minutes)

By invitation:

Anna Morgan Financial Controller

1. Standing Items

1.1 Welcome and Apologies

The Chair welcomed everyone to the meeting, noting that apologies had been received in advance from Jean Lindsay and Ailsa Raeburn.

1.2 Declarations of Interest

There were no declarations of interest in respect of items on the Agenda.

2. ScotWind Option Monies

2.1 ScotWind Option Monies – current position (paper BD(2023)33.1)

Noted that:

- (a) the paper had only been circulated to members on the day prior to the meeting to ensure it reflected as accurately as possible the situation which is dynamic. It provided an update to Board on the progress which had been made since 30 November 2022 in relation to the ScotWind option monies. Not all issues had been resolved and the position remained fluid, although all parties involved were working collaboratively with a view to securing a resolution which would allow Crown Estate Scotland, on receipt of a request from Scottish Ministers, to legally transfer cash to the Scottish Consolidated Fund ahead of the income being recognised in Crown Estate Scotland's accounts.
- (b) there were both legal and accounting issues for the organisation to address prior to any transfer being made.
- (c) Crown Estate Scotland had sought legal advice and an Opinion from Senior Counsel on the legality of making a payment ahead of income being recognised. Initial legal advice and the draft Opinion suggested that the transfer of funds as requested by Scottish Ministers was not illegal or in contradiction to any obligations under the SPFM. The legal advice would be reviewed to ensure it covered the ability of Crown Estate Scotland to say no if requested to do something which the Accountable Officer did not agree with.
- (d) weekly meetings were being held with Scottish Government officials, from the treasury team and the sponsor team, and with Audit Scotland. A meeting had been held in early December to allow Crown Estate Scotland and Scottish Government to explain the issues to Audit Scotland and to agree future information requirements and a timetable for reaching a conclusion.
- (e) in addition to having the legal opinions, and confirmation from Audit Scotland, as external auditor, on the accounting treatment, the Accountable Officer, Director of Finance & Business Services and Financial Controller all required to be satisfied on the position. During a workshop held on 19 December 2023, four criteria had been agreed with Scottish Government officials that would require to be met for a transfer of funds in one year which was in excess of the income recognised. In summary those were:
 - a. written acknowledgement from Audit Scotland that IFRS15 is the appropriate accounting standard to be applied by Crown Estate Scotland to the treatment of option fee income;
 - b. written acknowledgement from Audit Scotland that the proposed accounting treatment of the advance transfers are in accordance with relevant accounting procedures / guidance;
 - c. the approval of the Crown Estate Scotland Board; and
 - d. approval from Crown Estate Scotland's sponsor branch.

Crown Estate Scotland had advised that if these conditions were not met then any request for a transfer of funds which exceeded the amount of ScotWind option fee income recognised in the accounts would only be actioned on receipt of a Ministerial Direction.

- (f) it is understood that the Deputy First Minister has been briefed by officials and there is a draft letter to be issued by him to the Chief Executive in relation to the funds request. This has not yet been finalised and will only be issued once everyone is satisfied on the

legal and accounting treatments. The draft letter did include wording in relation to the retention of costs associated with the management of the options over their 10-year period. If these costs are not retained then Crown Estate Scotland will require to finance the management from other revenue.

- (g) the amount of funds which Scottish Government require to be transferred has not yet been fixed by officials and it is anticipated that this will be intimated to Crown Estate Scotland in February.

2.2 Direct Costs attributable to ScotWind Options

Noted that:

- (a) the accounting treatment applied by Crown Estate Scotland, based on the matching principle, meant that the costs of managing the ScotWind option agreements were spread across the lifetime of the agreements. If the costs associated with managing the options were not retained from the option fee income, then Crown Estate Scotland would be required to fund management of the options from other income.
- (b) Scottish Government had agreed in principle that a sum to meet management costs could be retained and work was underway to identify the costs associated with the management of the options over the next 10 years. These costs include staff costs; legal and consultancy costs; overheads; and enabling costs.

Agreed that:

- (a) the Audit & Risk Committee would be asked to review the principles and assumptions of the costs associated with the ScotWind options.

Action: 33/1 (AM)

2.3 Next Steps

Noted that:

- (a) the intention was that Crown Estate Scotland would continue to work closely and constructively with Scottish Government and Audit Scotland; would get the legal advice and Opinion finalised; and work to secure a letter from the Deputy First Minister giving assurance on a number of matters, including unforeseen costs.
- (b) if, on conclusion, of the discussions with Scottish Government and Audit Scotland, there was ambiguity or unacceptable risk then a further meeting of the Board would be convened.
- (c) a further paper would be issued to the Board in advance of any transfer setting out the overarching position of Crown Estate Scotland, including any residual risks, along with a formal recommendation as to how to proceed.
- (d) the communications team were working on a plan for external communications and were mindful that there might be a divergence from the narrative being offered by Scottish Government on the use of the option fee income. The team were preparing 'lines to

take' which would be available once a final position was reach and the quantum of funds to be transferred identified.

- (e) the Chief Executive had written to the Director of Marine Scotland to address a number of issues, including securing settlement of the revenue to capital conversion which had, to date, been set at 9%. The letter had provided the Director with a set of scenarios for consideration, highlighting the on-going obligations which Crown Estate Scotland has and the expectations for use of capital which had been publicly set. The letter would be shared with the Board by the Governance Manager following the conclusion of the meeting.

Action: 33/2 (HH)

- (f) not all Board members had been aware that the current revenue to capital conversion would cease to apply after the end of the current financial year, 31 March 2023. The provision was contained in an accounts direction issued by Scottish Ministers in March 2022 and was appended to the annual accounts. Any future revenue to capital conversion would be set out in a further direction from the Ministers.

3. Any other business

Noted that:

- (a) there was no other business and the meeting closed.

4. Dates of Next meeting

1 March 2023

Amanda Bryan
Chair, Crown Estate Scotland

Date