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Convener
Devolution (Further Powers) Committee
The Scottish Parliament
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Gareth Baird
Scottish Commissioner
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[REDACTED]

21 April 2015

Dear Mr Crawford

In my letter to you dated 25 March, I referred to documents which The Crown Estate recently submitted to the Scottish Government, and promised to share these with your Committee.

I am pleased to attach the relevant documents which are as follows:

- A slide deck which summarises the way in which we currently manage our Scottish assets;
- Draft heads of terms for a document (which we have described as a management transfer protocol) which covers the very fine detail involved in the transfer of our responsibilities. These are issues that are likely to be too inconsequential to be covered explicitly by the Statutory Transfer Scheme; and,
- A draft transition Memorandum of Understanding (MOU), which suggests a framework through which The Crown Estate and Scottish Government could work together during this transition period to facilitate the proper and swift transfer of management of the Crown Estate's Scottish portfolio.

Please note that both working documents are still in draft form as suggestions we have offered to Scottish Government colleagues. Once the documents are in final form we will send them to the Committee for information.

I hope these documents are of assistance to the Committee.

Yours sincerely



Gareth Baird
Scottish Commissioner

PSP – Management Transfer Protocol Heads of Terms

The Management Transfer Protocol (**MTP**) is intended to cover matters of a purely administrative nature, which will assist/provide clarity on operational matters, to support the transfer effected by the Statutory Transfer Scheme. Our preference is to include as much as possible in the Statutory Transfer Scheme, so that terms are clear, a matter of public record and given statutory force. It is therefore possible that some of the provisions outlined at a high level below will not form part of the MTP and will instead sit within the Statutory Transfer Scheme.

Matter	Position
Principles	
<u>Parties</u>	<ul style="list-style-type: none"> The Crown Estate Commissioners (TCE) [<i>Scottish Ministers</i>](SM)
<u>Purpose</u>	<ul style="list-style-type: none"> Contractual arrangements to support the transfer of management provided for by the Scotland Act [2015] and the subsequent Statutory Transfer Scheme (STS).
<u>Transfer Date</u>	<ul style="list-style-type: none"> [<i>date to be confirmed</i>] SM assumes full responsibility for management from 00:00 on the transfer date.
<u>Further devolution</u>	<ul style="list-style-type: none"> SM remains responsible for matters in the MTP in the event of further local devolution of management.
Data and Systems	
<u>Business Information</u>	<ul style="list-style-type: none"> TCE obliged to deliver what it reasonably believes to be the business/asset information needed for SM to assume the management role. Specific requirement to deliver the original versions of the documents provided in the data room – together with an electronic copy of the data room information.
<u>Information Technology</u>	<ul style="list-style-type: none"> No information technology to transfer. No computer hardware to transfer.
<u>MaRS/GIS</u>	<ul style="list-style-type: none"> [<i>Position with regard to the transferability of the Marine Asset Resource System (MaRS) being examined</i>] Scottish GIS to be transferred and licensed where required.
<u>Title/Heritable Interests</u>	<ul style="list-style-type: none"> No evidence of title will be provided beyond the deeds in the data room.
Operational Matters	
<u>Cross-border matters</u>	<ul style="list-style-type: none"> Any agreements crossing the boundary between TCE and SM management will be fairly and equitably split, where there is no express provision for that split in the existing document.
<u>Bell's Brae/Occupied Premises</u>	<ul style="list-style-type: none"> [<i>Use of and contents at Bell's Brae to be dealt with once it is established that SM does/doesn't require Bell's Brae going forward</i>] [<i>Use of occupational premises (including Bell's Brae) to be determined, but maintenance contract etc. to be adopted if they are to be taken on by SM together with apportioned rates liabilities</i>]
<u>Operational Plant</u>	<ul style="list-style-type: none"> Operational plant (such as fixed assets, estate vehicles etc.) to be identified and transfer terms agreed.

PREPARED IN CONNECTION WITH THE FORMULATION OF POLICY

<u>Apportionments</u>	<ul style="list-style-type: none"> ○ Arrangements will be required to set out payment details etc for reconciliations of rent, capital and arrears collection. • Arrears to be claimed by SM and apportioned to TCE.
<u>Rent Deposits</u>	<ul style="list-style-type: none"> • Deposit sums to be transferred by TCE to SM on the transfer date.
<u>Staff</u>	<ul style="list-style-type: none"> • [TBC – expected to be covered in STS]
<u>Managing Agents</u>	<ul style="list-style-type: none"> • [SM to take continue with existing managing agent appointments and take responsibility for those contracts – SM to confirm]
<u>MeyGen/Other Specific Transactions</u>	<ul style="list-style-type: none"> • [TBC depending on project status – expectation that this will transfer in full on transfer date, but some transaction elements/formalities may have to be dealt with in the MTP]
<u>Notices of change of management</u>	<ul style="list-style-type: none"> • Notice and rent authority letters to be delivered by TCE on the transfer date (subject to SM providing relevant details for the new manager(s) in a timely manner).
<u>Contact with counterparties</u>	<ul style="list-style-type: none"> • SM not to directly approach customers, tenants or staff before the transfer date, except with the consent of TCE.
<u>Financial Reporting</u>	<ul style="list-style-type: none"> • Dependent on timing of transfer, provision to be agreed to allow proper audit and financial reporting.
Liability	
<u>Risk</u>	<ul style="list-style-type: none"> • All risk passes to SM on the transfer date.
<u>Litigation/Claims</u>	<ul style="list-style-type: none"> • Commissioners to transfer information they hold on adverse claims. • Commissioners to notify SM on receipt of any notices or correspondence on litigation in relation to the management functions transferred.
<u>Insurance</u>	<ul style="list-style-type: none"> • [All existing TCE insurance arrangements will terminate at 11:59 on the day before the transfer date and SM will be required to put in place its own policies from that date]
“Boilerplate”	
<u>Data Protection</u>	<ul style="list-style-type: none"> • Compliance is required.
<u>Confidentiality</u>	<ul style="list-style-type: none"> • [TBC what if any elements of the MTP are considered to be confidential]
<u>Warranties</u>	<ul style="list-style-type: none"> • TCE gives no warranty as to the accuracy of the information provided to SM.
<u>Conflicts</u>	<ul style="list-style-type: none"> • In the event of conflict between the provisions of the MTP and the Scotland Act [2015] or the STS – the MTP shall be subservient.
<u>VAT</u>	<ul style="list-style-type: none"> • Arrangements for proper discharge of VAT obligations/liabilities to be agreed.
<u>Dispute Resolution</u>	<ul style="list-style-type: none"> • Escalation, mediation and arbitration provisions to be included.

Memorandum of Understanding on the transitional arrangements for The Crown Estate in Scotland (“Transition MoU”) made on [INSERT DATE]

This Transition MoU is made between

(1) THE CROWN ESTATE COMMISSIONERS (“The Crown Estate”); and

(2) THE SCOTTISH GOVERNMENT (“Scottish Government”).

(together the “Parties”)

Introduction:

On 27th November 2014, the “Report of the Smith Commission for further devolution of powers to the Scottish Parliament” (the “**Report**”) was published. Paragraphs 32 to 35 of the Report made provision for the devolution of The Crown Estate’s functions in Scotland. The full text of the relevant section of the Report is attached to this Transition MoU at Annex 1. The draft Scotland Bill and Command Paper were published on 22 January and are attached at Annex 2.

This Transition MoU sets out the basis on which The Crown Estate will work with Scottish Government in connection with delivering its statutory mandate under the Crown Estate Act 1961; during the period between the date of this Transition MoU and the transfer of Crown Estate management functions in Scotland to Scottish Parliament (the “**Transition Period**”).

It further sets out the principles that will be adopted by the Parties during the Transition Period, to facilitate the proper and swift transfer of management of the Crown Estate’s Scottish property portfolio, including its relevant employees and information in accordance with the recommendations of the Smith Commission Report with a view to enabling a single transfer within [4 weeks] of the passing of Royal Assent.

The Crown Estate:

The Crown Estate is a public body, established by statute, with an independent commercial mandate. It’s primary function under its governing legislation – the Crown Estate Act 1961 (the “**Act**”) – is:

“managing and turning to account land and other property, rights and interests”

Its primary function of managing such land and other property, rights and interests in Scotland will continue to be undertaken by The Crown Estate until it is transferred to Scottish Parliament. That transfer will be made under a statutory transfer, which will also make provision for all of the rights and liabilities associated with that management function to be transferred.

The Act regulates the Crown Estate, placing duties, obligations and restrictions on it and the Parties acknowledge that nothing in this Transition MoU shall fetter in any way the Crown Estate's discretion as regards those duties, obligations and restrictions, nor the governance by which The Crown Estate manages its activities which its Board and employees will continue to perform.

The Crown Estate is accountable to Treasury and has entered into a framework document with Treasury which describes the working relationship between The Crown Estate and Treasury and takes precedence over other similar documents The Crown Estate enters into. The Parties recognise that the Treasury framework document will take precedence over this Transition MoU.

Working Together:

The Crown Estate commits that it will:

- i. continue to properly discharge its contractual commitments;
- ii. inform Scottish Government of any substantial new contracted commitments in Scotland;
- iii. share with Scottish Government, The Crown Estate's Business Plan for Scotland for the Financial Year 2015/16 and provide 6 monthly progress reports;
- iv. engage with Scottish Government in full and meaningful discussions regarding the transfer of management, including the sharing of relevant knowledge on both the transfer of management and the arrangements that can be put in place during the transition period;
- v. in order to facilitate knowledge transfer, provide Scottish Government with access to an online data room containing available property and contractual documentation which will transfer with the management functions; and
- vi. provide support and advice, as reasonably necessary, to assist Scottish Government in designing how it will discharge the devolving Crown Estate functions.

Scottish Government commits that it will:

- i. as soon as possible identify the entity or body (or entities or bodies) to which The Crown Estate's functions will transfer; and
- ii. share with The Crown Estate the proposed structure and governance for discharge of the functions of The Crown Estate in Scotland post transfer, to allow transition to be optimised.

The Parties commit that they shall each:

- i. appoint a named Project Sponsor and Programme Manager who shall lead their respective Steering Groups to be ultimately responsible for ensuring that the matters in this Transition MoU are delivered;
- ii. in good faith, agree a “Management Transfer Protocol”, to regulate short term arrangements between the Parties post transfer of management;
- iii. agree a phased timetable for the transfer of knowledge, using a ‘gateway’ system to identify phases; and
- iv. identify the key work streams that will need to be progressed and appoint principal leads for each of the work streams, who will work together in a collaborative manner, to progress matters relating to that work stream. The Programme Managers will co-ordinate the progress of the workstreams and shall meet regularly to discuss progress and raise any issues to the Project Sponsors.
- v. Arrange for meetings of the Steering Groups on a timetable linked to the gateway system in order to agree the completion of each phase in the gateway before moving to the next

Status

1. The parties agree that, except in relation to the confidentiality obligations below, this Transition MoU is not legally binding between them and does not create any form of partnership or legal rights or obligations. It is however a statement of their shared intention to work together in a spirit of co-operation in pursuance of the matters outlined above.
2. This Transition MoU shall be effective from its date and shall continue until management transfer occurs, except in relation to the confidentiality provisions below, which shall be effective for a period of 5 years from the above date.
3. The Parties agree and acknowledge that this Transition MoU and any information exchange pursuant to it are confidential and both Parties agree, whilst respecting their respective statutory and regulatory obligations, to treat such information and the terms of this Transition MoU accordingly.
4. This Transition MoU shall be subject to the terms of enabling primary and secondary legislation once passed, and the terms and objectives of this Transition MoU shall from time to time be amended by agreement between the Parties to reflect such matters.

Signed by the parties by:



[Insert name]

for and on behalf of The Scottish Government

[Insert name]

for and on behalf of the Crown Estate
Commissioners

Annex 1

Extract from the Report – The Crown Estate

Crown Estate

32. Responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate’s seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

33. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate’s foreshore and seabed assets to the UK as a whole.

35. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

Annex 2

Draft Scotland Bill clauses and Command Paper

The Crown Estate in Scotland

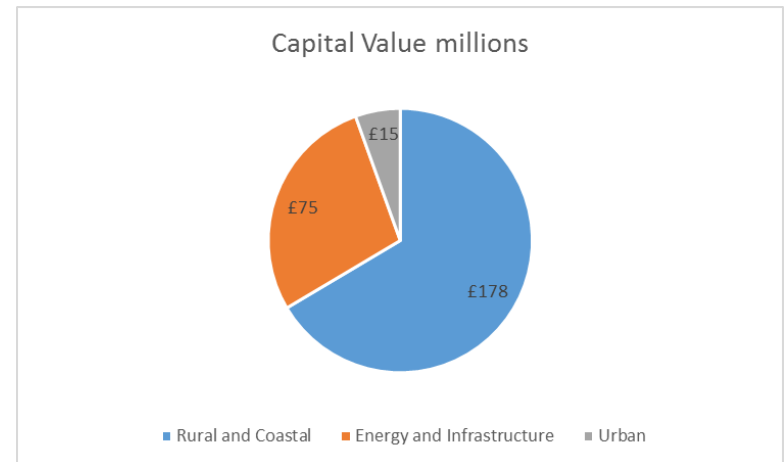
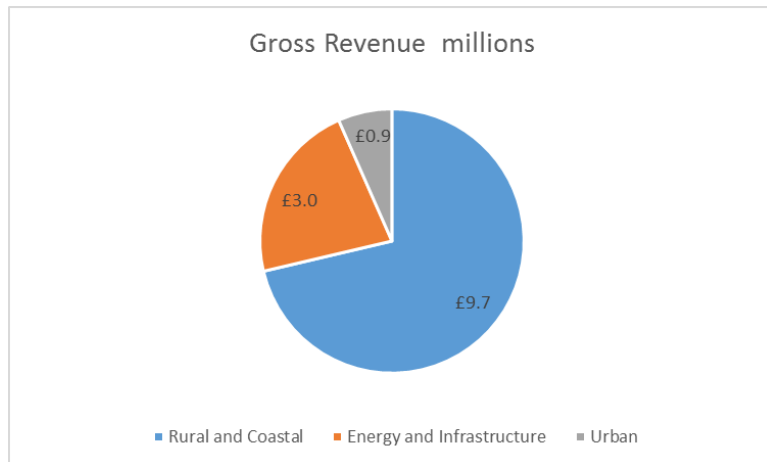
Introduction

This document is in line with the Memorandum of Understanding between HM Treasury, Scottish Government and The Crown Estate which proposed that The Crown Estate would provide to Scottish Government a brief outline of structures, resources and methodology it has used for the management of its assets to date.

The Crown Estate in Scotland acts in accordance with its mandate under the 1961 Crown Estate Act and manages a wide range of assets.

In the financial year 2013/14 these assets contributed a gross revenue to The Crown Estate of £13.6 million and had a Capital Value of £267 million.

The gross revenue and capital values are from three portfolios within The Crown Estate, Rural and Coastal, Energy and Infrastructure and Urban. The gross revenue and capital value split between the 3 portfolios is shown in the charts below.



The Crown Estate Real Estate Assets

The adjacent table outlines the classes and brief description of the assets that The Crown Estate currently manage.

Asset	Definition
George Street	the land owned by Her Majesty known as 39 to 41 George Street, Edinburgh
Seabed	the land owned by Her Majesty forming the seabed of Scottish Territorial Waters
Storage Rights (Seabed)	the rights of: <ul style="list-style-type: none"> (1) Unloading gas to installations and pipelines; (2) Storing gas for any purpose and recovering stored gas; and (3) Exploration with a view to use for (1) and (2)
Energy rights (Seabed)	the rights of exploitation, exploration and connected purposes for the production of energy from wind or water
Mineral Rights (Seabed)	the right to exploit the Seabed and its subsoil other than for hydrocarbons
Cables (including interconnectors)	the right to install all or part of a distribution or transmission system on or under the Seabed
Pipelines	the right to install pipelines
Whitehill	the Whitehill estate in the County of Midlothian owned by Her Majesty
Glenlivet	the Glenlivet estate in the County of Moray owned by Her Majesty
Applegirth	the Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty
Fochabers	the Fochabers estate in the County of Moray owned by Her Majesty
Aquaculture Rights (Seabed)	the right to farm aquatic organisms
Mooring Rights (Seabed)	the right to lay and use permanent moorings
Foreshore	the land that is owned by Her Majesty: <ul style="list-style-type: none"> (1) In Orkney and Shetland, lying between mean high water springs and lowest ebb tide; and (2) In the rest of Scotland, lying between mean high and low water springs
Internal Waters	the land owned by Her Majesty forming the internal waters of Scotland
Salmon Fishing	the right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty
Gold and Silver (onshore minerals)	the right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty
Reserved Minerals	all the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed

Our Operating Model

The operational model for the Crown Estate in Scotland is one that is integrated into the wider business operation rather than as a separate division or entity. This enables services and associated overheads to be shared across the business rather than a duplication of the functions either within the portfolios or locations.

The shared services include:

- Finance (Accounts, Payroll, Rent Accounting)
- Legal
- Human Resources (there is currently one part-time consultant based in Bells Brae to specifically support the devolution process)
- Information Systems (including GIS)
- Corporate Affairs (there are 2 Corporate Affairs staff based in Bells Brae)
- Sustainability and Stewardship

The asset management of the two principal portfolios in Scotland, Rural and Coastal and Energy and Infrastructure, are each headed by a functional lead reporting to a London based Director. The two functional leads have a wealth of knowledge in their respective portfolios. They are further supported by a team with experience and technical knowledge in each of the sectors and function under their control. A number of standard and bespoke systems are used in the delivery and operation of asset management of the assets

In addition to these there are Urban Portfolio assets located in George Street, Edinburgh which are asset managed by our Urban Team in London, the day to day property management is undertaken by a Managing Agent based in Edinburgh.

The following two sections set out the manner in which Energy and Infrastructure and Rural and Coastal are currently operated.



Energy and Infrastructure

THE CROWN ESTATE IN SCOTLAND

Energy and Infrastructure

The Energy and Infrastructure portfolio manages the Marine Energy Assets, Cables and Pipelines and Marine Aggregate sectors.

The Cable and Pipelines and Marine Aggregates are operated through an outsourced model with Managing Agents taking responsibility for property management (lease renewals, rent reviews etc.) with the strategic asset management being undertaken by in-house staff. It should be noted that there are no active Marine Aggregates assets within the Scotland Portfolio.

The Marine Energy sector are managed through a purely in-house function. The development stages (pre-contract through to first energy) in each of each of the sectors are managed by staff based in Edinburgh with support , both corporate and project specific, provided from London.

Once the assets become operational they are transferred to a asset management group based in London.

The following pages outline some of the activities that are undertaken in the management of the various sectors.

Energy and Infrastructure

Taking projects from award of rights through to consent:

Maintain development management database monthly, including financial planning and forecasting (income & expenditure);

Negotiate terms and manage execution of exclusivity agreements, agreements for lease, variations to existing agreements, reassignment of rights, as well as surrender of rights;

Monitor contract and commercial obligations including key dates (e.g. exclusivity periods, contractual milestones, guarantees, insurances, credit checks etc.);

Ensure prompt processing of eligible cost claims or invoicing of reimbursable costs;

Provide monthly partner reports and undertake quarterly partner liaison meetings (monitors contractual obligations, identify issues and maintain relationships especially with remote partners);

Receipt and manage the internal authorisation of temporary works applications;

Develop, manage and conclude (with the assistance of the in house commercial and legal teams) leasing rounds;

Assess new approaches for rights from offshore wind developers on an individual basis; and

Support mapping and data management teams to collate data from partners and ensure project data rooms are audit compliant.

Offshore Wind Delivery

Taking projects from consent through to FiD

Energy Market Reform – working with DECC, Low Carbon Company and the CfD Delivery Body to facilitate delivery of offshore wind e.g. Phasing provisions, capital cost, deliverability of the MDD hurdle and impacts of Target Commissioning Windows;

Financial models including the impact on project hurdle rates, rates of return and financial risk;

Working with financial institutions and advisers including GiB, overseas investors and others to enable investment;

Income forecasting and asset valuation including risk scenario mapping and deterministic modelling; and

Levelised cost of Energy and Cost Reduction – including work with the OSW Programme Board finance group.

Energy Asset Management

Once renewable energy assets receive FiD and are deployed:

The primary focus is on offshore wind assets (one operating wind farm in Scotland – Robin's Rigg A and B, but also, Samsung site off Methil and Offshore wind Met Masts). Secondary focus is on assets post entry into lease (final design, construction & commissioning phases);

Maintain property database, including record keeping and deed management (maps maintained by specialist GIS team);

Annual business planning, budgeting/monthly forecasting (revenue);

Manage production verification and audit, and rent billing & collection, processes (bi-annual);

Monitor Elexon generation figures and MERRA wind data weekly for internal performance reporting;

Undertake 6 monthly tenant liaison meetings (identifies issues and drivers on a site by site basis);

Monitor and action key dates (e.g. lease expiry, rent review etc.);

Undertake annual audit of Insurance cover;

Security assurance process (ensure validity of guarantees, Letters of Credit, decommissioning plans etc.);

Negotiate terms for lease variation, assignment, surrender and re-grant (e.g. to appointed OFTO's);

Review temporary works applications and grant consent where appropriate;

Energy Asset Management (cont.)

- Analyse generation performance (e.g. capacity factors), cable integrity (e.g. OFTO performance) etc;
- Review of construction progress against programme (monthly);
- Assess new site maintenance strategies and decommissioning plans;
- Prepare and publish annual offshore wind (O/W) operational report;
- Study asset optimisation (e.g. during 2015 we'll research asset lifetime extension and re-powering);
- Commission/manage one O/W industry report each year;
- Initiated SPARTA (industry performance, availability and reliability);
- Support industry working groups (e.g. OWPB O&M sub-group; SLIC pile corrosion study);
- Undertake wind analysis using met-mast and other data (helps understanding of performance to take a portfolio-wide view);
- Development of UK O/W portfolio generation monitor;
- Assist with the development of suitable enabling actions including managing procurement activity;
- Future opportunity frame working and support to the Technology Manager to produce supporting internal and external reports on future opportunities and technology development; and
- Provide unique portfolio wide prospective to partners and stakeholders.

Ocean Energy (Wave and Tidal)

Lease areas of foreshore and seabed for wave and tidal deployment (Coordinate Leasing Rounds);

Manage contracts;

Tens of agreements in Scottish waters;

On-going management of Demonstration Zones (2 in Scottish waters);

Provide information and support to early stage developers seeking installation sites; and

Provide feedback into various groups (for example; devolved Governments, ORE Catapult and Innovate UK).

CCS

Our objectives for CO2 Transport and Storage are to carry out targeted and high impact actions that unlock potential around the storage assets, to anticipate and design approaches to making those assets available to markets timeously and in optimised form, and to manage the asset rights going forward. We aim to help create confidence in a value for money infrastructure deployment pathway beyond the early demonstration projects that will lower the risk that FID is not achieved on these first projects;

Gas Storage Ownership rights subsurface in Territorial Seas (not oil, gas, coal); and

Rights under the 2008 Energy Act to Gas Storage beyond Territorial Seas.

Rural and Coastal

THE CROWN ESTATE IN SCOTLAND

Rural & Coastal

The Crown estate Rural and Coastal Portfolio in Scotland manages a wide variety of assets of varying classes and has in the portfolio in the order of 3000 individual agreements, with a customer base from large multinational organisation through to individuals.

The portfolio is led by a dedicated Portfolio Manager supported by a team of 18 people based at our office in Bells Brae and at some of our assets. The team includes individuals with sector specialist knowledge and experience. In addition at our estates at Fochabers & Glenlivet we have a locally based maintenance team of tradesmen that maintain and repair of assets in that area as this area suffers from a lack of contractor availability

The R&C folio is predominately managed on an Outsourced model with firms of managing agents (MA's) responsible for the day to day running of the assets. The internal team set the strategy, manage performance and reporting and deal with customer concerns as well as stakeholder and community engagement.

The R&C team are supported by a number of functions as previously described within head office and whilst Legal assistance is led by a London based team, delivery of local legal services is provided by an Edinburgh firm.

The aquaculture team is entirely in house and manages all aspects of this part of the folio.

Rural & Coastal

The Portfolio is broken into the following key areas:

Rural

Agricultural land	Managed by MA's locally. *
Let housing	Managed by MA's locally *
Minerals extraction	Managed by a national firm of minerals surveyors
Development land	Managed in house with assistance from development specialists
Forestry	Managed in house by foresters and assisted by ranger team
Salmon Fishing Rights	Managed in house with MA support
Mines Royal	Managed by mineral surveyors

Coastal

Ports & Harbours	Managed by MA's on national basis
Outfalls and other agreements	Managed by MA's locally
Marine leisure and Moorings	Managed by MA's and local Coastal Officers
Regulating & Master Leases	Managed in house with MA support
Metal detecting & access	Managed in house

Rural & Coastal

Aquaculture

Salmon and Finfish

Managed in house

Shellfish

Managed in house

We have appointed a number of managing agents through performance driven contracts and these are summarised below:

Rural Agent

Smith Gore

Coastal Agent

Bidwells

Onshore Miners Agent

Wardell Armstrong