

MOORINGS in DALGETY BAY

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For some years now the club has been in contact with the Crown Commissioners regarding keelboat moorings. In recent months the Crown Commissioners have appointed Smiths Gore to act as their agents. In his respect Phil Walter and Duncan Small had a meeting with Smiths Gore (Shevonne Ellis) to discuss the situation.

HISTORY

To allow the readers to understand the situation, I will briefly cover the relevant events so far. The Crown Commissioners have written to the club a number of times, asking for the names of the owners of the keelboat moorings. There have been no explanation of why this information has been required or what the liability of the owners would be. Since the club did not have this information to hand, and (at the time) the membership information was on a computer disc and therefore covered by the data protection act the owners names were not passed to the Crown Commissioners.

The meeting with Smiths Gore, has now clarified the situation. The Crown has the control of most of the seabed and much of the sea shore around the British Isles, and as owner they control the use of this 'land'. I have used quotes since some of the land is the seabed.

The moorings used by the keelboats, are on this land and the Crown is trying to collect rent for the use of this land. To collect this rent, Smiths Gore, on behalf of the Crown are asking the club to sign an agreement. This agreement effectively means that the club collects the money from the boat owners, and in doing so forces some responsibilities and liabilities on the club.

NOTES ON AGREEMENT

I have attached a draft copy of such an agreement. This one is the basic agreement that has been used by a number of clubs on the West coast of Scotland. It should be noted that the figures in this document are not yet fixed so are liable to change. As an example of this the figures for the West coast are rising on January 1st 1988 to £50 for the first boat a £20 thereafter. Smiths Gore noted that the figures for the West coast would be lower but this is up to the district valuer. These figures are exclusive of VAT! It is possible that this figure may be used for the whole of the East coast of Scotland, or agreed individually with each of the clubs (further news on this point should be available around the end of September, as should the proposed rents).

The above prices would be fixed in the agreement, and only be reassessed at a three or five year interval. The exact figure would be written into the agreement.

The figures given in the agreement are assuming that it will cover more than ten boats. If less than ten boats are in the agreement, then the rates may be different.

It is stressed that this money is a rent for the use of the land, and the local authority may wish to also levy rates on the moorings. At the time, I don't know of any general ruling on this point (in relation) and it is up to each individual authority.

There are no concessions for using a mooring for only part of a year, and there is no such thing as a temporary mooring. Though it is a grey area as the definition of a temporary mooring and using the boats own anchor for a short period.

This agreement only covers those boats which are moored below the Mean Low Water Springs line. From the map that the Crown Commissioners gave us last year, this covers all but a few boats which dry out on most tides.

WHAT NEXT ?

There are a number of points to consider, both from the clubs point of view and from the mooring owners point of view. I will expand on the ones that come to mind immediately, I am sure that there are others that must be addressed.

The first question that must be raised is should the club take on this agreement, or should the mooring owners form a 'Mooring Association' and take the agreement out in their own right? In the following notes, I have assumed (simply to make the typing easier) that the club will sign the agreement, but if a Mooring Association is formed, then the same steps will have to be taken by that association.

Before the agreement can come into force, the club, or the 'Mooring Association' must obtain permission from the Marine Division of the Department of Transport for the mooring to be placed where they are. This does not cost anything. As I understand this, it is to ensure that the mooring do not constitute a danger to shipping, or block any shipping channels.

This agreement places an onus on the club to insure itself against any liability that could arise from certain events defined in the agreement. This will involve checking with the club's insurers, and possibility having to take on extra cover (and extra premium). This raises a question of who should pay for this; the club members as a whole, or those who have the moorings?

At this time the club has taken no formal interest in the moorings, if this agreement is signed, then the club must, and will take an active role in the management of the moorings. One of the advantages of the agreement is that the club will be given the sole control of the area of the seabed covered by the agreement. In practice this means that we can enforce all mooring owners to be club members, and obey any regulations that we may bring in (i.e. that they must pay their Crown Rent through the club).

At this time I have not checked the club's constitution, but I expect that it may require some amendments in respect of this situation. For example ensuring that the club has some method of enforcing that the mooring owners accept the agreement between the club and Crown Commissioners/Smiths Cove. To fit in with the constitution any amendments must be with the club secretary by 26th October, for the AGM on the 12th November. Alternatively, or as well as, the membership renewal form (or a special form for mooring owners) would have to be changed/created to cater for collecting the rent and ensuring that the mooring owners are aware of the agreement.

The club must make reasonable efforts to discover the ownership of all

the moorings in the bay. It has been suggested that a suitable note be placed in the Dalgety Bay Diary and, of course our own newsletter. Plus those owners known to the club can be contacted directly.

Smiths Gore hope that the agreement can be signed by January 1st 1988. To meet this time, any changes to the club's constitution must be agreed at this years AGM.

4704

MINUTE OF AGREEMENT between THE CROWN ESTATE COMMISSIONERS acting in exercise of the powers of the Crown Estate Act 1961 on behalf of the Queen's Most Excellent Majesty (who acting and on behalf as aforesaid and hereinafter called "the Commissioners") OF THE FIRST PART and the several persons named and designed in the Schedule hereto being three of the office holders for the time being of the Moorings Association as authorised by the Association to enter into these presents and their successors in office as Trustees for the said Association (the said several persons being hereinafter called "the Grantees") OF THE SECOND PART as follows vedelicet:-

ONE

(Handwritten signature)

The Commissioners hereby grant to the Grantees exclusive right and authority to lay down and maintain up to moorings on the bed of the sea below low water mark at situated in the Region and in the County of within the area shown coloured pink on the plan annexed and signed as relative hereto and from time to time to repair and renew such moorings, together also with the right and authority to use the said moorings for the sole purpose of mooring vessels belonging to members of the said Association or to their permitted visitors

TWO

This Agreement shall come into force on the day of Nineteen Hundred and and shall subsist until terminated as hereinafter provided in Clause TWELVE

THREE

Subject as hereinafter declared, the Grantees hereby bind themselves to pay to the Commissioners or their Factors who may from time to time be authorised to receive from the same the yearly rent calculated on the basis of the number of moorings stated in terms of Clause FIVE to be maintained by the Association to be paid on the first day of July in every year for the year commencing the previous First day of January. The

yearly rent so payable, subject to review as hereinafter declared will be the total of £40 for the first mooring and £15 for each subsequent mooring; declaring that the said yearly rent shall be reviewed as at and with effect from the First day of January 1988 by the Inland Revenue Valuation Office who shall take account of the circumstances existing at the review date, and such determination shall be made after an opportunity has been afforded to the Grantees to make representations thereanent; declaring further that interest on the yearly rent in the event of late payment thereof will apply at the rate of three per cent above Bank of Scotland base rate prevailing from time to time, or in the event of the cessation of the said base rate, at such rate of interest as the Commissioners reasonably may decide should apply from the due date of payment until paid.

FOUR

A copy of the Grantees' Constitution has been submitted to the Commissioners for prior approval and no alteration to the said constitution is to be made without prior written approval of the Commissioners. Such approval shall not be unreasonably withheld.

FIVE

By not later than the Fifteenth day of May in each year, the Grantees shall provide to the Commissioners a list giving the number of moorings laid down or to be laid down and maintained during the current season by the Association.

SIX

The Grantees shall pay all rates, taxes, charges and assessments properly leviable in respect of the right hereby granted.

SEVEN

The Grantees shall at all times during the continuation hereof maintain and keep the said moorings in good, safe and substantial repair, order and condition

EIGHT

The Grantees shall at any time when called upon by the Commissioners and to their satisfaction alter the positions of the said moorings or substitute other moorings in such positions as may be required by the Commissioners and any moorings so altered or substituted shall be subject to the provisions of this agreement as if originally laid down.

NINE

The Grantees bind themselves at their expense to make good to the satisfaction of the Commissioners any damage or injury that may arise or be caused by the maintenance, repair, alteration or substitution of the said moorings or by any failure or defect therein and to indemnify Her Majesty and her Successors, and the Commissioners from and against all actions, proceedings, claims, demands, costs and expenses in consequence of the exercise by the Grantees of the right thereby granted or of any fault or defect in the said moorings.

TEN

There is reserved full and free right for Her Majesty and Her Successors and for all persons by Her or Their to the Commissioners' permission and for all members of the public to exercise all rights to which they may be entitled and all privileges which they may enjoy including without prejudice to the foregoing generality such rights of navigation and fishing over and from the area of the bed of the sea described in Clause ONE hereof so that the right and authority hereby granted shall have due regard thereto and the Grantees shall not do or permit to be done whether upon the said vessels using the said moorings or otherwise any act or thing which shall be an annoyance, nuisance or disturbance to the owners or occupiers of neighbouring property or to the public or to the crews of vessels moored or anchored nearby.

ELEVEN

The Grantees shall not assign or otherwise dispose of the right and authority hereby granted to the effect that no one other than a member of the said Association or a permitted visitor may be permitted to use any of the said moorings.

TWELVE

This Agreement shall continue in force until terminated by the Commissioners giving to the Grantees six calendar months' notice in writing by registered post expiring at any time of the year or by the Grantees giving a similar notice to the Commissioners at the office of the Commissioners in Edinburgh.

THIRTEEN

It is a condition of this Agreement that the consent of the Department of Transport, Marine Directorate, as required under Section 34 of the Coast Protection Act 1949 will be sought and maintained in respect of the said moorings.

LASTLY

At the termination of the Agreement the Grantees shall if the Commissioners so require within one calander month after such termination at their expense remove the said moorings and in default thereof the said moorings may be removed by the Commissioners at the expense of the Grantees: IN WITNESS WHEREOF.