



H&H Bowe

Chartered Surveyors

Establishing a Commons Council for Cumbria

A progress report

March 2011

Authors:

Viv Lewis, in association with the Federation of Cumbria Commoners

Julia Aglionby and Charlotte Raw, H & H Bowe

Contract CSP01/03/021 – Cumbria

Commissioned by Natural England



An H&H Group Company

H&H Bowe Ltd

Borderway, Rosehill, Carlisle, Cumbria CA1 2RS

T. 01228 406260 F. 01228 406261

www.hhbowe.co.uk

Contents

Summary	4
1. Introduction	5
2. Approach and methodology	6
3 Phase 1: Identification of stakeholders wishing to take part in the consultation .8	
3.1 Identification of commons associations	8
3.2 Recruiting commons associations	10
3.3 Identifying those eligible to take part	13
3.4 Conclusions and lessons learnt.....	13
4 Phase 2: Developing the Consultation materials.....	14
4.1 The brochure	14
4.1.1 Key Features of the Commons Council	15
4.1.2 Proposed Functions	15
4.1.3 Proposed Structure	15
4.1.4 Membership and Representation	17
4.1.5 Proposed voting	17
4.1.6 Administration and financing	18
4.2 Fact sheets.....	19
4.3 Rules and Regulations	20
4.4 Maps.....	20
4.5 Conclusions and lessons learnt	20
5 Phase 2 continued: the consultation meetings.....	21
5.1 First round of meetings	21
5.2 Second round of meetings	23
5.3 Other meetings	24
5.4 Other communication methods.....	25
5.5 Conclusions and lesson learning	25
6 Voting process	26
6.1 Conclusions and lessons learnt	27
7 Analysis: Testing for <i>prima facie</i> substantial support	28
7.1 Overall results	29
7.2 Analysis of active grazier vote at local commons association level.....	29

7.3	Analysis of owner vote	31
7.4	Analysis of non-grazier vote	33
7.5	Testing for <i>prima facie</i> substantial support	33
7.6	Conclusions and lesson learnt.....	36
8	Next Steps: Keep the Ball Rolling.....	36
	Appendix 1: Commons taking part in the consultation process.....	37
	Appendix 2: Consultation Brochure.....	40
	Appendix 3: Guidance notes on Election of Members and Decision Making	44
	Appendix 4: Set of draft rules	47
	Appendix 5: Example Voting Form.....	50
	Appendix 6: Active Graziers voting patterns at set thresholds	51

Acknowledgements

We would like to express our thanks to all those without whom this study would have not happened. In particular to the committee members of the Federation of Cumbria Commons and Chairmen and Secretaries of local commons associations, also Richard Hunter of H & H Bowe for producing the maps at short notice.

Summary

The Commons Act 2006 provides for the establishment of Commons Councils when there is *prima facie* substantial support from those with legal rights on common land. Councils have the ability to make and enforce regulations with a remit of managing agriculture, vegetation and the use of commons rights. This report presents the findings from a short consultation process to test whether there was *prima facie* substantial support for a Commons Council for Cumbria.

The project recruited twenty nine local commons associations covering just under half of all the common land in Cumbria. It allowed 799 stakeholders of whom 387 were active graziers, 357 non graziers and 56 owners to increase their understanding of the requirements and procedures to establish a commons council and comment on the design of procedural matters and arrangements of the council. They were then invited to vote, on whether they were in favour of establishing a commons council; 47% returned their ballot papers, and of those 73% responded 'YES'.

This report documents the consultation process and analyses the outcomes. It concludes that the short timescale allowed for the consultation process was insufficient and compromised the facilitation of a full understanding of the subject by the stakeholders. With more time a cogent case could be made and receive substantial backing of those involved. The Federation of Cumbria Commoners will be taking the process forward over the next year.

1. Introduction

Cumbria has over 30% of England's common land, comprising nearly 113,000 ha of land and more than 60 voluntary local commons associations. Part 2 of the Commons Act 2006 provided new legislative powers for establishing commons councils with functions related to the management of agricultural activities, vegetation and the exercise of rights of common. In 2008-09 in advance of the regulations on commons councils being agreed by parliament and published H & H Bowe was contracted to undertake a consultation exercise to establish if there was support to for Shadow Commons Council in Cumbria. The result was considerable support for a shadow council among a number of commons.

This contract builds on the earlier consultation work and re-tests the previous commitment and support of commoners and landowners, as well as inviting other local associations to join the process. It is one of three pilot studies working with local groups of commoners to work up proposals for the establishment of pilot commons councils based on '*Part 2 of the Commons Act 2006: Commons Councils. Technical guidance on setting up a commons council*'.¹ The other studies are taking part in Bodmin Moor and Brendon Common (Exmoor).

Between December 2010 and the end of February 2011, twenty nine local commons associations covering 55,171 hectares with 387 active graziers, 357 non graziers and 56 owners took part in a consultation process to test whether there was *prima facie* substantial support for a Commons Council for Cumbria. This report records the process, provides sample documentation and guidance and identifies lessons learned. It is hoped that these will be of use to anyone wishing to establish a commons council in the future.

The authors undertook the work through a contract from Natural England to H & H Bowe Limited.

The remainder of this report is structured as follows:

- **Section 2** outlines the approach taken to the study
- **Section 3** describes the process of identifying local associations and other key stakeholders willing to take part
- **Section 4** outlines the consultation documents on the functions, membership, regulations and financing of the proposed commons council
- **Section 5** explains how the key stakeholders were consulted
- **Section 6** details the voting procedures
- **Section 7** provides analysis of the results
- **Section 8** outlines the next steps

¹ See <http://www.defra.gov.uk/rural/documents/protected/common-land/cc-techguide.pdf>

2. Approach and methodology

The objective of the consultancy was to undertake all necessary work to take a select number of Cumbrian Commons to a stage whereby a case for the establishment of a commons council could be submitted to the Secretary of State.

The previous consultation on a shadow council indicated that there was support for the concept of commons councils but this was accompanied by some significant concerns about the detail of the proposal. One way to deliver this contract would have been to select a small number of commons who we knew were more or less in favour of a council, iron out the concerns and develop a case. They would then, if there was substantial support, be the first wave of commons to sign up to a Commons Council. However, we knew that this approach would be contentious and other commons associations would be asking why they were not included in the process. Therefore we decided to put out an open call to all commons associations asking them if they would like to join the process. We were not sure if we would be flooded with requests or we would be appealing to commons to take part. In fact we had a steady flow of commons entering the consultation process who then stuck with it.

We adopted three main approaches to the consultation. These were:

- Flexible entry into the consultation and voting process. We did not set a formal joining date and allowed entry into the process as it went along.
- Facilitating top down/ bottom up consultation and information dissemination. Initially we drove the process by inviting local associations to take part and then informing of up-coming meetings we had arranged. However, as the momentum got going the Chairmen of local associations invited us to come to their meetings to explain the key features of commons councils, to answer their questions and listen to their views.
- Enabling people to decide in private through using a postal voting system. We were aware that people can feel under social pressure not to give an unpopular answer in front of others, as is the case when a show of hands is required at a meeting.

We adopted participatory action research methodology whereby each step of the consultation process was dictated by the outputs from the previous step, while allowing for a period of reflection before further modifications. The methods used included semi-structured meetings, open discussions and reflection, maps, acknowledging local practices and ground truthing. In addition, the Federation of Cumbria Commoners played a significant role in supporting the consultation by inputting into the design and content of the consultation,

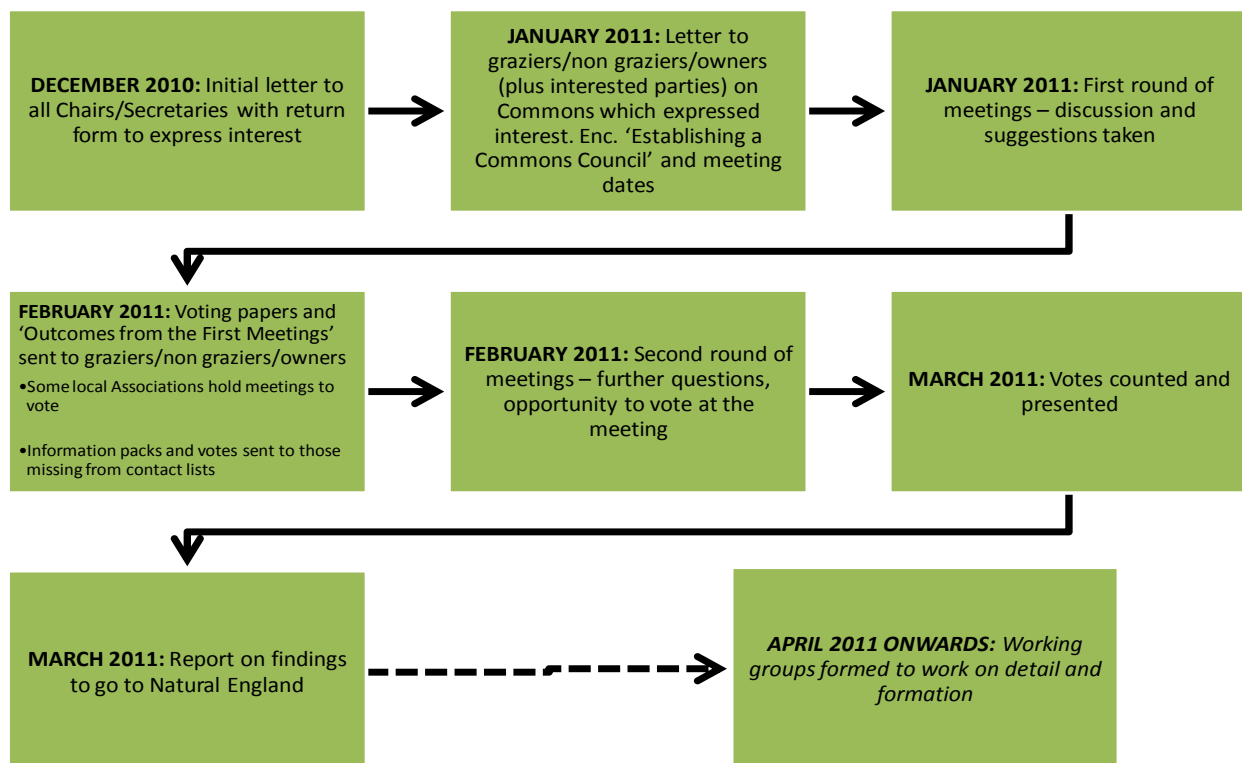
providing information and chairing consultation meetings. Alongside delivering a consultation process we aimed to enhance the capacity of the Federation of Cumbria Commoners so that they could take on the process of completing this exercise and preparing a formal case for the Secretary of State to establish a Commons Council, if necessary.

The consultancy was essentially divided into four phases (partially sequential and partially overlapping) to cover the steps required for preparing the case as follows:

- Phase 1 – Scope: clarifying those commons and identifying key stakeholders to be including in the consultation process
- Phase 2 – Consultation: on all matters to be included in an establishment order
- Phase 3 – Testing for *prima facie* substantial support : Voting
- Phase 4 – Analysis, conclusion and ways forward.

Figure 1: Diagrammatic representation of the consultation process.

The Consultation Process



3 Phase 1: Identification of stakeholders wishing to take part in the consultation

It was not practicable to take all the commons in Cumbria to a point whereby a case could be submitted to the Secretary of State within the timescale and budget of the contract. We needed to devise a process to identify and recruit a manageable number of commons willing to take part. Once this group of commons was enlisted we could then identify the relevant stakeholders i.e. those commoners with grazing rights, commoners with other rights, owners and occupiers of the common, those with any other legal interests, and those holding functions under enactments relating to the management of the land, and invite them to take part in the process.

3.1 Identification of commons associations

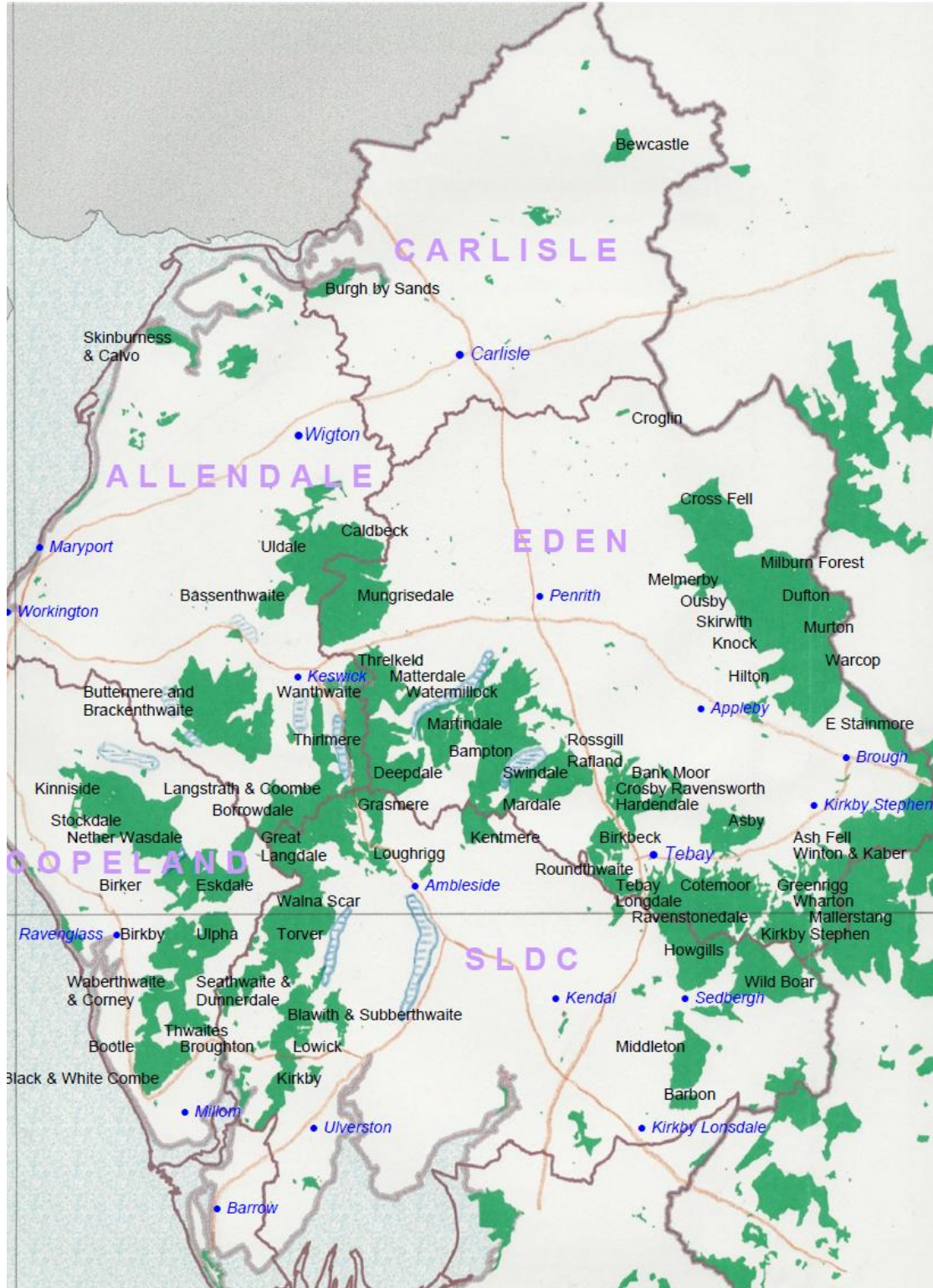
There were over 600 units of common land (CL) in Cumbria and as far as we could tell no up-to-date accurate data existed as to the number of commoners. From previous work we knew there were around 60 local associations and an estimated 1,000 commoners in Cumbria - see Table 1 below. Thirty two of these associations were members of the Federation of Cumbria Commoners and we had access to their contact database. We also knew that the vast majority of associations held agri-environment scheme agreements and H & H Bowe had details of the signatories to many of these agreements. We compared and merged the two databases to form our initial list and where possible obtained missing contact details of the local associations not included in our database.

Table 1: Data on Common Land in Cumbria

Source: Federation of Cumbria Commoners and Defra

No CL Units	
No CL Units < 1ha	297
No CL Units 1ha - 9.99 ha	126
No CL Units 10 ha - 99.99 ha	90
No CL Units 100 ha - 999.99 ha	75
No CL Units >1000 ha	<u>42</u>
<i>Total</i>	630
Entries on the Register on commons greater than 10 ha	
No Entries of Rights on the Registers	
No Grazing Rights Entries on the Register	3170
No Duplicated Rights Entries on the Register	3078
	1075
Estimated No. of Commoners in Cumbria	
Federation of Cumbria Commoners	900
From Registers	1002
Estimated no of active graziers in Cumbria	
Number of associations/ groups	60
Av. no of graziers per association	8
Estimated no of active graziers	480

Figure 2: Map of the commons in Cumbria



Source: Federation of Cumbria Commoners

3.2 Recruiting commons associations

An initial letter (text below) was sent to the Chairmen of all the local associations on our database in early December 2010. The letter informed them of the process to prepare a submission for the establishment of a commons council and invited their association to take part in the process.

Dear

Do you want to be part of a Commons Council for Cumbria?

Natural England are funding Julia Aglionby of H & H Bowe and Viv Lewis of the Federation of Cumbria Commoners to prepare a submission for the establishment of a commons council in Cumbria. This can only be done where there is prima facie substantial support among commoners (especially those exercising rights), owners, and others with legal interests.

Our first step is to find out whether there are commons associations who wish to take part in the establishment process. Therefore, we are writing to the Chairmen of all local commons associations to ask if your common would like to be part of a first wave of commons to join a commons council.

What is a Commons Council?

Commons Councils are statutory organisations established under the Commons Act 2006 to enable the better agricultural management of commons. As a legal entity they can take action against those that compromise agreements or the rights of commoners. They cannot be imposed they can only be established where there is prima facie substantial support amongst commoners.

Why might a Commons Council be useful to my common?

A number of potential benefits have been identified, these include:

- A mechanism to overcome disputes and resolve long standing obstacles associated with land management*
- Enables majority voting making it easier to reach agreement as the power of veto is removed*
- Protects and supports active commoning and sustainable use of commons land*
- It could maintain a live register NB this is required by the UELS Commons As a statutory body it must be consulted about proposals that affect the commons supplement*
- Addresses disease control and stock welfare through clearance of sheep for a given period*
- Facilitates the process of applying for agri-environment schemes and ensuring compliance with the scheme*
- Can lease, license and transfer rights of common*
- Provides a stronger voice for commoners*

Costs of a Commons Council

The cost of running a commons council is often stated as its main disadvantage. We understand the need to keep costs to a minimum and will look at ways to achieve this. We believe that key to keeping the costs down will be to ensure that the Council does not duplicate or interfere with the good work of local commons associations and the Federation of Cumbria Commoners.

Timetable

The process of establishing a council will require a time commitment from you and the members of your local commons association. You will need to attend two meetings in January and February next year. At these meeting we will confirm your commitment to take part and discuss how the commons council will operate in terms of membership, representation of different interest, voting arrangements and financing. You will be deciding the detail of how it should work.

Are you interested?

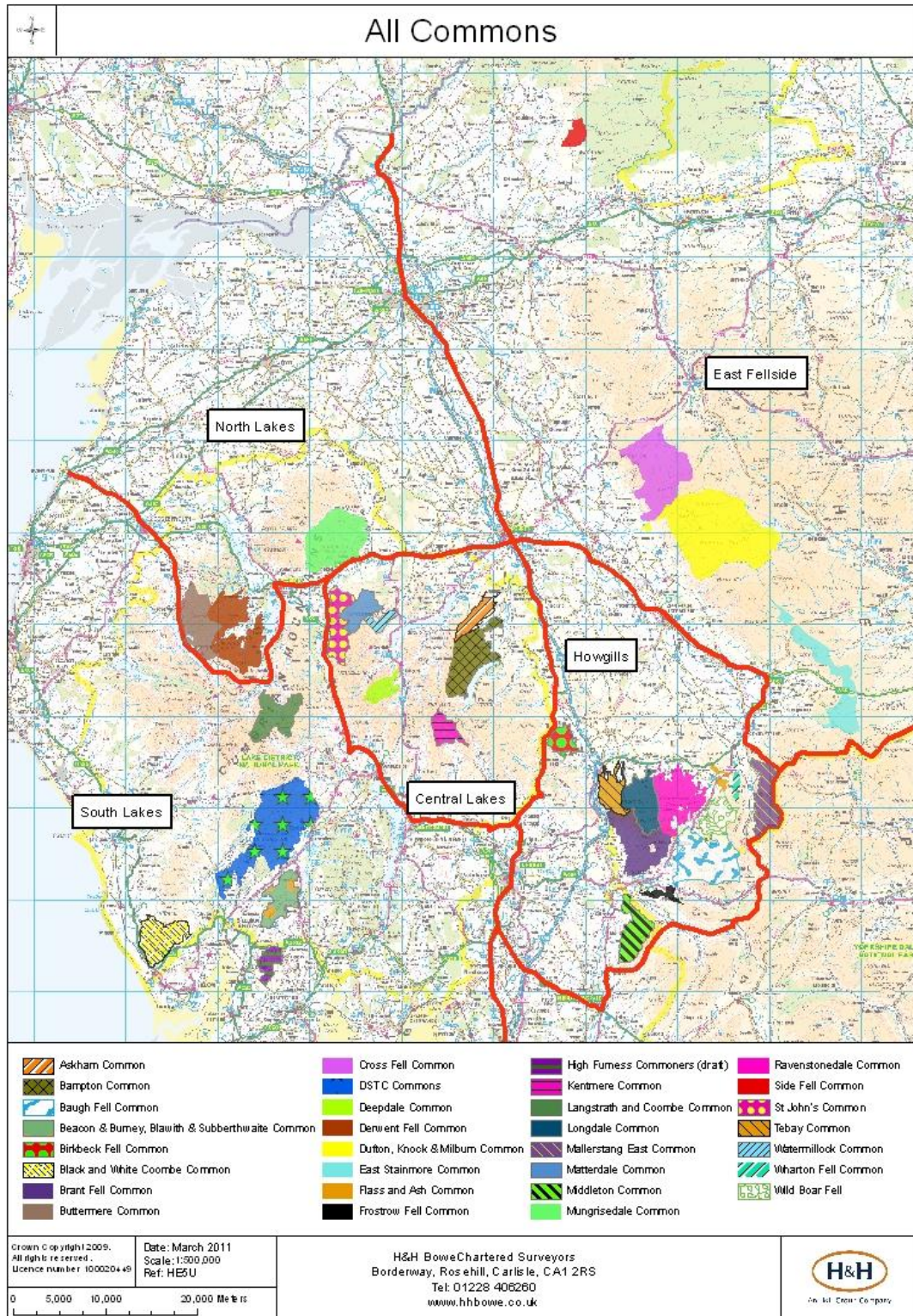
Before we start the work we need to gauge if there is sufficient interest to carry on. We would be very grateful if you could fill out the slip at the end of this letter as soon as possible and send it back to us in the SAE provided.

If you have any questions, please feel free to ring us up for a chat

We look forward to hearing from you.

By Christmas 2010 the Chairmen of 17 local associations had expressed an interest in taking part and three declined. By the end of January another 11 commons joined the process and the final common joined on the first of February making a total of 29 commons associations and covering 55171 ha, just under half of all the common land in Cumbria (see Figure 3 overleaf). For a more detailed breakdown of Commons taking part in the consultation process, CL units and hectares please see Appendix 1.

Figure 3: Map to show the distribution of local associations who took part in the consultation exercise



3.3 Identifying those eligible to take part

As commons were entering the process at different times we were continually updating our database to make sure that we had contact details (as far as possible) for all relevant stakeholders who were divided into three categories: active graziers, non graziers and owners. The final database had 799 entries of which 387 were active graziers, 356 non graziers and 56 owners. These were the people we would be inviting to open meetings, sending out information packs to and testing for *prima facie* evidence of substantial support.

We also informed other interested parties such as the Lake District National Park, Yorkshire Dales National Park, Friends of the Lake District, the National Trust, United Utilities, Natural England and the North Pennines AONB. All were owners of commons, but not all the commons they owned were taking part in the process.

3.4 Conclusions and lessons learnt

We faced considerable difficulty in getting to the point of knowing who actually would be taking part in the consultation process for three main reasons. The major constraint was out-of-date, inadequate databases, information and registers. For instance the initial lists of chairmen of local associations had not been regularly updated. We became aware that in at least a couple of cases we sent letters to ex-chairmen who did not pass on the letter to the current incumbent. Likewise, our initial lists of members of local associations were incomplete. A number of letters were returned as the addressee had deceased or moved away. We tried to remedy this as we went along by asking for up-to-date lists from local associations, but these were not always available within the short timescale of the contract.

Second, a number of local associations had weak governance. Even if the letter went to the right person, some of the chairmen did not inform their members of the consultation process, some took an executive decision on behalf of their members not to take part and others just didn't respond at all.

Third, time was a key issue. With more time we could have started with a better initial list and improved the efficiency of the operation. Likewise with more time we could have met with the Chairmen and other officers first, explained the process and encouraged them to consult their members about taking part.

4 Phase 2: Developing the Consultation materials

The concept of commons councils had been introduced to commoners in Cumbria via the previous work on developing a shadow council but there had been a lapse of two years. It was highly likely that those who took part in the previous consultation would need reminding about the rationale for commons councils and the detail around procedural matters, voting, membership and representation. For the others these concepts would be new.

We decided to design a suite of consultation materials to be used at public meetings that would cover in reasonably simple terms the main elements of an establishment order and include a clear set of proposals for the structure and operation of a council grounded in the reality of Cumbria. As not all people would be able to attend consultation meetings, it was important that these materials were self-explanatory and in plain English. We developed the following handouts as part of an information pack:

- A brochure setting out proposals for the main elements of a Commons Council in Cumbria (Appendix 2)
- Guidance notes on Election of Members and Decision Making (Appendix 3)
- A set of draft rules (Appendix 4)
- Maps showing participating commons (see page 12)

This information pack was handed out to everybody who attended the consultation meetings. Attendees were encouraged to take copies and give them to neighbours/fellow commoners unable to attend. The pack was sent out to people who joined the process late and to chairmen who requested them for their own meetings. They could also be found on the Federation of Cumbria Commoners website² which had a special section on the consultation process.

4.1 The brochure

The 8-page document entitled 'Cumbria Commons Council: A proposal for Consultation' formed the core of the consultation materials. As part of the process of developing the brochure we sent a draft version to the committee members of the Federation of Cumbria Commoners for their comments, not only on content but also on the style, length and accessibility of the language. In effect we were piloting it on them and their response was positive. The brochure was a key tool in the consultation process and we needed to get it right.

The brochure covered the benefits of a commons council and introduced a set of proposals on the functions, structure and budget for the council, a section on

² See www.cumbriacommoners.org.uk

frequently asked questions and next steps in the process including an outline of the voting procedures. Readers of the brochure were asked to contact us if they had any queries or suggestions or amendments. The sections of the brochure are described in more detail below:

4.1.1 Key Features of the Commons Council

One of the first sections of the brochure outlined key features of a council as follows:

- a) Covers the whole of Cumbria
- b) Common Land (CL) units join the Council if there is *prima facie* substantial support from those with legal rights on that CL unit
 - a. If a CL unit does not join, the Council has no jurisdiction over that land
 - b. If a CL unit joins the Council then all users of that unit are bound by the regulations whether commoners or not
- c) As a matter of principle the Council will wherever possible leave the management to local associations
- d) Negotiations, mediation and arbitration would be the preferred routes for dispute resolution; the courts would be a last resort
- e) All graziers would be required to provide returns for the live register, the system chosen would meet UELS rules
- f) Where consent was currently required from the owners for any activities the Council would still require the owner's consent
- g) There would be separate Council members for graziers (10), non-graziers (2) and owners (3)

4.1.2 Proposed Functions

It was proposed that the Council would undertake the following activities:

- Managing agricultural activities
- Prepare and maintaining a register of grazing
- Establishing and maintaining boundaries
- Removing unlawful boundaries and other encroachments
- Removing animals unlawfully permitted to graze
- Regulating the use of common rights

4.1.3 Proposed Structure

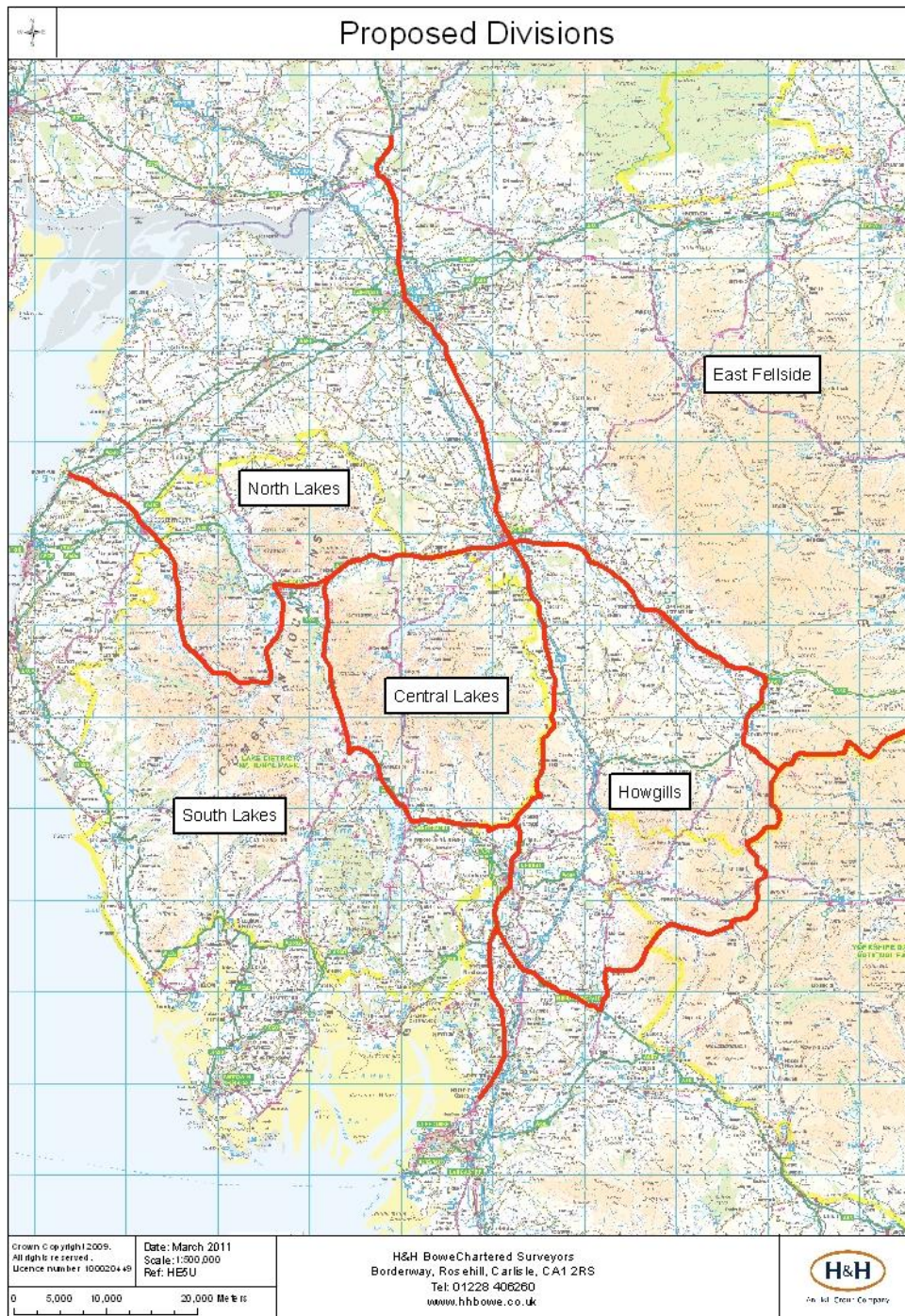
The Commons Council for Cumbria would take the form of 'umbrella' council³ as the commons in Cumbria cover a wide geographical area and are non-contiguous. Drawing on the experience of Dartmoor, we provided an example of the way it could

³ This concurs with the 'Technical Guidance on setting up a commons council' Defra, 2010 p 30 and the Shadow Council proposal

work. We divided the whole of Cumbria into five areas for the purpose of representation as follows:

- East Fellside
- Howgills
- North Lakes
- South Lakes
- Central Lakes

Figure 4: Map to show the proposed areas for the Commons Council



Those with right of common in each area would have the opportunity to decide whether their CL Unit should join the relevant this area of the council.

4.1.4 Membership and Representation

Readers of the brochure were informed that the Council would be made up of fifteen members elected, appointed or co-opted to serve on the Council. These members had to represent all the categories of rights owners as follows:

- Commoners with grazing rights, distinguishing those who are actively grazing the common and non active commoners
- Owners and occupiers of the common;
- Any other legal interests (e.g. those with sporting rights).

Each elected council member would represent a specific category of interests and the number of council members assigned to represent each category would be weighted towards those actively exercising their rights.

We proposed that the voting members of the Council would comprise of⁴:

- **Ten active graziers** made up of two from each of the five groupings of commons
- **Two non-active graziers**, who were not landowners and from different areas of the common
- **Three owner representatives**, including one non-institutional owner - a considerable proportion of the commons in Cumbria is owned by public and commercial interests but we wanted to make sure that there was representation for the private owners

There was no legal definition in the Act of an 'active grazier' and it was suggested that the following definition: '*active commoners would be commoners who have grazed an even aged hefted fell flock for at least the two previous years*' was considered. While owners would, if required, need to show proof of ownership (e.g. title documents).

Active graziers would vote for the active grazier members, the non-active commoners for the non-active graziers and the owners would vote for the owner members.

As membership of the council was not limited to legal interests only, we suggested provision in the constitution for up to four co-opted non-voting members. The term of office for elected and co-opted council members would be four years and they could stand for re-election or re-appointment.

4.1.5 Proposed voting

This short section in the brochure explained that each council member would normally be entitled to one vote and that most council decisions would be made by a simple majority vote. Decisions that had a significant financial or operational

⁴ To a large extent this proposal was based on signals from the previous Shadow Board consultation

impact would require a higher level of agreement. We gave two examples of decisions for which a higher threshold of 75% majority was appropriate as follows:

- Entry into a stewardship scheme where unanimous support at the local level was not forthcoming. The Council would need to be convinced that a scheme was the preferred option of the majority of active graziers.
- Limiting the uses of common rights

Given the importance of voting and representation, we also produced two Fact Sheets (see next section) for consideration and discussion at the consultation meetings.

4.1.6 Administration and financing

No council would be able to carry out its functions unless it had sufficient funds. Mindful of the fact that commoners would not be willing to pay a high levy to support the council we proposed a business model with low overheads and operating costs to be administered by a part-time, self employed administrator as follows:

Table 2: Estimated running costs of a Cumbrian Commons Council

Estimated Running Costs	
Administrator 1.5 days per week incl. office costs	£10,000
Postage and Newsletter 2 mailings per year	£1500
Travel Local and national	£1000
Meetings 5 times a year including the AGM	£1000
Software and Equipment: Software and website maintenance and updates	£1000
Accounts	£500
Professional advice	1000
Officer insurance	500
Total	£16,500
NB It would be useful to accrue a financial reserve for Dispute Resolution	

We suggested that grants could be found for the establishment costs, but the council would need a sustainable financing plan to cover the running costs. We provided an example where the council charged local associations rather than individuals a levy which included membership of the Federation of Cumbria Commoners. This fee could be paid from agri-environment payments made to local associations. We suggested that the annual running costs of around £16,500 per annum would represent a small proportion, approximately 3% of the £500,000 per annum UELS commons supplement coming into Cumbria. We decided not to pin down the levy/fee to precise amount per ha, or per commoner/ owner for two reasons. The price would depend on the number of commons that participated and we did not want to get tied down to a figure, only to be held to it in the future. What we

wanted to show was that a Council with lean business model did not necessarily have to cost a lot.

4.2 Fact sheets

In addition to the brochure, we developed two more detailed fact sheets on (i) the election of Members to the Council, and (ii) voting procedures and decision making thresholds (Appendix 3). We knew that many were concerned about the council as an overarching body interfering in local affairs, and how the council would make decisions on issues that only affected a particular common or area.

The ‘Election of Members to a Commons Council’ factsheet explained the rather unusual terms of ‘participant’ and ‘member’ given to the membership and decision-makers of the council. The Technical Guidance described a participant in a council as a commoner; landowner or other person entitled to participate in the council by virtue of an interest in the area of common land covered by it. They would be able to vote in elections of council members. A council member would be the person appointed, elected or co-opted to serve on the council.

It also briefly explained the role of the returning officer who would be responsible for preparing the initial lists of those eligible to vote, arranging the first meeting and inviting nominations for committee members. He/she would also announce the nominations and, where these exceed the vacancies to be filled, hold an election by ballot.

The ‘Voting procedures’ fact sheet explained that each elected council member would be entitled to one vote, except where a decision related to only one or several of the five areas. Then only the active grazier commoner representatives from that area or areas affected would be entitled to vote. The votes of these active grazier representatives would be weighted such that there was still a total of ten potential votes for active graziers, two for non-active graziers and three for landowners. This would maintain the balance in favour of active graziers and local knowledge as shown in Table 3 below.

Table 3: Voting mechanism to weight decision in favour of local knowledge and active graziers

No of areas involved in decision	No of active graziers voting	No of votes per active grazier	Total votes
1 area	2 (representing this area)	5	10
2 area	4	2.5	10
3 areas	6	1.66	10
4 area	8	1.25	10
All areas	10	1	10

The majority of decisions would be passed by a simple majority of those present. If votes were equal the person presiding at the meeting would have the casting vote. A two thirds majority vote would be needed to change subscription rates, with seventy five percent majority vote needed for:

- Approval, amendment or revocation of rules
- Entry into an agri-environment or other similar scheme
- Making, amendment or revocation of standing orders
- The co-option of any person as a member of the council

4.3 Rules and Regulations

We prepared a set of draft rules and regulations (Appendix 4) based on the rules for Dartmoor Commons Council. Our aim at this stage was to indicate what a draft set of rules should cover, including good practice in grazing and stock management, vegetation management, animal health and the management of rights on common land. These rules would need fine tuning for Cumbrian conditions.

4.4 Maps

We prepared a set of maps indicating the commons that were taking part in the exercise (as shown in Fig 3, page 14). These were displayed at consultation meetings. We asked people to check that the boundaries of their commons were correct. In three cases we asked commoners to draw the boundaries of their commons as we didn't have sufficient information. We updated the maps as more commons came into the consultation process and produced eight versions before we got to the final version.

4.5 Conclusions and lessons learnt

The rationale for, and establishment of, a commons council is complex. An essential part of this contract was to clearly communicate the key details of Part 2 of the Commons Act and the *Technical Guidance of setting up a commons council* and to formulate a series of proposal appropriate to the Cumbrian context. We knew that short documents written in plain English and covering the main elements of a council would be a necessary, but not sufficient aid to meaningful consultation. People would also need the opportunity to have the documents explained to them, to ask question and make suggestions before could make up their mind.

In an ideal world it would have would have been good to send out the consultation brochure with the invitation to the consultation meetings and ask people to read it before they came to the meeting. We were unable to get the brochure ready in time due to the tight timescale of the contract and our desire to pilot it on committee members of the Federation of Cumbria Commoners. This was as essential trade off.

5 Phase 2 continued: the consultation meetings

Public meetings were the main consultation method and people were invited to attend two meetings, four weeks apart. At these meetings we aimed to increase people's understanding of the requirements and procedures of establishing a commons council and provide opportunities for them to discuss and input into the design of procedural matters and arrangements of the council.

5.1 First round of meetings

In early January 2011, we sent out invitation letters and included the explanatory leaflets 'An introduction to Commons Councils' and 'Establishing a Commons Council' published by Natural England to all appearing on our list at the time⁵. There were three versions of the letter aimed at the three categories of stakeholders – the commoners, owners and interested parties.

We divided Cumbria into four areas and invitees were asked to attend two meetings, one in mid-January and the other in mid- February, at the venue nearest to where they resided. The meetings were held at community halls in Threkeld to cover the North and Central Lakes area; Dufton for East Fellside; Sedbergh for the Howgills; and at a hotel in Broughton in Furness for the South Lakes. They were offered refreshments (tea and coffee) after the meeting and the opportunity to continue discussing issues. The text of the invitation letter to commoners to attend the first meeting is shown below.

Dear

Cumbria Common Council: Commoners' Consultation

We are writing to invite you to a meeting to discuss whether your common would like to be part of a Cumbria Commons Council. As you may remember a consultation was undertaken in 2008 and further to this the Federation of Cumbria Commoners has decided that they would like to explore the establishment of a Council more formally. Natural England has provided funding for this process and your association has expressed interest in being part of the initial group of commons that may seek the establishment of a Commons Council. Natural England has awarded the contract for this work to H&H Bowe and Viv Lewis (Administrator for the Federation).

The process is that we have divided Cumbria into four areas and for each area there will be two meetings. At the first the draft proposal for the Council will be set out and you will be provided with documentation to take away and consider. At the second meeting you will be asked to vote on whether you would like your CL unit to be part of the Council. Prima facie substantial support is required before the Secretary of State will consider the establishment of a Council.

⁵ As mentioned before the list was constantly growing, 90% of the commons we on board in time to receive this letter.

The first meeting for your common will held at:

The second meeting for your area will be at:

All those with a legal interest in the common are being invited; active and non-active commoners, owners and sporting interests. If you know someone who has not received an invitation please ask them to come along and or contact us for a formal invitation. Please also note that due to some inaccuracies on the commons register this letter may be sent in error to individuals who have since sold on their rights or may be deceased, our apologies for this.

I should stress that the Council is not proposing to replace local associations but will work with them to ensure the more effective management of common land. Local associations can continue to manage your common on a day to day basis and run your agri-environment scheme. The Council is proposed to have the following functions:

- *Making rules regarding agricultural activities, vegetation and common rights*
- *Preparing a live register of grazing (now required for UELS)*
- *Establishing and maintaining common boundaries*
- *Removing unlawful boundaries and encroachments*
- *Removing animals unlawfully on the common*

If you require any information in the meantime please do not hesitate to contact me, in the meantime we look forward to hearing your views at the meeting. If you are unable to attend but would like the documentation please contact me and we can send it to you. We will also be posting it on the Federation Cumbria Commoners and H&H Bowe website.

Yours sincerely

Around 140 people attended the first round of meetings which generally lasted between 1 ½ to 2 hours. The majority were graziers (both active and non-active) and a few owners turned up to the meetings. We aimed to create an open atmosphere at these meetings where individuals felt free to speak their personal views. They were chaired by committee members of the Federation of Cumbria Commoners. The key business of the meetings was to guide those present through the main points of the consultation brochure and other handouts, inviting questions, comments and opinions as we went along. Participants were informed that we would be conducting a vote to test 'substantial support' for the proposals, as this was required before the Secretary of State would consider the establishment of a Council. They would be receiving voting papers in early February and could vote by post or via a ballot box at a number of meetings in February.

In general the meetings went well with a reasonable level of discussion, some individuals clearly had strong opinions however time was taken after the meeting to deal with their concerns where possible. Various points were raised during this first round of meetings including:

- How to pay for the costs of dispute resolution?
- Should the Southern Lakes be divided into two?
- Was 2 years sufficient to qualify as an active grazier?
- How to ensure local views are represented on the Council?
- What are the procedures for enforcement of rules?

One or two took the view that a Commons Council was a backdoor method for government interference. Others were concerned that it was another layer of red tape in an industry already full of bureaucracy.

5.2 Second round of meetings

At the beginning of February reminders for the second meeting along with ballot papers and a note of the points raised at the first meeting and a few worked examples of how a commons council can resolve issues (see text box below) were sent out to all. As with the first letter there were three version of this letter tailored to the different categories of stakeholder.

Insert to letter sent out all participants as of February 1st

Examples of How a Commons Council can resolve issues

NB The Council would only intervene when asked by the local association or those with legal rights on the common

Illegal grazing on Commons. A Council would be able to impound and dispose of stock illegally grazing on any common part of the Council. This could include:

- stock belonging to commoners grazing in excess of their rights
- stock belonging to those with no common rights
- stock repeatedly straying from other commons

Sheep Identification. Where commoners did not mark their stock in accordance with the agreed rules they would be in breach of the Council's regulations and would be required by the Council to comply or remove his stock until the marking has been done.

Sheep Scab. In the event of an outbreak of sheep scab the Council could co-ordinate and require the clearance of the affected common(s) and work in conjunction with the Animal Health authorities.

The meetings took place in mid-February at the same four venues. They were slightly less well attended, with an average of 15 – 20 people at each meeting some of whom had attended a previous meeting and others were new. The meeting content centered on:

- A reminder of the process and content of the proposal (for those who were unable to attend the first meeting)
- Presenting and discussing issues raised during the first round of meetings.
- An update on how the voting was going
- Information on how the vote would be announced
- Next steps
- An opportunity to vote via the ballot box

Like the first round there was useful discussion and some questions for clarification. We acknowledged that many details of the Council were not finalised and this was work in progress. If the commons voted in favour of establishing a Council, the next stage would be to flesh out the finer details.

We knew that we would need a reasonable voting turnout in order to analyse the results with any level of confidence so we used the meetings to encourage people to vote. We took a ballot box with us so people could vote there and then gathered around 40 votes this way.

5.3 Other meetings

We were very pleased that local associations also took ownership of the consultation process and held their own meetings to discuss the issues – many of these were at their AGMs as they are usually held in the first quarter of the year (a quiet time in the hill farming calendar). We were informed of 18 meetings and attended where requested. Meetings were held at:

- Beacon and Burney
- Dufton
- Bampton and Askham (attended)
- DCST
- North Stainmore (attended)
- Middleton
- Brant Fell
- Wharton
- Wild Boar
- Ravenstonedale Moor (attended by Chair of Federation of Cumbria Commoners)
- Ravenstonedale Common (as above)
- Mallerstang East and West

- Longdale
- Flass and Ash Fell
- Mungrisedale
- Buttermere and Derwent (attended)
- Matterdale
- Cross Fell (attended)

5.4 Other communication methods

We also used other media to communicate with, and inform people of, the consultation meetings and continue the discussion, including:

- An article in the monthly *Farming News* supplement of the Cumberland News
- A short presentation at the *Hill Farming Gathering* (an annual hill farming conference that attracts around 100 delegates)
- An article in the Federation of Cumbria Commoners' newsletter
- Regular updates on the Federation of Cumbria Commoners website
- Personal communication – we received many phone calls and some e-mails

5.5 Conclusions and lesson learning

The concept of a commons council for Cumbria generated more interest and activity than we had originally planned. On the plus side, there was wider coverage than expected as many local associations took some ownership of the process and held their own meetings to discuss the proposals. In total 34 meetings were held over a six week period with around four hundred participants.

On the downside the short timescale, has meant that the process was rushed leaving little time for a process of dialogue, consultation and response between the consultants and participants or between the participants themselves. A suggested timescale for meaningful consultation would be at least twelve weeks⁶ and we only had five. People felt rushed and in some cases this led to a No vote or abstention (personal communication). On reflection it would have been better to build a realistic timeframe for the consultation, allowing plenty of time for each stage of the process from the outset.

⁶ See HM Government Code of Practice on Consultation <http://www.berr.gov.uk/files/file47158.pdf>

6 Voting process

As mentioned before a postal voting system was used to test and record the level of support for a commons council as set out in the consultation brochure. We opted for a postal system as the only viable way to enable people spread over a wide geographical distance to voice their opinion. It was also a way to allow people cast their vote in confidence and anonymity and free from coercion as could be the case with a show of hands at a meeting.

A very simple voting paper was sent to respondents with the question '*Are you in favour of your local Commons Association joining a Commons Council for Cumbria?*' and asked to tick either a Yes or No box. The CL number(s)⁷ for each respondent was pre-filled in according to our records. We had three categories of voters: active graziers, non graziers and owners and used different coloured paper to distinguish between them as this made the counting process easier. An example of the ballot paper can be seen in Appendix 5. The voting papers were sent out with a covering letter (there were two versions one for graziers and one for owners) and a SAE, allowing respondents a 4 week window of opportunity to respond with a cut off date of February 28th. A specimen of the letter sent to graziers is shown below:

Your Common, Your Voice

This is your vote for the formation of a Cumbria Commons Council. The Secretary of State wants to hear from you, if you do not vote your voice will not be heard. You are voting for your common to join the Council, the votes will be counted separately for each common.

The Federation of Cumbria Commoners is supporting a "YES" vote. Dave Smith, Chairman of the Federation says;

"This is a turning point for the management of your local common, a Council would enable more effective and democratic local control of our commons helping to ensure a viable future both now and for future generations."

Please encourage your fellow commoners to vote, if you know someone who has not received a voting form please phone me on 01228 406 260. All the information is also available online at www.cumbriacommoners.org.uk.

Ways to cast your vote:

- *LOCAL MEETING - If your local association is having a meeting before February 28th you can vote at that meeting.*
- *AREA MEETING - Attend the area meeting on*

⁷ Many have rights of common on more than one common

- *POSTAL VOTE - Return the enclosed form in the enclosed SAE*

The results will be announced at the Federation's AGM on 4th March 2.00pm at Melmerby Village Hall. Please call me if you have any queries.

In order to interpret the results with any level confidence we needed reasonable participation rates so we provided several ways for people to cast their vote as mentioned in the letter above.

A total of 799 ballot papers were mailed out and 373 returned making a 47% response rate. This would be considered a good response rate for this type of consultation. However, the voting process did not go completely smoothly with some concern about the accuracy of the voting in two CL units. After sending out the voting papers we noticed that Baugh Fell Commoners Association and DSTC Commoners had the same CL unit number - one is in the former Westmorland and the other in Cumberland. Our input data for Baugh Fell showed a response rate of over 100%, clearly some of these votes would be from members of DSTC. Moreover, we suspected some double voting on a few commons and under voting on others, especially where people had rights on more than one common. As far as possible we have attempted to safeguard and confirm these results by returning the overall results to local associations to validate the voting outcome.

In addition, we announced the overall results at the AGM of the Federation of Cumbria commoners on March 4th 2011 as we wanted to provide some feedback to the participants as soon as possible. It also gave us the opportunity to informally validate the results. The general opinion was that they appeared to be an accurate reflection of the mood of the commoners.

6.1 Conclusions and lessons learnt

A postal voting system provided all stakeholders with the opportunity to vote in private. However a good turnout would be needed to interpret the results with confidence. As with much of the activity undertaken in this contract the voting procedures were compromised to some extent by the short timescales available. In our opinion it was likely that a considerable number of voters felt that they didn't have sufficient grasp of the subject to express an opinion, so they abstained from voting. Furthermore, some errors crept in due to the weak database. To some extent these errors have been obviated by going back to the local associations and finding out if the voting reflected the mood of their members.

7 Analysis: Testing for *prima facie* substantial support

The Technical guidance did not give prescriptions of how to test for substantial support, but it did give some clues and general principles on how to test for support. These included:

- Simple majority support from all the different interests in the common would not automatically be taken to mean substantial support.
- Each class of interests in the common would vary numerically and in terms of the value of their ‘rights’ or nature of their ‘interest’ — a judgment on the relative weighting of the different interests would need to be made on a case-by-case basis.
- The level of support from the different interests must be more than sufficient to enable the council to operate effectively and would therefore need to be considered in relation to each of the three main functions (managing the agriculture, vegetation and the exercise of common rights on the common) that it is proposed to confer on the council
- The overall level of support for a council may be assessed with regard to the following:
 - proportion of the total number of active commoners in support/ opposition,
 - proportion of the total number of other commoners in support/opposition,
 - proportion of the total number of landowners in support/opposition,
 - number of other interests in support/opposition,
 - proportion of land actively used by each of the different interests,
 - the proposed functions of the council.
- The Secretary of State would not treat abstentions as opposition but would take them into consideration when considering whether there is substantial support: in particular, where there are a substantial number of abstentions, the Secretary of State would wish to be satisfied that there is a sufficient weight of support for the establishment of a commons council to assure the future management of the land.
- The test of ‘substantial support’ will usually be satisfied where the majority of those with a key legal interest in the common (i.e. landowners and commoners) support the establishment of the council.
- Substantial support will be commensurate to the number of commons and commoners involved. A higher proportionate majority of commoners might be expected to support the establishment of a commons council in relation to a single common, than a commons council for a large number of commons.

The rest of this section analyses the voting data and tests for support in relation to the principles given above.

7.1 Overall results

The response rates from the three categories of voters varied considerably ranging from 67% of the active graziers, 43% of the owners and 25% of the non-graziers. Of those responding, the average 'YES' vote across the three groups was 73%, the owners had the highest percentage of 'YES' votes at 79%, followed by the non-graziers at 74% and active graziers at 72%. The overall results of the voting are shown in Table 4.

Table 4: Overall results of the voting

Grand Total mailed	799
Total Received	373
Response rate	47%

GRAZIERS	Graziers mailed	387
	Graziers replied	259
	Graziers not replied	128
	Response rate	67%
	<i>of those replying</i>	
	Yes	72%
	No	28%

NON GRAZIERS	Non Graziers mailed	356
	Non Graziers replied	90
	Non Graziers not replied	266
	Response rate	25%
	<i>of those replying</i>	
	Yes	74%
	No	26%

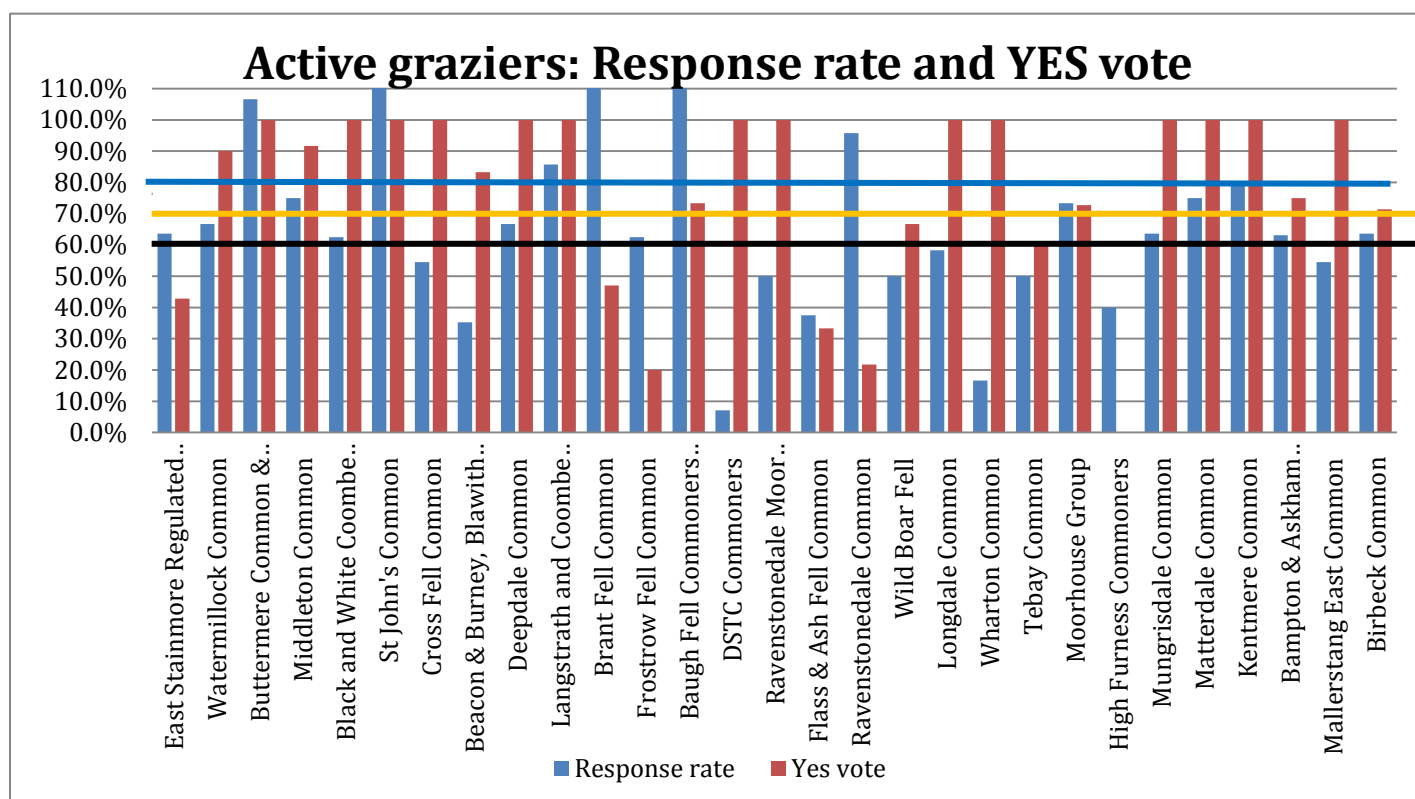
OWNERS	Owners mailed	56
	Owners replied	24
	Owners not replied	32
	Response rate	43%
	<i>of those replying</i>	
	Yes	79%
	No	21%

As all respondents were voting for their CL unit/ local commons association to be part of an umbrella council, it was essential to analyse the data at the local commons association level. The next sections present this further level of analysis.

7.2 Analysis of active grazier vote at local commons association level

Chart 1 shows the response rates and YES votes of active graziers for each local association. The horizontal lines indicate a 60%, 70% and 80% majority threshold to test for *prima facie* substantial support among active graziers.

Chart 1: Comparison of response rates and Yes vote for active graziers



As the threshold increased, fewer local associations were able to meet the threshold. Fourteen local associations achieved a threshold of 60% of active members voting YES with a 60% turnout, 8 associations met the 70% YES threshold with a 70% turnout and 4 associations achieved an 80% YES vote on an 80% turnout. The commons associations that met these requirements are shown in Table 5 below. To see these a graphical representation of these please see appendix 6.

Table 5: A comparison of response rates and voting rates of active graziers for local commons association that have returned at least 60% in support and 60% turn out rate

Name local Association/ Response rate: yes vote	60:60	70:70	80:80
Watermillock Common	x		
Buttermere Common & Derwent	x	x	x
Middleton Common	x	x	
Black and White Coombe Common	x		
St John's Common	x	x	x
Deepdale Common	x		
Langstrath and Coombe Common	x	x	x
Baugh Fell Commoners Association	x	x	

Moorhouse Group	x	x	
Mungrisdale Common	x		
Matterdale Common	x	x	
Kentmere Common	x	x	x
Bampton & Askham Common	x		
Birbeck Common	x		
Total	14	8	4

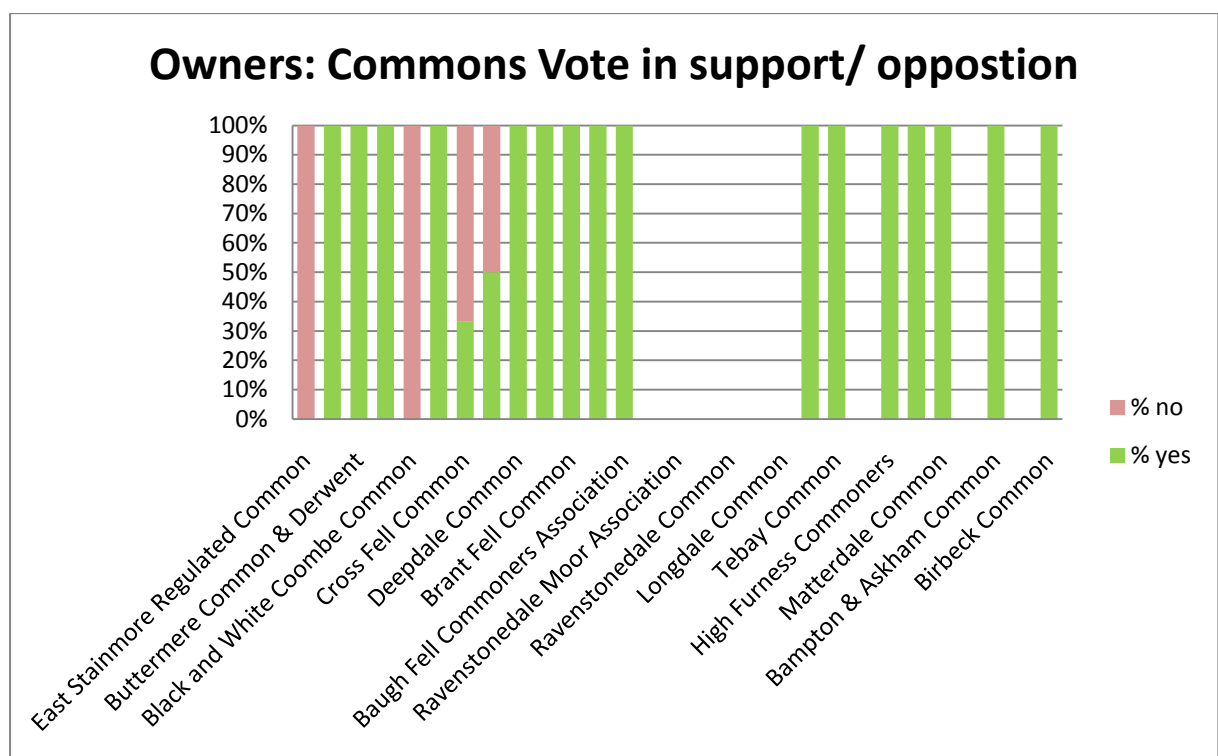
If abstentions were not treated not as opposition and were taken into consideration when testing for *prima facie* substantial support then a 50% response threshold would enable another five associations to be added to the table above. In these five commons at least 60% of the active graziers voted in support of a commons council, indeed in three of them the active graziers were 100% in support.

7.3 Analysis of owner vote

Despite the low return rate of 43% it was relatively easy to interpret these results as seventeen of the commons have a single owner, 11 voted in favour, 2 against and 4 didn't vote. Another six commons have three or less owners and in two of these commons the owners didn't vote. Three commons have four or more owners of which the owners of one common didn't vote.

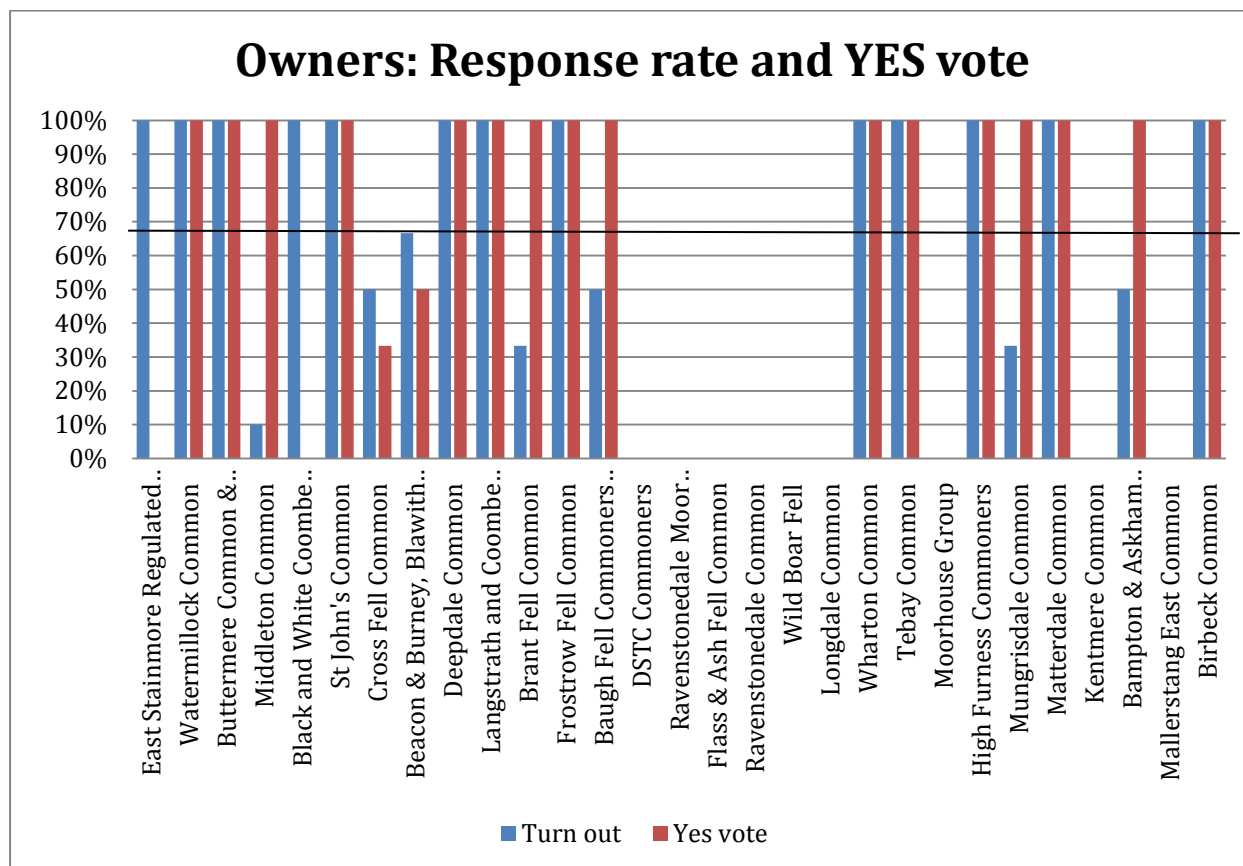
In total the owners of sixteen commons voted 100% in support of a commons council. These include the big landowners and institutional owners.

Chart 2: Owners vote in support/ opposition of a Commons Council



When comparing support/opposition for the council with response rates we opted for a two thirds majority threshold for testing *prima facie* substantial support as most commons had three owners or less (i.e. 60%, 70% and 80% doesn't work for owners). Eleven commons achieved 100% YES vote with at least a 2/3 response rate of their owners as shown in Chart 3 below.

Chart 3: Comparison of response rates and yes votes for owners



The eleven commons that met the criteria were:

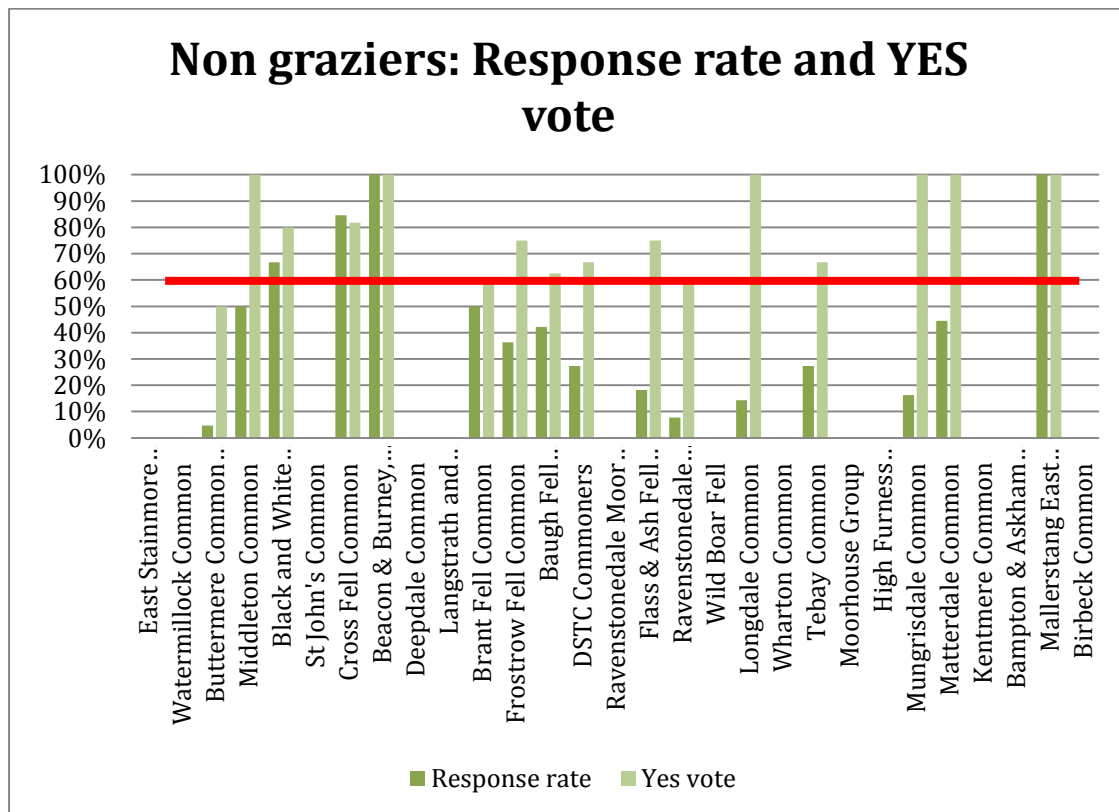
- Watermillock Common
- Buttermere Commons & Derwent
- St John's Common
- Deepdale Common
- Langstrath and Coombe Common
- Frostrow Fell Common
- Longdale Common
- Wharton Common
- Moorhouse Group
- High Furness Commoners

- Matterdale Common
- Birkbeck Common

7.4 Analysis of non-grazier vote

In general the response rate for the non-graziers was relatively low. This was to be expected as they had less interest in the active management of the commons and possibly less stake in the formation of a commons council. In addition it should be noted that the non-grazier lists were the most inaccurate due to the fact that they were very rarely used or updated. The results show that four commons met the 60% response rate and YES vote threshold. These were Black and White Coombe Common; Cross Fell Common; Beacon and Burney; and Mallerstang East.

Chart 4: Comparison of response rates and yes vote for non graziers



7.5 Testing for *prima facie* substantial support

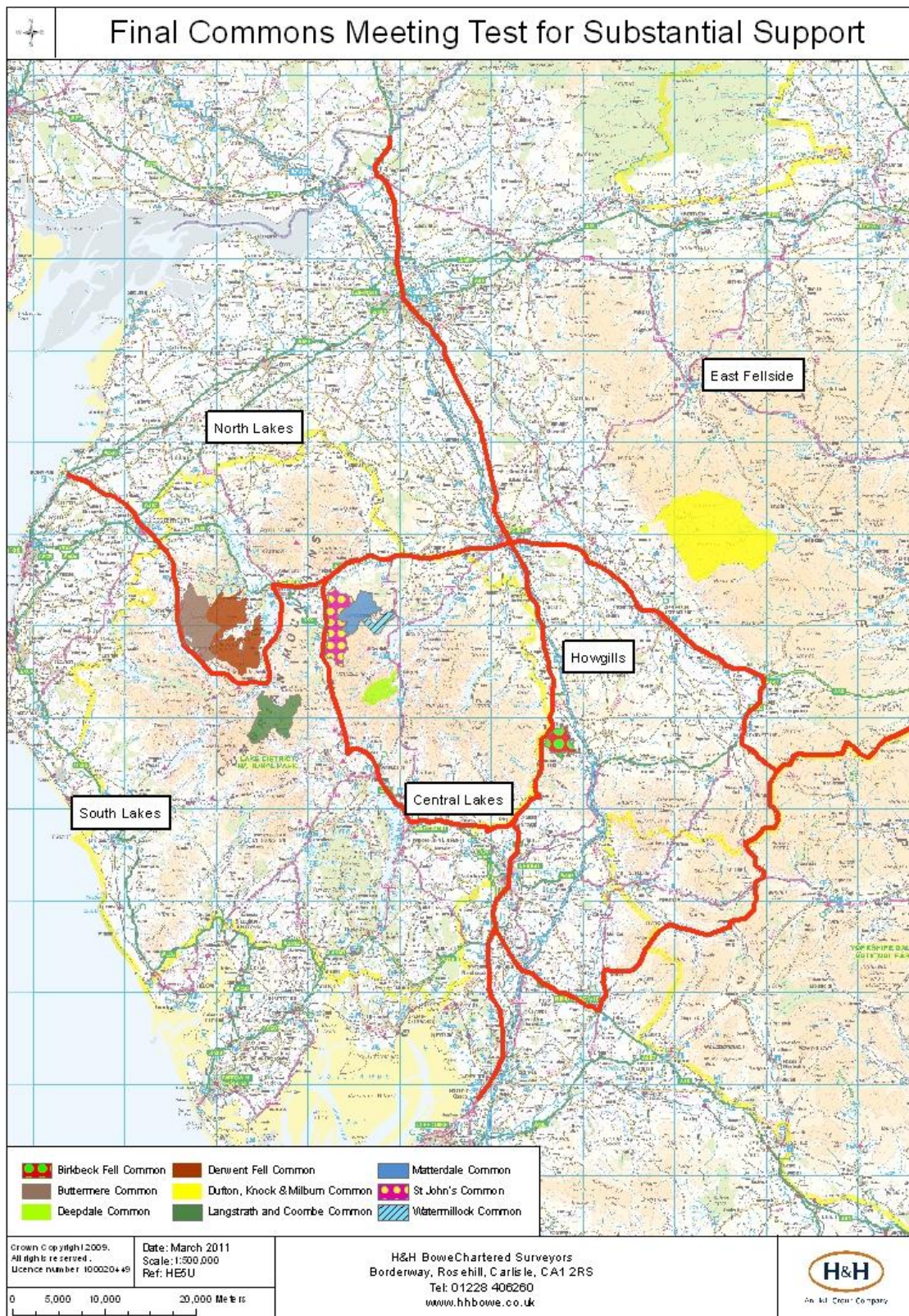
It could be argued that eight commons would meet a test for *prima facie* substantial support based on a 60%:60% response rate: YES vote from active graziers and 66.66%: 100% response rate: Yes vote from owners, as these are the two groups with the most interest and capability of delivering the functions of a council. Table 6 shows the results.

Table 6: Commons that meet the test for prima facie substantial support

Local Association/ Response rate: YES vote	Active graziers: 60:60	Owners : 66.66: 100	Hectares
Watermillock Common	x	x	345
Buttermere Common & Derwent	x	x	5082
St John's Common	x	x	1539
Deepdale Common	x	x	732
Langstrath and Coombe Common	x	x	1619
Moorhouse Group	x	x	7513
Matterdale Common	x	x	1029
Birbeck Common	x	x	738
Total	8	8	18,597

In terms of location these commons would form a cluster in the central lakes with outliers in the East Pennines and the western edge of the Howgills. Please see Figure 5 overleaf.

Figure 5: Map showing final commons meeting test for substantial support



7.6 Conclusions and lesson learnt

It would be difficult to conclude that the consultation process established sufficient *prima facie* substantial support among enough commons to build a comprehensive case for establishing a Commons Council in Cumbria. It could however, be argued that the case was nearly there. The process engaged 29 commons, with over 400 attendees at meetings and as a result many of those with rights of common in Cumbria have hugely increased their knowledge about commons council. The voting data showed that if two additional active graziers had voted YES on each common, then twenty six commons would have met the 60% response rate threshold, 21 commons the 70% threshold rate and 14 the 80% threshold rate. Only five would have indicated a definite NO. Similar results occur if one additional owner per common voted YES.

These results confirm that in an ideal world taking people through a meaningful consultation process that presents a relatively complex idea and structure, sorting out their concerns and compiling a case for submission should be undertaken over a much longer time period than the 17 weeks of the contract, whose commencement coincided with severe winter weather and was punctuated by the Christmas and New Year period.

8 Next Steps: Keep the Ball Rolling

The Federation of Cumbria Commoners have decided that they will be taking the process forwards. They recognize that some momentum will be lost over the next few months as their members are lambing. They will pick up the baton in late May. In the meanwhile, a short article outlining the results appeared in the Cumberland News on 20th March 2011 and the intention is get a longer article published in the next Farming Supplement of the Cumberland News. There will be an article in the widely read Federation's Spring/Summer Newsletter and information posted on the website.

The plan is to obtain a small amount of grant funding (possibly matched with money from their reserves) and establish a series working groups which will include members of the local commons associations who voted in favour. These groups will re-consider and finalize the proposal for procedural matters, rules and regulations and financing arrangements and report back in to the Committee of the Federation of Cumbria Commoners in autumn. The Federation will meet with the Chairmen of local commons associations and extend a new invitation to all commons associations to join a proposed Commons Council. The level of support will be tested at the AGMs of the local associations who agree to take part. If there is substantial support, then a case for submission may be made to the Secretary of State early in 2012.

APPENDICES

Appendix 1: Commons taking part in the consultation process

Common	CL Unit	Hectarage	Date Entered
EAST FELLSIDE			
East Stainmore Regulated Common			15/12/2010
<i>North Stainmore</i>	CL17	1508.00	
<i>South Stainmore</i>	CL18	1043.00	
Dufton Common and the whole of Moorhouse Group			15/12/2010
<i>Dufton</i>	CL81	4616.50	
<i>Knock</i>	CL80	860.00	
<i>Milburn</i>	CL5	2036.77	
Cross Fell Common			20/12/2010
<i>Melmerby Fell</i>	CL124	934.67	
<i>Ousby Fell</i>	CL125	1449.41	
<i>Skirwith Fell</i>	CL126	879.58	
<i>Kirkland Fell - Part B</i>	CL127	164.60	
<i>Blencarn Fell</i>	CL323	291.49	
Side Fell Common	CL007	536.51	20/01/2011
TOTAL		14320.53	
HOWGILLS			
Longdale Common	CL42	1927.80	09/12/2010
Birbeck Fells	CL9	738.46	21/01/2011
Baugh Fell Commoners Association	CL29	3057.90	13/12/2010
Brant Fell Common	CL26	2735.00	13/12/2010
Ravenstonedale Common	CL39	2511.54	14/12/2010
Ravenstonedale Moor	CL33	242.75	11/01/2011
Wild Boar Fell Graziers Group	CL40	1034.30	22/12/2010
Tebay	CL45	1045.00	12/01/2011
Wharton Fell Common	CL44	289.22	10/01/2011

Mallerstang North and East	CL93	1671.67	10/01/2011
Frostrow Fell	CL28	168.50	31/01/2011
Flass & Ash Fell	CL37	235.03	24/01/2011
Middleton Common	CL110	1459.50	01/02/2011
TOTAL		17116.67	
NORTH LAKES			
Buttermere Brackenthwaite above Derwent			07/12/2010
<i>Brackenthwaite Fell</i>	CL11	4256.50	
<i>Brackenthwaite Common</i>	CL74	193.75	
<i>Tracts of Open Fell Common</i>	CL118	1.83	
<i>Maiden Moor Common</i>	CL166	109.50	
<i>Catbells Common</i>	CL168	152.50	
<i>High Coledale Fell Common</i>	CL169	1.75	
<i>Skelgill Bank and Catbells Common</i>	CL250	3.12	
<i>Scawdale Fell and Catbells Common</i>	CL255	361.00	
<i>Braithwaite Common</i>	CL297	0.80	
<i>Newlands Fells Common</i>	CL321	1.50	
Mungrisdale Common			13/12/2010
<i>Carrock and Mungrisdale</i>	CL60	439.50	
<i>Saddleback Common</i>	CL66	1093.84	
<i>Mungrisdale Common</i>	CL293	1235.25	
TOTAL		7850.84	
CENTRAL LAKES			
Deepdale Common	CL160	732.00	15/12/2010
Matterdale Common	CL67	1029.00	20/12/2010
Watermillock Common	CL1	345.45	20/12/2010
Kentmere Common	CL67	775.60	05/01/2011
Langstrath and Coombe Common	CL423	17.50	09/12/2010
<i>Langstrath and Coombe Fells in Borrowdale</i>	CL167	1601.50	
Bampton and Askham Common			
<i>Askham Fell</i>	CL87	225.50	10/01/2011
<i>Bampton Common</i>	CL85	2788.32	10/01/2011
St John's Common	CL123	1539.20	10/01/2011

TOTAL		9054.07	
SOUTH LAKES			
Black and White Coombe Common	CL112	1823.10	09/12/2010
DSTC Commoners	CL29	4552.50	10/12/2010
Beacon & Burney Commoners, Blawith & Subberthwaite Common			13/12/2010
<i>Blawith Common & Subberthwaite Common</i>	CL155	453.69	
TOTAL		6829.29	
GRAND TOTAL		55171.40	

Financing Mechanism for a Cumbria Commons Council

Grants would be sought for establishment costs but a sustainable financing plan is needed for running costs.

Estimated Running Costs	
Administrator	1.5 days per week incl. office costs
Postage and Newsletter	2 mailings per year
Travel	Local and national
Meetings	5 times a year including the AGM
Software and Equipment	Software and website maintenance and updates
Accounts	
Professional Advice	
Officer Insurance	
Total	

NB It would be useful to accrue a financial reserve for Dispute Resolution

The exact costs per commoner / owner will depend on the number of commons that participate. Payments could be made by commons associations from agr-environment payments and would include membership of the Federation as well as the Commons Council.

The UELS commons supplement of £5 per ha equates to over £500,000 per annum in Cumbria. £16,500 per annum is a small proportion of that supplement (3%) to protect vital income streams.

for more details contact:
 Julia Aglionby 016974 70016
julia.aglionby@hhbhowe.co.uk
 or Viv Lewis 01934 713335
viv@cumbriacommoners.org.uk

8

Cumbria Commons Council
 A Proposal for Consultation

Functions, Membership, Regulations and Financing
 January 2011

Funded by H&H National Trust

Federation of Cumbria Commoners

Appendix 2: Consultation Brochure

Introduction

In 2008 a consultation process for a Shadow Commons Council for Cumbria was undertaken. Overall there was considerable support for a Council and the Federation of Cumbria Commoners undertook further research and concluded that a Statutory Commons Council offers advantages to those actively managing commons.

This time the consultation process is for real, if you have received this it is likely your commoners association has expressed interest in being part of the first phase of commons to be part of an umbrella Commons Council for Cumbria. Substantial support from each CL unit is required before your common becomes part of the council.

Next Steps

1. Please read this document and contact us by 7th February 2011 if you have any queries or suggestions for amendments.
2. A further meeting will be held in mid February when you will be asked to vote via a paper ballot on whether your common should join the Council. Postal voting will be an option.
3. If there is substantial support from a number of commons then a case of establishment will be made by the Federation to Defra, all those commons who have voted in favour of a council would be involved in preparing the case.

2

Proposed Council Membership

It is proposed that the Council has 15 voting members and the ability to co-opt up to four additional members who would be non-voting. It is proposed these would be:

- 10 active commoners: up to 2 from each of the 5 areas. Active graziers would vote for these members.

Areas
East Fellside
Howgills
North Lakes
South Lakes
Central Lakes

- 2 non-active commoners from different areas who are not owners to be voted for by non-active commoners
 - 3 owner representatives chosen by the owners including 1 non-institutional owner
- plus up to 4 co-opted non voting members

Active commoners would be commoners who have grazed an even aged hefted fell flock for at least the previous two years

7

Frequent Questions about Commons Council

- **Why does the Federation support a Commons Council?**

The Federation has worked hard since 2003 to provide a voice for commoners in Cumbria. It is also approached by local associations when problems arise but in these cases the Federation's role is limited as it has no statutory powers. A Council would enable common land to be properly managed with a binding dispute resolution service and prevent a small minority disrupting the livelihoods of the majority. As public funding becomes tighter and demands for public goods increase Commons require a stronger statutory voice and effective management to protect commoning.
- **How will the Council work with the Federation?**

All commoners who are part of the Council would automatically then be members of the Federation which would continue to run in parallel with the Council but with shared staff and newsletters to minimise costs.
- **We cannot enter Stewardship due to some commoners' illegal activities. Would a Council help?**

A Council would at the request of a local association or commoners be able to remove illegally grazing stock and remove items left on a common such as middens and other rubbish.
- **The majority of the commoners want to enter a HLS but cannot due to one objector, can a Council help?**

Yes, where the majority of active commoners wish to enter a scheme the Council will be able to enter into an agreement on behalf of the association and bind the minority objector(s) if the Council considered a scheme was beneficial.
- **What will the relationship be between local associations and the Council?**

Local associations will continue to manage all day to day activities on a common and will continue to hold the stewardship agreement unless they request the Council's involvement. When a problem arises the association or individual commoners can seek the assistance of the Council. The Council will be able to enter into agreements with associations to facilitate carrying out its functions. A separate guidance note will be produced detailing all the associations involved in the Council and their roles.
- **Why doesn't Natural England pay for the Council?**

If the commoners pay for the Council they retain ownership of the Council. Natural England provides an extra £5 per hectare to all commons in UELS to recognise the extra costs of managing commons and keeping a live register. Some of this money could be used to meet the subscription to the Council.
- **Will recreational users be part of a Council**

Commons Councils are for commoners, owners of common land and other property rights. Those with access rights under CROW and other laws have no right to sit on the Council.
- **What happens to those Commons who do not join the Council at this stage?**

There will be another chance but each time a new common would like to join the umbrella Commons Council a new establishment order from Defra is required. It is therefore likely that there would only be opportunities at 2-5-year intervals but there is likely to be a cost.

Proposed Functions of the Council

1. Managing agricultural activities
2. Prepare and maintaining a register of grazing
3. Establishing and maintaining boundaries
4. Removing unlawful boundaries and other encroachments
5. Removing animals unlawfully permitted to graze.
6. Regulating the use of common rights

How will decisions be made?

The Council will have a set of rules that would apply to all commons within the Council and if a breach cannot be resolved locally the Council can be brought in. Some Council decisions would be a simple majority vote but on decisions that limit the use of common rights a 75% majority would be required.

For instance a decision to enter a common to a stewardship scheme could be taken by the Council where unanimous support is not forthcoming. The Council would require a 75% majority vote in this case and need to be convinced that a scheme was the preferred option of the majority of active graziers.

New rules for the Council would require majority support of the Council members. When new rules are proposed there would be notification procedures to all commoners and owners.

6

Key Features of the Commons Council

1. Covers the whole of Cumbria
2. Common Land (CL) units join the Council if there is substantial support from those with legal rights on that CL unit
 - a. If a CL unit does not join the Council has no jurisdiction over that land
 - b. If a CL unit joins the Council then all users of that unit are bound by the regulations whether commoners or not
3. As a matter of principle the Council will wherever possible leave management to local associations
4. Negotiation, mediation and arbitration would be the preferred routes for dispute resolution; the courts would be a last resort.
5. All graziers are required to provide returns for the live register, the system chosen would meet UELS rules.
6. Where consent is currently required from the owner for any activities the Council would still require owner's consent
7. There will be separate members for graziers (10), non-graziers (2) and owners (3)

3

Appendix 3: Guidance notes on Election of Members and Decision Making

FACT SHEET

Election of Members to a Commons Council

If a Council is established the regulations governing the Council will be set out in the Standard Constitution and in the Establishment Order specific to Cumbria Commons Council. This note expands on the information given in the consultation leaflet on the process for electing members.

Membership and participation — definitions

A **participant** in a council is a commoner, landowner or other person entitled to participate in the council by virtue of an interest in the area of common land covered by it. They will be able to vote in elections of council members.

A **council member** is a person appointed, elected or co-opted to serve on the council. Most decisions made by a commons council will be made by its council members through majority voting procedures.

Returning Officer

Following a decision to establish a commons council, the Secretary of State will appoint a returning officer to facilitate the appointment of the first members of the council. The responsibilities of the returning officer will include:

- preparing information on persons who will be eligible to vote for, or become, a committee member of the commons council.
- arranging and advertising the first meeting of the council, and inviting nominations for committee members.
- announcing the nominations and, where these exceed the vacancies to be filled, holding an election by ballot.

Identifying Commoners

The following is a summary of the steps the returning officer will be required to take to identify eligible commoners (full details are provided below):

1. Returning officer prepares initial list, based on information supplied by local interests and the register of common land held by the commons registration

authority.

2. Returning officer advertises list, allowing at least 28 days for representations.
3. Returning officer finalises list, taking into account the representations received.

Identifying Landowners

The returning officer through the Commons Register, the Land Registry or local knowledge aim to identify the owner of the Commons part of the Council.

Procedure for the election of council members

Election of council members shall take place at the first meeting of the council.

The returning officer shall, not less than 28 days before the meeting, by advertisement in a local newspaper circulating in the area of the commons

- (a) give notice of the holding of the meeting
- (b) specify the time and place where information on those entitled to vote for, or to become, a council member of the council may be viewed, and the date by which any representations on this information must be received, and
- (c) invite nominations in writing for council members of the council, specifying a date by which nominations must be received.

At the meeting, the returning officer shall announce the nominations received for membership of the council, and in any of the categories in which the nominations do not exceed the vacancies to be filled, the officer shall declare the candidate or candidates to be duly appointed; and in any other case, the officer shall cause an election by ballot of those present and entitled to vote to be held forthwith.

Procedure for nomination of council members

Specific provision may be made in an establishment order for the landowners or commoners to nominate a person as a council member on their behalf, for example, a landowner who is resident overseas may nominate a local land agent for this purpose, or a commoner could nominate a person who is not commoner, but may have particular expertise or interest in commoning practices.

Structure of the Commons Council

Active Graziers	Up to 2 members from each of the 5 areas
Non Active Graziers	Up to 2 members to be from separate areas
Landowners	Up to 3 members at least one to be a non institutional landowner

Co-opted members

Up to 4 non co-opted members

Factsheet: Decision making by Council members

If a Council is established the regulations governing the Council will be set out in the Standard Constitution and in the Establishment Order specific to Cumbria Commons Council. This note expands on the information given in the consultation leaflet on the process for electing members.

Number of votes per Council Member

Each elected council member will be entitled to one vote (co-opted members cannot vote)

EXCEPT

Where a decision relates to only one or several of the quarters, only the commoner representatives from the quarter or quarters affected are entitled to vote. The votes for the commoner representatives are weighted to maintain the balance in favour of active commoners.

Simple majority vote

Most decisions will be passed by a majority of those present. If votes are equal the person presiding at the meeting will have the casting vote

Two thirds majority vote needed to change subscription rates

Seventy five percent majority vote needed for:

- Approval, amendment or revocation of rules
- Entry into an agri-environment or other similar scheme
- Making, amendment or revocation of standing orders
- The co-option of any person as a member of the council

Appendix 4: Set of draft rules

CUMBRIA COMMONS COUNCIL

RULES AND REGULATIONS

- 1 No person shall turn out on the commons any animal in respect of which he does not have an entitlement.
2. All owners commoners or their tenants or licensees grazing the common are required to update the grazing register annually providing the information set out in the Establishment Order
- 3 If a person owning rights of common attached to land wishes to lease or licence those rights without the land to another person for a period greater two years they must seek the consent of the Council. The Council's decision will have particular regard to the views of the local Association if existing for that area and any guidance on the leasing of rights produced by the Council.
- 4 No person shall allow any animal to be turned out on the commons without taking all reasonable steps to make sure it is hefted in accordance with the custom and practice of that common as approved from time to time by the Council.
- 5 No person shall turn out on the commons any cattle or ponies exceeding the age of 12 months or sheep exceeding the age of 6 months which are not permanently marked in a form that is readily visible for the purpose of identifying their ownership. Breeding sheep should have a permanent incised earmark readily discernable together with a paint mark. The Council may waive the requirement of such permanent marking on application of the person where the duration of grazing is to be a single period of less than 3 months.

New graziers or commoners changing their mark shall one month prior to turning out animals animal send to the Secretary of the Council a diagram and a description of the mark adopted for this purpose if it is not in the Shepherd's Guide.

The Council may require a person to alter or vary any mark which it considers cannot adequately be distinguished from that employed by another person grazing animals on the commons, and thereafter such person shall ensure that all animals turned out by him are marked in accordance with such requirement.

- 6 No person shall turn out on the commons any animal which he knows or has reasonable cause to believe is suffering from any disease which is a notifiable disease for the purpose of the Animal Health Act 1981 as amended. A person who turns out on the commons an animal which is or which appears to be in a healthy condition and who subsequently discovers or is informed that that animal is suffering from such a disease shall within 48 hours remove that animal from the commons and arrange for that animal to be tested.

If the result of such a test confirm that that animal is suffering from a notifiable disease that person shall undertake an inspection to ensure that other stock belonging to him and similarly turned out is not affected by such a disease. Further, if any animal is discovered to be suffering from a notifiable disease the person by whom it was turned out shall within 48 hours of such discovery notify the Secretary of the Council thereof and the Local Association if existing.

- 8 No person shall turn out a prohibited animal on the commons or a designated unit thereof during a prohibited period. A prohibited period shall be a period designated by the Council in accordance with advice concerning animal health or other matter and may apply either to all the commons or such unit or units thereof as the Council decides. A prohibited animal may be an animal of any description as the Council may decide.

When the Council has determined that a prohibited period is necessary and the appropriate extent thereof the Secretary of the Council shall send the relevant details to the Secretary of all those Commoners' Associations whose commons are affected by the prohibition notice and shall advertise notice of such prohibition in a newspaper circulating in the area of such commons.

- 9 No person shall turn out on any unit of the commons animals in excess of the number contained in a Limitation Notice. A Limitation Notice whenever the Council shall consider it expedient to prescribe the maximum number of any description of animal that any person may from time to time turn out on any unit of the commons (whether by reason of the quality of the pasturage or otherwise). The Secretary of the Council shall send a Limitation Notice in accordance with the Rules of the Council to the owner or tenant of that land and to each person registered on the grazing register. The notice shall specify the common land so restricted, the period of the limitation and the maximum number and description of animals that may be turned out. A copy the notice will also be sent to the Secretary of the Commoners' Association to whose area the restriction applies if existing. Any person affected by a Limitation Notice may appeal the Notice in accordance with section x below.

10 No person shall turn out on the commons:

- (a) A bull over the age of six months or a shod horse or a shod pony.
- (b) A stallion or other animal which the Council considers to be a danger to any person or animal.
- (c) A ram or ram lamb between the 31st day of July and the 10th day of November in any year or in respect of any common land units or other such other dates as the Council may from time to time determine.

- 11 (i) Any reeve appointed or other person duly authorised by the Council may remove from the commons and detain any animal turned out there in contravention of any of the foregoing regulations.

(ii) During the detention of any animal so removed from the commons the Council shall arrange for it to be properly fed, watered and, if appropriate, sheltered and to receive any treatment, veterinary or otherwise, as seems to the Council reasonably necessary for its well-being.

(iii) As soon as is reasonably practicable after removal from the commons of an animal in accordance with this Regulation the Council shall arrange for notice of its detention to be given to the owner of that animal. Such notice shall inform the owner where the animal may be collected.

(iv) Before an animal is returned to its owner the Council shall be entitled to charge and receive from the owner of the animal the cost of its detention, including the cost of its maintenance and of any treatment the animal has been given during its detention.

(v) If within ten days of giving notice of its detention to the owner of that animal that animal is not collected by the owner the Council shall be at liberty to sell the animal and deduct from the proceeds of the sale all its costs and expenses incidental thereto before remitting the balance to

the owner. [check re passports for cattle]

- (vi) Where an animal is detained and is unable to identify the owner it shall advertise that detention in a newspaper circulating in the area where the animal was impounded in two consecutive weeks' editions. The Council shall continue to keep the animal safely and if at the end of seven days from the date on which the notice was published for a second time no enquiry from the owner has been received by the Council it shall sell that animal and deduct from the proceeds of the sale all its costs and expenses incidental thereto. The Council shall then retain the balance of the sale money for six months and if in this time it is not reclaimed by a person who satisfied the Council that he was the owner of the animal so sold the Council may include that balance within its income for that financial year.

- 12 An owner or his tenant or other person may appeal against the number of animals he may turn out as prescribed in a Limitation Notice issued by the Council under Regulation 9. The appeal shall be heard by an Arbitrator appointed by the Chairman of the Northumbria and Cumbria branch of the Central Association of Agricultural Valuers. Unless both parties agree to submit written representations to him the Arbitrator shall arrange a hearing at which the appellant and a representative of the Council may address him orally and shall before he makes an award make an inspection of that part of the commons to which the dispute relates. The costs of, and incidental to, the arbitration and award shall be in the discretion of the Arbitrator who may direct by whom the costs or any part thereof are to be paid.

- 13 No person exercising any rights on common land shall do anything in contravention of the Commons Act 2006.

- 14 The Council may require the removal of stock from the commons or from a particular part of the commons where stock are being grazed or fed in contravention of any Code of Guidance approved by the Council or in order to prevent or limit damage to the commons.

- 15 All burning shall follow the Heather and Grass etc Burning (England) Regulations 2007.

- 16 Any person who contravenes any of the foregoing Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of a continuing offence to a further fine not exceeding £xx for each day during which the offence continues after conviction thereof.

DATE

Appendix 5: Example Voting Form

Charlotte Raw
H&H Bowe
Borderway
Rosehill
Carlisle
CA1 2RS

Fold Here

CUMBRIA COMMONS COUNCIL VOTING PAPER

IMPORTANT: If you have already voted at a meeting of your local Commons Association PLEASE DO NOT fill out and return this form

Please fold this form so the above address appears in the windowed envelope provided and return **no later than 28th February 2011.**

Fold Here

YOUR VOTE

CL ***

Are you in favour of your local Commons Association joining a Commons Council for Cumbria? (please tick)

YES

NO

Appendix 6: Active Graziers voting patterns at set thresholds

