

Disposition

By

The Scottish Ministers

In favour of

Achnamara Community Trust SCIO

Subjects: Achnamara Village Hall, Achnamara

Ref: PTI/549114
FAS: 3889 Direct Debit

DISPOSITION

by

The Scottish Ministers (the “Sellers”)

in favour of

Achnamara Community Trust SCIO, a Scottish Charitable Incorporated Organisation with registration number SC048950 having its principal office at Castle Sween Cottage Achnamara, Argyll, PA31 8PT (the “Purchaser”)

1 Narrative

- 1.1 The Sellers are the proprietor of the Conveyed Property and the Retained Property.
- 1.2 The Sellers have sold the Conveyed Property to the Purchaser for the Price.
- 1.3 The Sellers acknowledge receipt of the Price.
- 1.4 The Schedule forms part of this Disposition.

2 Disposition

- 2.1 The Sellers DISPONE the Conveyed Property to the Purchaser.
- 2.2 Insofar as the Sellers have right to the same, the Conveyed Property is disposed together with:
 - 2.2.1 the whole mines, metals, minerals, stone, sand, gravel and others therein and thereon (but excepting all coal and mines of coal vested in the National Coal Board constituted by the Coal Industry Nationalisation Act 1946);
 - 2.2.2 any exclusive shooting, sporting and fishing rights pertaining thereto;
 - 2.2.3 all standing and fallen trees and growing timber therein and thereon; and
 - 2.2.4 all buildings, erections, boundary fences, walls, dykes and others therein and thereon.
- 2.3 The Conveyed Property is disposed with all existing rights and pertinents thereof including the benefit of, insofar as subsisting and valid, the Existing Servitudes.
- 2.4 The Conveyed Property is disposed with the benefit of the New Servitudes. The New Servitudes are subject always to the Servitude Conditions.
- 2.5 The Conveyed Property is disposed with the benefit of the Reciprocal Burdens, which are hereby imposed as real burdens on the Burdened Property for the benefit of the Conveyed Property.

3 Existing burdens benefiting the property (section 12 declaration)

We nominate the Conveyed Property and the Retained Property each to be a benefited property in respect of the following existing real burdens (insofar as valid and subsisting), namely all real burdens benefiting the Conveyed Property and Retained Property which are set out in section D of the title sheet for the Larger Property.

4 **Encumbrances**

4.1 Existing title conditions etc

The Conveyed Property is disposed ALWAYS WITH AND UNDER so far as valid, subsisting and applicable (a) the burdens, servitudes, conditions and other encumbrances contained in section D of the title sheet for the Larger Property and (b) the Encumbrances.

4.2 New title conditions

The Conveyed Property is disposed ALWAYS WITH AND UNDER:

4.2.1 the Reserved Servitudes, which are hereby imposed as heritable servitude rights on the Conveyed Property for the benefit of the Retained Property;

4.2.2 the Reciprocal Burdens, which are hereby imposed as real burdens on the Conveyed Property for the benefit of the Burdened Property; and

4.2.3 the New Burdens on the Conveyed Property, which are hereby imposed as real burdens on the Conveyed Property for the benefit of the Retained Property.

5 **Entry**

The Conveyed Property is sold WITH ENTRY and VACANT POSSESSION on the Date of Entry.

6 **Dispute Resolution**

6.1 The Parties will each attempt in good faith to resolve all disputes, questions, or differences at any time arising under, out of, or in connection with all of the rights, obligations and others set out in this Disposition within 14 days of written notice of the dispute from one Party to the other Party (or Parties, as appropriate) through negotiations between the representatives of the Parties who have authority to settle the relevant dispute.

6.2 In the event of any dispute arising under the terms of this Disposition not being resolved through negotiation, the Parties will attempt in good faith to settle the dispute or claim by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

6.3 Unless extended by agreement of the Parties, if the dispute has not been resolved by mediation within 28 days of the initiation of mediation, or if either Party will not participate in an Alternative Dispute Resolution procedure, then the dispute shall be settled by an arbitrator to be appointed on the application of either Party by the Chairman (or senior office holder) of The Royal Institution of Chartered Surveyors in Scotland. The said arbitrator shall have power to award expenses of any Party wholly or partially against the other Party or Parties.

7 **No application to Lands Tribunal**

No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) or 91(1) of the Title Conditions (Scotland) Act 2003 in respect of the real burdens, servitudes and servitude conditions created by this Disposition for a period of five years after the registration of this Disposition in the Land Register of Scotland.

8 **Warrandice**

The Sellers grant warrandice but excepting therefrom (a) all presently existing rights of way and access and third party rights, public or private, howsoever constituted over and across the Conveyed Property and/or Burdened Property including but without prejudice to the foregoing generality any rights in respect of any overhead or underground power lines or other services and apparatus associated therewith (b) any change in the extent of the Conveyed Property and/or Burdened Property that may be occasioned by any change in the course of any burn or any water feature forming or which may form the boundary of the same and (c) any public road (including any verge thereof); IN WITNESS WHEREOF this Disposition consisting of three pages together with the Schedule annexed is executed as follows:

EXECUTED for and on behalf of the SCOTTISH MINISTERS
at
on the day of

..... Authorised Signatory
..... Full Name

Before this witness:

..... Witness
..... Full Name
..... Address of Witness
.....

This is the Schedule referred to in the foregoing Disposition by The Scottish Ministers in favour of Achnamara Community Trust SCIO relative to subjects Achnamara Village Hall, Achnamara

Part 1 – Interpretation

1 In this Disposition:

“Access Road” means the access road, track or path (including any verge or ditch thereof) from time to time on the Access Route;

“Access Route” means that part of the Retained Property shown coloured blue on the Plan;

“Burdened Property” means in respect of the New Servitudes the Access Route;

“Burdened Property Owner” means the Sellers and their successors in title as proprietors of the Burdened Property or part thereof;

“Conveyed Property” means ALL and WHOLE the property known as Achnamara Village Hall, Achnamara being the subjects shown coloured pink including the dark pink verge on the Plan, and forming part and portion of the Larger Property;

“Conveyed Property Owner” means the Purchaser and their successors in title as proprietors of the Conveyed Property or part thereof;

“Date of Entry” means 25th March 2021;

“Encumbrances” means all encumbrances affecting the Conveyed Property (as such term “encumbrances” is used in section 9 of the Land Registration etc (Scotland) Act 2012);

“Existing Servitudes” means any existing servitude rights benefiting the Conveyed Property;

“Forestry Road Standard” means the standard set out in Part 7 of the Schedule;

“Larger Property” means the subjects the subjects registered in the Land Register of Scotland under Title Number ARG18617;

“New Burdens on the Conveyed Property” means the provisions (if any) of Part 5 of the Schedule;

“New Fences” means the fences to be installed by the Conveyed Property Owner in accordance with Part 5 of the Schedule;

“New Servitudes” means the provisions (if any) of Part 2 of the Schedule;

“Parties” means the Conveyed Property Owner and the Burdened Property Owner (and “Party” shall be construed accordingly);

“Plan” means the plan forming Part 8 of the Schedule;

“Price” means SIX THOUSAND POUNDS (£6000) Sterling;

“Reciprocal Burdens” means the provisions (if any) of Part 6 of the Schedule;

“Reserved Servitudes” means the rights (if any) set out in Part 4 of the Schedule;

“Retained Property” means the Larger Property under exception of the Conveyed Property;

“Retained Property Owner” means the Sellers and their successors in title to the Retained Property or part thereof;

“Schedule” means the schedule annexed and signed as relative to this Disposition;

“Servitude Conditions” means (a) Clauses 6 and 7 of the main body of this Disposition (relating to dispute resolution and Lands Tribunal applications respectively) and (b) the provisions (if any) of Part 3 of the Schedule;

“Works” means any works to the Burdened Property which are carried out or to be carried out by or on behalf of the Conveyed Property Owner in terms of this Disposition.

- 2 Words importing any gender include all other genders.
- 3 Where at any one time there are two or more persons included in the expression “Conveyed Property Owner” or “Burdened Property Owner” obligations contained in this Disposition which are expressed to be made by the Party denoted by the expression in question are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order.
- 4 Words importing individuals include legal persons and vice versa.
- 5 References to this Disposition or to any other document are to be construed as reference to this Disposition or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time.
- 6 Any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Disposition.
- 7 Any phrase introduced by the words “including”, “include”, “in particular” or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words.
- 8 Any rights reserved to the Burdened Property Owner are exercisable by the tenants, agents, employees, workmen and others authorised by them from time to time.
- 9 Any obligation on the Conveyed Property Owner to do or refrain from doing something in this Disposition shall be construed as to include a corresponding obligation to ensure compliance by its employees, workmen, contractors or others for whom it is responsible.
- 10 In relation to any reference to reasonableness by the Burdened Property Owner in this Disposition, the Burdened Property Owner shall (without prejudice to the foregoing generality) be deemed to be reasonable when its actions or decisions are based on silvicultural, agricultural or forestry interests.
- 11 The headings and sub-headings of this Disposition are for convenience only and shall not affect its interpretation.

Part 2 – New Servitudes

1 Access

- 1.1 A servitude right of pedestrian and light vehicular access, together with equipment and materials, over the Access Route for the purpose of access and egress to and from the Conveyed Property.
- 1.2 A servitude right of pedestrian and light vehicular access, together with equipment and materials, over the Access Route for the purpose of carrying out the Works.

DECLARING THAT no guarantees or warranties (express or implied) are given by the Burdened Property Owner in relation to, and (subject to any real burdens on the Burdened Property Owner in this Disposition in relation to the same) there shall be no liability on the Burdened Property Owner in relation to the current or future suitability of the Access Road for the foregoing purposes or any purposes related thereto, nor compliance with any regulations or laws affecting the same from time to time DECLARING FURTHER that all risk in relation to the foregoing matters will from the Date of Entry rest with the Conveyed Property Owner so far as relating to their exercise of the New Servitudes, Servitude Conditions, New Burdens on the Conveyed Property or Reciprocal Burdens.

Part 3 – Servitude Conditions

1 Inconvenience and nuisance

- 1.1 The New Servitudes shall be exercised in such a manner as to cause the least practicable inconvenience to the Burdened Property Owner and the tenants and occupiers from time to time of the Burdened Property.
- 1.2 The Conveyed Property Owner shall not adversely affect the Burdened Property Owner's interests or the use and enjoyment of the Burdened Property and shall minimise and reduce to an acceptable level any disturbance or disruption (whether by noise, dust, vibration, obstruction or otherwise) to the use and occupation of the Burdened Property with all precautions reasonably required by the Burdened Property Owner being taken by the Conveyed Property Owner.

2 Estate management

- 2.1 The Conveyed Property Owner shall comply with the rules and regulations made by the Burdened Property Owner (including, without limitation, any factor appointed by, or on behalf of the Burdened Property Owner) in the interests of management of the Burdened Property, in particular those relative to the safety of pedestrians or flow of traffic on and surrounding the Burdened Property.
- 2.2 The Conveyed Property Owner shall comply at all times with any fire precaution order or direction applicable to the Burdened Property or the vicinity thereof, and without prejudice to the foregoing generality, will ensure that no fires are lit or any blow lamp or similar tool used on the Burdened Property without the prior written consent of the Burdened Property Owner or their agents (any decision thereon to be at the absolute discretion of the Burdened Property Owner and on such conditions as the Burdened Property Owner may direct).
- 2.3 No vehicles shall be parked within the Burdened Property nor materials placed on any such roadway by the Conveyed Property Owner nor shall the Conveyed Property Owner otherwise permanently or materially obstruct the same or any roadway within the Burdened Property in the exercise of its rights. Broken down vehicles belonging to the Conveyed Property Owner (or their tenants, customers, occupiers, visitors or those for whom they are responsible) must be removed from the Burdened Property by the Conveyed Property Owner within 48 hours.
- 2.4 Other than reasonable access to and from the Conveyed Property over the Access Route, the Burdened Property must not be used in periods of thaw except in an emergency.
- 2.5 Salt must not be spread anywhere on the Burdened Property at any time.
- 2.6 The Conveyed Property Owner will not exercise the New Servitudes (or permit the same to be exercised) in such a way as to breach or cause a breach or prejudice any title conditions, wayleaves, real burdens, servitudes or third party rights affecting the Burdened Property.
- 2.7 The Conveyed Property Owner shall ensure that if it (or its agents, employees, and those deriving right from it or for whom it is responsible) drive any vehicles through the Burdened Property, all such vehicles must be driven safely at all times, and in any case not faster than 15 miles per hour (being the maximum safe speed limit for which the forest road on the Access Route was designed).

3 Damage

The Conveyed Property Owner shall reinstate any road, roadside verge and others and make good all damage caused by the exercise of the New Servitudes, all as soon as reasonably practicable in a good workmanlike manner by competent contractors and all to the reasonable satisfaction of the Burdened Property Owner.

4 **No removal of trees**

The Conveyed Property Owner shall not remove any trees, roots or plants from the Burdened Property without the prior written approval of the Burdened Property Owner (such decision to be at the absolute discretion of the Burdened Property Owner). Any approval by the Burdened Property Owner may be subject to such conditions as the Burdened Property Owner decides, and in addition will be subject in all cases (unless the Burdened Property Owner agrees otherwise) to the following conditions:

- 4.1 Any trees agreed to be removed must be marked by the Conveyed Property Owner and then assessed and valued in terms of timber by a Forestry and Land Scotland Forester and the Conveyed Property Owner shall be obliged to pay forthwith to the Burdened Property Owner such sum as may be assessed by the Forestry and Land Scotland Forester; and
- 4.2 Any removal of trees must be carried out by a suitably qualified chainsaw operator and the Conveyed Property Owner shall be obliged to exhibit to the Burdened Property Owner a copy of the relevant chainsaw certificate prior to any removal works being carried out.

5 **Carrying out of Works**

5.1 The Conveyed Property Owner shall:

- 5.1.1 not carry out or commission the Works until after:
 - 5.1.2 prior consultation with the Burdened Property Owner, taking account of its interests as heritable proprietor of the Burdened Property and any silvicultural or forestry interests;
 - 5.1.3 comprehensive independent risk assessments have been obtained by the Conveyed Property Owner and supplied to the Burdened Property Owner, and the Burdened Property Owner has satisfied itself on their terms;
 - 5.1.4 a method statement for carrying out the Works has been supplied to the Burdened Property Owner and the Burdened Property Owner has satisfied itself on the terms thereof; and
 - 5.1.5 all necessary statutory consents have been obtained by the Conveyed Property Owner;
 - 5.1.6 ensure that all Works are carried out as quickly as reasonably practicable in a good workmanlike manner by competent contractors in accordance with method statements previously agreed with the Burdened Property Owner, and that any material delays or changes are notified to the Burdened Property Owner;
 - 5.1.7 ensure that adequate collateral warranties are granted in favour of the Burdened Property Owner by any contractors or workmen carrying out the Works for or on behalf of the Conveyed Property Owner as soon as reasonably practicable following completion of the Works;

5.2 **Statutory consents etc**

All statutory consents necessary for the exercise of the New Servitudes must be obtained by, and at the cost of, the Conveyed Property Owner. Without prejudice to the foregoing generality the Conveyed Property Owner shall:

- 5.2.1 obtain any necessary statutory or local authority consents or permissions or licences for the carrying out of the Works; and

- 5.2.2 comply with all applicable statutory and local authority requirements in relation to such works and ensure that the Works are carried out in a good workmanlike manner with good quality materials to accepted industry standards.

6 **Insurance**

The Conveyed Property Owner shall maintain and exhibit on request by the Burdened Property Owner (or by a factor or agent on their behalf) copies of insurance policies maintained by the Conveyed Property Owner providing adequate insurance cover against the risk of loss, injury and/or damage to third parties and/or their property arising as a result of the exercise of the New Servitudes.

7 **Maintenance**

- 7.1 The Conveyed Property Owner shall be solely responsible for the maintenance, repair and condition of the Works and for any damage which may occur thereto irrespective of the cause of damage, or to any neighbouring property to the extent that the same is adversely affected by the Works.
- 7.2 The Conveyed Property Owner shall ensure that the Works shall be maintained in good repair and condition and good working order at all times.
- 7.3 Where the whole or part of the Access Road is to be maintained, repaired, renewed, upgraded or replaced to a higher standard than the Forestry Road Standard, the Conveyed Property Owner shall be solely responsible for such maintenance, repair, renewal, upgrading or replacement, but that to the extent only that no claims in law can reasonably be made by the Burdened Property Owner against any third party in respect thereof.

8 **Enclosure**

The Conveyed Property Owner shall use all reasonable endeavours to keep any gates, doors or fences on the Burdened Property locked and secure at all times.

9 **Compliance with servitude conditions**

The Conveyed Property Owner shall:

- 9.1 ensure that the provisions set out in Part 3 of the Schedule are complied with by the Conveyed Property Owner and those deriving right, title or interest from it and those for whom it is responsible, and those whom it instructs or through whom it acts;
- 9.2 use all reasonable endeavours to procure such compliance from any third parties; and
- 9.3 notify the Burdened Property Owner forthwith on becoming aware of any breach or likely breach of any of the said provisions.

10 **Indemnity**

The Conveyed Property Owner shall free, relieve and indemnify the Burdened Property Owner against all actions, proceedings, costs, claims, losses, damages, expenses and liability of whatsoever nature incurred or threatened (except to the extent that the same arise by virtue of the negligence of the Burdened Property Owner), which are made against or suffered by the Burdened Property Owner, to the extent that the same relate to:

- 10.1 the exercise of the New Servitudes;
- 10.2 the breach of the Servitude Rights or the real burdens in Parts 5 and 6 of the Schedule of any of the obligations on the Conveyed Property Owner in this Disposition.

11 **Relocation**

In relation to the rights reserved to the Burdened Property Owner in Clause 1 of Part 4 of the Schedule:

11.1 The Conveyed Property Owner shall, on receiving notice from the Burdened Property Owner of its intention to exercise such right, use all reasonable endeavours and speed to agree such alternative route(s) or area(s) as are proposed by the Burdened Property Owner, failing which the Conveyed Property Owner will be deemed to have agreed to such relocation. Within a period of not less than 10 months from agreement or deemed agreement of such alternative route(s) or area(s), the Conveyed Property Owner shall carry out and complete all necessary works to divert the Burdened Property to such alternative route(s) or area(s) as aforesaid.

11.2 The Conveyed Property Owner shall, within a period of not more than 10 months from notification of such alternative route(s) or area(s), carry out and complete all necessary works to divert the Burdened Property to such alternative route(s) or area(s) as are specified by the Burdened Property Owner.

12 **No increase of burden**

The New Servitudes may be exercised only for the benefit of the Conveyed Property as it is currently used and the Conveyed Property Owner shall not increase the burden on the Burdened Property beyond such use.

Part 4 – Reserved Servitudes

There is reserved to the Burdened Property Owner and to anyone deriving right, title or interest therefrom the following rights, capable of being exercised at their discretion at all times and for all purposes:

- 1 The right to vary, divert or relocate the route of the whole or part of any Burdened Property subject to providing alternative route(s) or area(s), provided that the Burdened Property Owner meets the costs reasonably and properly incurred for all necessary works to give effect to the foregoing, save where such relocation is at the request of the Conveyed Property Owner (in which case all costs will be met by the Conveyed Property Owner including the cost of making good any damage to the Burdened Property);
- 2 The right to grant any future personal or real rights to any party or parties in relation to the whole or part of the Burdened Property including any future wayleaves, servitudes or others;
- 3 Full rights at any time (on giving notice to the Conveyed Property Owner) to develop, to carry out any alterations or adjustments to the Burdened Property including road widening and any silvicultural or forestry operations, and to interrupt the supply of services (including water) through the Burdened Property; and
- 4 Full rights of access and egress at all times and for all purposes over all the Burdened Property; and
 - 4.1 through such parts of the Conveyed Property as are required in an emergency; and
 - 4.2 through such parts of the Conveyed Property as are reasonably required from time to time for the purposes of inspection, repair, maintenance, renewal, upgrading or replacement of Burdened Property or any services serving the Burdened Property, or for the inspection or removal of trees from the Burdened Property, but only to the extent that such erection, use, upgrading, inspecting, maintenance, repairing or renewing cannot reasonably practicably be carried out by taking access only over the Burdened Property.

Part 5 – New Burdens on the Conveyed Property

1 Fences

The Conveyed Property Owner will erect the New Fences around the Conveyed Property as soon as reasonably practicable after the Date of Entry, and will keep the same in good repair and condition in all time coming.

Part 6 – Reciprocal Burdens

1 Maintenance

The responsibility for, and cost of, maintaining, repairing, renewing, upgrading, or replacing the whole or part of the Access Road will be shared between the Conveyed Property Owner and the Burdened Property Owner in reasonable proportions according to their relative use thereof and that by their respective tenants, occupiers, visitors and others for whom they are responsible at law and that to the extent only that no claims in law can reasonably be made against any third party in respect thereof.

Part 7 – Forestry Road Standard

Part 8 – Plan