

Agriculture and Rural Economy Directorate
Land Reform unit

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Your ref/Ur faidhle:
Our ref /Ar faidhle: CB00246

3 December 2020

Dear Dr Lee

NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 37(17) OF THE LAND REFORM (SCOTLAND) ACT 2003: DECISION ON THE APPLICATION BY THE CARRADALE COMMUNITY TRUST TO REGISTER A COMMUNITY INTEREST IN LAND KNOWN AS CARRADALE FOREST, CONSISTING OF DEUCHERAN, GROGPORT AND DEER HILL FOREST BLOCKS, EAST KINTYRE, ARGYLL

Case Number: CB00246

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 ("the Act") is enclosed.

The Scottish Ministers have considered the application by Carradale Community Trust, to register an interest in land known as Carradale Forest, consisting of Deucheran, Grogport and Deer Hill forest blocks, East Kintyre, Argyll. Scottish Ministers have decided that the interest **should not** be entered in the Register of Community Interests in Land.

The enclosed Notice sets out the reasons for the Scottish Ministers' decision.

I understand that you will be disappointed by this decision given the hard work and effort involved in pulling together the required information for your application. It is clear from the application that Carradale Community Trust have a clear passion for their community and for its future sustainability.

There are still options open to CCT to progress with land acquisition, lease and development, for the benefit of the community. Whilst Scottish Ministers appreciate that Carradale Community Trust did not have an enjoyable experience of the Asset Transfer scheme, you may wish to reengage with Forest and Land Scotland to further your plans. Forest and Land Scotland have made it clear that they would be happy to work with CCT, whether this is through Asset Transfer, the Energy Offering process, which is currently underway, or negotiation. Forest and Land Scotland have tried to engage with CCT, with regards to the Deer Hill site, and have offered to meet and discuss this area of land. Ministers would encourage CCT to work with Forest and Land Scotland to develop their proposals on this site, or other areas of land, in order to progress their plans for the benefit of the community.

In accordance with section 37(17) of the Act, a copy of this letter is being sent to the landowner, Forest and Land Scotland. In terms of section 37(20) of the Act, Scottish Ministers will direct the Keeper of the Register of Community Interests in Land to delete the interest in that Register with effect from the date of this decision.

Your attention is drawn to the notes contained in the Notice which provide information about the effect of Scottish Ministers decision and on rights of appeal against the decision

Yours sincerely

Ian Heron

Ian Heron
On behalf of Scottish Ministers

Notice under section 37(17) of the Land Reform (Scotland) Act 2003 of Scottish Ministers' Decision

The Scottish Ministers ("Ministers") have received the application by Carradale Community Trust to register a community interest in land as Carradale Forest, consisting of Deucheran, Grogport and Deer Hill forest blocks, East Kintyre, Argyll in terms of Part 2 of the Land Reform (Scotland) Act 2003 ("the Act").

Having considered the information provided Ministers have decided that the interest is **not** to be entered in the Register of Community Interests in Land ("the Register"). Scottish Ministers decision is effective from 3 December 2020 ("the Decision Date"). This notice states the reasons for that decision.

- Sustainable Development

Section 38(1)(b) of the Act requires Scottish Ministers to be satisfied that the acquisition of the land by the community body is compatible with furthering the achievement of sustainable development. Carradale Community Trust's (CCT) proposals are for the provision of:

- Participatory tree planting with an improved path network and a range of interactive resources.
- A range of circular routes and long-range paths for everyone including routes for walkers, runners, cyclists and horse riders, footpaths and running trails, cycle paths, mountain bike trails, bridle ways, heritage trails and nature trails.
- A programme of tree-planting to preserve the environment, planting native trees, extending rainforest and creating wildlife corridors.
- Facilities will be built, integral to the trails, using timber from the forest and labour from the East Kintyre communities and these include:
 - Natural History Resource Stations
 - Historical Information points
 - RSPB sanctioned bird and wildlife hides
 - Panoramic Viewpoints, wet weather-covered picnic areas and benches
 - Accessible woodland areas for engaging families, visitors and those with mobility issues
- A range of environmentally friendly and sustainable power sources for use by the wider community and visitors - possible micro-hydro sites within the forest, coupled with a Virtual Private Grid Network, to supply the community.
- A low impact silvicultural system (LISS) approach to the management of the larger forest area with an increase in the small scale species and structural diversity in the forest.

It is Scottish Minister's view that the creation of new path networks "Routes" for cycling, walking and running etc could have real benefits for the health and wellbeing of the community and visitors to the area. These new routes could provide greater access to the land for local communities and tourists. Greater access could provide more opportunities for people to interact with nature and the mental health, wellbeing and physical benefits

this brings. The routes will take mobility into account and this may help to contribute to more people being able to access the land, for recreational purposes.

CCT wish to increase the number of visitors to the area and want to try and maximise the tourist footfall in the community, as well as bringing more people to stay and live in the community. By creating facilities along with the Route network they hope to provide a tourist attraction which will have knock on benefits to the villages in East Kintyre, such as Carradale. Scottish Minister's consider that bringing more people to the area could have positive knock on economic benefits to businesses including local shops, cafes, Hotels, B&B's etc. The protection of the natural environment appears to be an important part of CCT's proposals and creating tourism opportunities, which are linked to this, could also provide local employment opportunities. The proposals indicated by CCT could provide new jobs to the area, including a full time local ranger post and the potential for other jobs to be created through planting, construction and maintenance.

CCT hope that a route network coupled with facilities will make the community a more desirable place to live and work and may result in an increase in people wishing to move to the area on a permanent basis. Scottish Minister's consider that bringing in more people to stay and live in the community could again, have benefits to the local service providers and help to sustain the community. This will also help contribute to social cohesion and interaction within the community. Scottish Minister's consider that the creation of historical resource stations, nature trails, information points etc could provide educational resources for the community, including the local school, members of the community and for visitors to the area.

CCT will work on a programme of tree-planting and education which will help combat climate change, engage the public, celebrate history and preserve the idyllic surrounds of East Kintyre. It aims to help preserve the native temperate rainforest environment. CCT will ensure that management of the forest and resources is sustainable and sensitive for the community and for the flora and fauna. Forest and Land Scotland (FLS) have stated in their response that CCT's proposals for forest management reflect FLS's existing plans, to increase broadleaves and the use of Low Impact Silvicultural Systems (LISS). Scottish Minister's consider that CCT and FLS appear to have similar aims in relation to the planting of broadleaved trees, native species and low impact silviculture, and that these proposals will help contribute to the environmental sustainability of the land.

CCT wish to create a range of environmentally friendly and sustainable power sources, such as micro hydro sites, which would include a private grid to supply the community. FLS have advised in their response that they are currently consulting on the Energy Offerings within the forest and that this is open to communities to apply. They have also highlighted that CCT through East Kintyre Renewable Energy Group have tendered for a site.

Scottish Minister's consider that CCT's proposal could provide power to members of the community from a sustainable local green energy source. This could ensure a long term supply of power to homes within the community without a reliance on sourcing power from the grid. These schemes could also provide economic benefits to the local community in providing savings to local businesses and family utility bills, as well as contributing to

reducing climate change. The power sources may also provide an income source, which could be used by the community to further other projects in their area. Local jobs may also be created in the construction and running of any power sources. Scottish Minister's consider that the creation of local green energy, and the jobs that may be created in the development of these, could ensure the environmental and economical sustainability of the community.

CCT indicate that by taking control of the forest, East Kintyre will be ensuring that it is developed in an environmentally friendly way that supports the local community and involves it in good stewardship for the future. CCT will work with existing and new organisations to help combat climate change in a sustainable and community-friendly way when looking at developing the land. CCT believe that they are best placed to plan and manage the sustainable development of Carradale Forest rather than FLS. FLS have expressed that they do not agree with CCT's comments and characterisation of FLS's management of land. FLS have highlighted the principals on which they operate and how they are aligned with the Scottish Government Purpose and National Outcomes, and the Scottish Forestry Strategy. They stress that people, both local communities and visitors, are fundamental to FLS management of the national forests and land in line with the principles of sustainable forest management. Scottish Minister's consider that both parties are aligned in that they wish to develop the land in relation to the principals of sustainable development.

FLS, in their comments, have indicated that they believe that CCT have not provided sufficient detail that their plans demonstrate that they are sustainable in the long term. They also indicate that they believe CCT's proposals do not provide a robust business case to demonstrate that they have the capacity to take on the significant costs and liabilities associated with managing 5,335 hectares of forest. CCT have responded to indicate that a business plan is not required at this stage in the process and that they will give their financial planning proper care and attention. CCT indicate that they have experience in raising funding and have provided evidence of the funding recently acquired for a local village shop project.

Scottish Minister's have considered whether the proposals by CCT would cause blight and harm in relation to sustainable development. FLS indicate that the registration would have a negative impact on their current management of Carradale Forests. Scottish Minister's consider that a registration in itself does not prevent an owner from developing their proposals for the land, in relation to sustainable development. Scottish Minister's consider that in this case no blight or harm to the sustainable development of the land would be caused by the registration.

It is Scottish Minister's view that the proposals put forward by CCT for the land are compatible with FLS and their future plans for the land are similar in many aspects to those proposed by CCT in their application. Scottish Minister's consider that a business case is not a requirement at the registration stage. A business plan would however, be required should the registration be approved and subsequently FLS decide to dispose of the land.

Scottish Minister's consider that this application and subsequent acquisition of the registered land could provide an opportunity for CCT to address the aspirations of the local

community thereby delivering CCT's intentions of furthering the achievement of sustainable development. It is Scottish Minister's view that the proposals put forward by CCT for the land to be registered are compatible with furthering the achievement of sustainable development. Consequently, Scottish Ministers are satisfied that this application meets the sustainable development criterion in section 38(1)(b) of the Act.

- Connection to the Land

Scottish Minister's must be satisfied that one of the options under **Section 38(1)(b)(i) to (iv)** regarding the community's connection to the land has been met. CCT have selected the option under section 38(1)(b)(i) that a significant number of the members of the community have a connection with the land.

Scottish Minister's view is that CCT have provided historical context to the community's connection to the land and information in relation to tourism in and around the land. CCT have also provided information in relation to the use of the land by the community for example dog walking, employment, angling and hobbies etc. However, they have not provided enough evidence with regards to the significant number of the **members of the community** that have that connection with the land. Scottish Minister's would have liked to have seen, for example, some figures on the number of members of the community that make use of the land for recreation, employment figures or the number of members of the groups (angling, photography) using the land etc, in order to be satisfied that a significant number of members of the community have that connection with all of the land.

It is Scottish Minister's view that CCT has not provided sufficient evidence that a significant number of the members of the community have a connection with the land. Therefore, Scottish Ministers are not satisfied that the criterion in section 38(1)(b)(i) of the Act has been met.

- Community Support

Sections 38(1)(d), Section 38(2) and Section 38(2A) of the Act sets out the level of support required for registration and the validity of the support. CCT indicates that they obtained 133 signatures to a petition list. The earliest signature of which is dated 5 June 2020, which is within the 6 months before the date on which the application was received by Scottish Ministers, as is required under Section 38(2A) of the Act.

CCT indicates that this represents 23% of the 578 residents who are entitled to vote at a local government election, being in support of the application, which exceeds the minimum level of support required in terms of section 38(2)(a) stated as one tenth or more of the members of the community.

Scottish Ministers contacted the Electoral Registration Officer on 18 August 2020 to confirm the number of members of the community eligible to vote in a local government election and were advised that there were 628 eligible residents within the defined community. Of the 133 signatures submitted 73 were found by Scottish Ministers in a check against the Open Electoral Register.

As a result, CCT had obtained 11.6% support for their application, when assessed on the confirmed number of eligible residents provided by the Electoral Registration Officer.

Scottish Ministers are satisfied that the level of support meets the requirements of **sections 38(1)(d) Section 38(2) and Section 38(2A)** of the Act.

- Public Interest

In considering the public interest, Scottish Ministers have taken into account:

- Comments on the application from Forest and Land Scotland (FLS) and views on these comments by Carradale Community Trust (CCT).
- Comments on the social, economic and environmental benefits associated in acquiring the land, which were contained in CCT's application and additional information, Forest and Land Scotland's comments on these and CCT's response to these views.
- The proposed use to which CCT wish to put the land to.

Scottish Ministers have considered the application, all supporting information and the various comments received from all parties. In considering whether a community interest is to be entered in the Register of Community Interest in Land at section 38(1)(e) of the Act provides that Scottish Ministers must be satisfied that it is in the public interest to register the application.

CCT in their application have stated that "to ensure our transformative plans can proceed" that Scottish Ministers take the view "that should the Scottish Government grant our Registration of Interest in the land, that the Registration, under Part 2 of the Land Reform Act 2003 uses the definition of 'transfer' given in the Land Registration etc (Scotland) Act 2012 and the concomitant 2012 Act Registration Manual of the Registers of Scotland, where 'transfer' can be in 'transfer of whole' or 'transfer of part' and is used for any application which requires the creation of a new title sheet with the Registers of Scotland (such as the right to part of the land or the creation of a new subordinate right). The Community asks for this so that the Community can be assured that when it comes to purchase the land, there would be no increase in burdens upon the land from those that are current at the time of Registration"

Scottish Minister's would like to confirm that the definition of transfer, under the Land Reform (Scotland) Act 2003, does not use the definition of transfer given in the Land Registration etc (Scotland) Act 2012. Transfer relates to the disposal of land for value under the Land Reform (Scotland) Act 2003, with exclusions to this being listed in Section 40 of the Land Reform (Scotland) Act 2003.

FLS in their response to the application have advised that prior to receiving the prohibition letter they were, under Forest and Land Scotland 2019 Energy Offering, currently inviting applications for an option agreement to carry out site investigations for potential renewable energy and storage developments, on the land to be registered. FLS advise that the area under the Energy Offering, could potentially cover Deucheran and Grogport forests. FLS

also advise that East Kintyre Renewable Energy Group (EKREG), set up by CCT to secure community benefits and opportunities for community shared ownership in renewable energy projects, are currently working with developers on two windfarm sites on the national forests land. One site is under construction and another has planning permission. EKREG has also expressed interest in wind and hydro sites within the land to be registered. CCT in their response to FLS views cite that they have not been fully consulted on the Energy offering and where consulted, have not been given sufficient time to engage with the community, consult and make a community decision. FLS indicate they contacted CCT to advise them that the Energy Offering was going ahead and after CCT advised them that they could not make a formal response in the time given, FLS provided an extension of time for CCT to make representation.

CCT in their response to the owner's views also advise that the invitation/application stage in relation to the energy offering closes on 9 November 2020. They express the view that as Scottish Ministers decision on this application, to register an interest in land, is due before 9 November 2020, if the registration of interest is granted, then no option agreement should be considered by FLS, as part of the Energy offering, and the tender process should be stopped.

The issue of planning blight has been considered and Scottish Minister's would like to make it clear to CCT that a registration of interest, under Part 2 of the Land Reform (Scotland) Act 2003, does not prevent a landowner from developing their land, subject to relevant planning permission etc, nor does it prevent a landowner from leasing their land. A registration of interest should not be used by communities as a means to prevent a landowner, whilst they own the land, from developing their land in any way. Community Right to Buy legislation should also not be used as means for a community to have a say on what happens to land, that a landowner owns, or influence how a landowner should develop their land. The legislation does not make provision for either of these options.

It is clear from the information provided by CCT, that there is a consultation process well underway for further leases over the land, that they wish to stop. CCT has indicated that the leases, if approved, would prevent them from being able to fully implement their plans for the land in the future.

In considering the view taken by CCT, regarding the leasing of the land by the current landowner, Scottish Minister's consider that this view expressed, is not in line with the Act and is therefore not in the Public Interest.

Scottish Minister's consider that any potential leases given over the land will be over a substantial number of years, due to the tendering process, obtaining the relevant planning consents, construction phases and the lifetime that these leases would need to be in place, in order for the investment in green energy to be worthwhile. FLS, in their views, have indicated that they have no intention of selling the land, within the initial 5 year period of a registration, as the land is a major asset of significant value. It would therefore be very unlikely that any registration over these areas of land would become available to purchase within the period of the initial 5 year registration. As indicated by CCT any future leases over the land at Deucheran and Grogport would prevent them from taking forward their plans on these sites.

FLS indicates that they excluded Deer Hill, the forest closest to Carradale, from the Energy Offering in recognition of the proximity and sensitivity to the Carradale Community. FLS has acknowledged in their response that they would be happy to work with CCT in developing proposals over this site. Whilst it is for CCT to determine the area of land they wish to register an interest in, Scottish Ministers consider that a number of the proposals put forward by CCT in their application could be achieved on the land at Deer Hill, without the need to purchase Deucheran or Grogport, and that this area of land may be more manageable due to its size and location in relation to the main population of the community. As FLS have indicated a willingness to work with CCT, Scottish Ministers consider that it would not be in the public interest to register CCT's interest in the land at Deer Hill and suggest that CCT engage in negotiations over this area of land.

FLS have advised that they are committed to contacting local communities, if they have land which they wish to dispose of. Whilst this is not a legal requirement this is a commitment they have had in place since 2005 and which has continued through to the Asset Transfer scheme. FLS owned land falls under Asset Transfer and Community bodies can apply to purchase, lease or manage areas of land from them. FLS have to give due consideration to any requests made under Asset Transfer. Scottish Ministers can see from CCT's views that they have had a negative experience using Asset Transfer previously to acquire FLS land and that they would think twice about using Asset Transfer again. FLS have indicated that Asset Transfer is open to CCT and that they would be happy to engage with the community on not only the Energy Offering, but also for other development plans they have for the area. The response from FLS was submitted by the Chief Executive and the response clearly indicates that they would be happy to work with CCT to achieve their goals, not only in relation to the Energy Offering but also for other aspects of their projects. Scottish Ministers consider that it would be in the Public Interest for CCT to work with FLS in order to achieve their aims. FLS have recognised processes and procedures in place for community engagement on a number of levels and Scottish Ministers would comment that both parties have the opportunity to work together to benefit the community.

Scottish Ministers have considered the evidence submitted with the application and the comments made by both parties and are not satisfied that the registration of the community interest in land is in the public interest. Accordingly, Scottish Ministers **are not** satisfied that the criteria in section 38(1)(e) of the Act, in relation to public interest, has been met.

- International Covenant on Economic, Social and Cultural Rights

In reaching their decision under section 38(1) of the Act, Scottish Ministers have had regard to the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, subject to any amendments in force in relation to the United Kingdom for the time being, and any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

Effect of Ministers' Decision

A community body may, by virtue of section 61(2) of the Act, appeal to the sheriff against a decision by Ministers that its community interest is not to be entered in the Register.

An appeal under section 61 of the Act should be lodged within 28 days of the date on which Ministers decided whether to enter the community interest in the Register.

Any person (other than a community body) who has incurred loss or expense in complying with the procedural requirements of Part 2 of the Act is by virtue of section 63 of the Act entitled to compensation from Ministers of such amount as Ministers may determine.