

Rural and Environment Directorate
Rural Communities Division

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Mr Donald Mitchell
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Your ref/Ur faidhle:
Our ref /Ar faidhle: CB0000112
11 August 2010

Dear Mr Mitchell,

**APPLICATION FROM MACHRIHANISH AIRBASE COMMUNITY COMPANY TO
PROCEED WITH THE RIGHT TO BUY LAND AT MACHRIHANISH AIRBASE**

Case number: CB000112

I refer to your application to Scottish Ministers of 26 May 2010 for approval of your right to buy on Machrihanish Airbase, Argyll & Bute, under Part 2 of the Land Reform (Scotland) Act 2003.

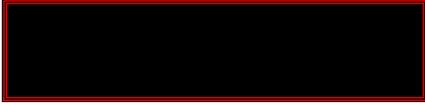
As your ballot has not been carried out in a fair and reasonable manner in accordance with the requirements of section 52 of the Land Reform (Scotland) Act 2003 and the Community Right to Buy (Ballot) (Scotland) Regulations 2004, your right to buy has been extinguished. The reasons for the extinguishment are set out in the attached note.

Following the extinguishment of your right to buy, your registered interest will remain on the Register of Community Interests in Land.

Ministers have observed that had they considered MACC's application in terms of section 51(3) of the Act they would not have been satisfied that the application met the criteria set out in section 51(3)(c). In order to provide guidance to MACC should the right to buy be reactivated, these points have been set out in the attached note.

A copy of this letter is being sent to the landowner, the Ministry of Defence, per Defence Estates, Hilton Road, Rosyth, Fife KY11 2BL, and to the Keeper of the Register of Interests in Land.

Yours sincerely



Heather Holmes
On behalf of Scottish Ministers

SECTION 52(2) OF THE LAND REFORM (SCOTLAND) ACT 2003

The right to buy of Machrihanish Airbase Community Company (MACC) has been extinguished under section 52(2) of the Act for the following reasons:

- Regulation 4 of the Community Right to Buy (Ballot) (Scotland) Regulations 2004 (“the Ballot Regulations”) provides that the date and place on which the ballot will be held shall be notified in writing to all eligible voters, and there shall be a period of not less than 10 days from the date on which such intimation is made to the date on which the ballot is to be held. MACC advises that the ballot was advertised in the Campbeltown Courier of 14 May 2010. MACC also states that ballot papers for the voters on the edited electoral roll (some 4721 voters or 79.4% of the total voters) were issued by post (first class postage) on 14 May, and would have been received on 15 May. The remaining 1228 voters (20.6% of the total voters) were issued with their ballot papers between 14 and 22 May.

On requesting clarification on the issue of the ballot papers to those voters who were on the full electoral roll but not on the edited electoral roll, MACC states that “a number of ballot papers were posted with first class stamps on May 15th but we do not have a record of the number. The remainder were hand delivered between the 15th May and 22 May. The majority of those not on the edited register were either posted by first class mail or hand delivered on 15th May, but we do not have records of how many were delivered on each day”. This statement appears to be contradicted by further evidence provided by MACC.

An information sheet entitled “Why vote” which was issued by MACC accompanied the ballot paper and notes that “you should receive your ballot paper around Monday 17th May”. A second information sheet was sent to voters, which was entitled “Its your decision!!!”. It states that “if you do not receive a ballot paper by Wednesday 19 May 2010 you should ...”. This statement suggests that that not all the ballot papers may have been sent to voters by 19 May. The ballot papers state that the papers had to be returned by “Wednesday 24th May”. However, MACC has informed us that the actual return date was 25 May, and that the date the ballot was held was 25th May. MACC notes that there were daily radio broadcasts on Argyll FM which informed voters that they could return their ballot papers up to 5pm on 25th May.

- The ballot return raises six issues. The first is the timescale given to the community to undertake the ballot. It appears that not all of the voters were given a period of 10 days from the intimation of the date on which the ballot was to be held until the date by which they were told to return their ballot papers (which raises issues of fairness) or indeed the date of the ballot itself (which is a straightforward breach of the Regulations). Given that some of the ballot papers were issued on 14 May and that the papers were to be returned by 24 May, the voters who were issued with their papers on that day were given only nine clear days to return them, and not the 10 days envisioned by the Ballot Regulations. MACC informed us that the return date was 25 May, and this would have given the 10 full days. However, not all the eligible voters

received their papers on 14 May or would have heard the Argyll FM broadcasts noting the extra day to return the ballot papers.

- The second issue is that not all members of the community were given the same amount of time to consider the ballot information and therefore an equal opportunity to consider the ballot papers and accompanying information and to return them. We are aware that some voters appear to have been given as little as two days from the receipt of the ballot papers (i.e. 22 May) to the date on which they had to return them.

MACC notes on the information sheet "Its your decision!!!" that the ballot papers for the community members who were on the edited voters roll would be issued first. It also notes that it did not have access to the full voters roll. Paragraph 110 of Section One of the current Community Right to Buy guidance (June 2009) notes how to obtain the information contained in the full electoral roll that does not appear on the edited electoral roll and the community body should have been aware of the access restrictions to that information. MACC was also advised of this verbally. Any issues such as access to the full voters roll should have been resolved before the ballot papers were issued. We are of the opinion that all the ballot papers should have been issued at the same time so that all members of the community had an equal opportunity to consider the ballot papers and accompanying information.

In relation to this point, MACC noted to us that there were difficulties with the postal system in the area and that it had decided to set the return date for postal votes to 24 May to allow for any possible delays. It said that it explained this policy at a public meeting on 12 May. However, neither the ballot papers or the accompanying information sheets that were provided to the voters provide voters with any guidance on this policy. This suggests that voters who were returning their paper by post were given less time to complete their paper than those who were returning it by other means, such as delivery to the secure ballot box in the Burnett Building, Campbeltown. We consider that having known that there were such difficulties, it was not sufficient for MACC to issue the voters with a stamped addressed envelope with a second class stamp. We know that there were a number of ballot papers received after the deadline. This policy also suggests that not all the voters were to be given the same timescale in which to return their ballot papers. We consider that the voters should have been given the same amount of time to return their papers regardless of how they wished to return them.

- The third issue is that voters appear not to have been given accurate advice about when to return their ballot paper. The ballot paper states that the paper was to be returned on 24 May. However, MACC's ballot return notes that the date of the ballot was in fact 25 May, the day after the date when the ballot papers were purportedly to be returned. However, this date also differs from information provided by MACC in other information that was sent to voters. An information sheet that accompanied the ballot paper notes that the ballot paper should be returned "before Saturday 22 May to help us move forward". In addition, MACC also informed listeners on Argyll FM listeners that they could return their ballot papers up until 5pm on 25 May.

MACC informed us that it took steps to correct these inaccuracies and to provide accurate advice on the date by which the papers were to be returned. It states that there were radio broadcasts on Argyll FM which informed that voters could return their ballot papers up until 5pm on 25th May. While we recognise that MACC took steps to inform the community that there were changes to the ballot paper, we do not consider that all voters in the area would have been Argyll FM listeners and would not have heard the updated advice from the community body.

In addition, the ballot paper states that it should be returned on "Wednesday 24 May". The 24 May is in fact a Monday and not a Wednesday. This is a point that could have misled voters into the return date of the papers – should it be Monday 24 May or Wednesday 26 May?. MACC took steps to correct this typographical error. It arranged for daily radio broadcasts on Argyll FM which informed voters of the correct day and date. We do not consider that all voters in the area would have been Argyll FM listeners and have heard the revised instruction.

Further, the fact that the ballot was carried out on 25 May, is in itself a breach of the Ballot Regulations. The Regulations provide that "the date and time" on which the paper must be returned. The date of return on the ballot paper was incorrect, being 24 May (with information on the radio also stating 25 May). In addition, the ballot papers did not state the time of the ballot.

- The fourth issue is whether the ballot question is accurate. It suggests that the "people of Kintyre" will be given the "opportunity" to purchase the Machrihanish Airbase. This raises three matters. The first is who will be acquiring the Machrihanish Airbase. The question, as framed, suggests that it is the "people" or the community that will be acquiring the airbase. However, in actual fact it is the community body – MACC – that is acquiring the airbase for the community; community members are members of the community body. This does not provide accurate information on who will have ownership of the airbase.

The second matter concerns the word "opportunity". Section 51(2)(a)(i) provides that the ballot to be conducted by the community body is to be on the question whether the community body should buy the land. The inclusion of the word "opportunity" suggests that the community is not at the time of the ballot being asked whether it actually wants to proceed with the purchase, the function of the community ballot. The third matter is that the vote was restricted to only part of the Kintyre area, the "community" defined by MACC in its Memorandum and Articles of Association, which is the PA28 6 postcode area, which embraces South Kintyre and some elements of Mid and North Kintyre. Indeed, MACC took steps to advertise that the vote would apply to the eligible voters who were in the PA28 6 postal area. While MACC involved a number of local councillors from the North Kintyre area in discussions relating to their buyout, they were not given the opportunity to vote. We consider that the ballot question should have accurately reflected the area in which the voters were located.

- The fifth issue is that the community body appears not to be able to account for the whereabouts of all its ballot papers during the course of the ballot period, and in particular the papers that were allocated to the voters on the full electoral register that were not on the edited electoral register (20.6% of the votes). MACC informs us that it cannot state the date on which a number of these voters (and whom) received their ballot paper. We do not consider that MACC has taken full steps to ensure the accuracy of the paperwork relating to its ballot.
- The sixth issue is raised by the information sent to the voters with their voting paper. MACC issued two information sheets with the ballot papers. The information sheet "Why vote?" listed 8 bullet points on why the community should vote in favour of the proposal. Four of these bullet points note (1) that "all contamination costs will be met by the MOD", (2) that "the community will NOT be held responsible for the airbase liabilities", (3) that the airbase requires £990K of capital investment, and (4) that "MACC's initial business plan shows the airbase to be a very affordable and worthwhile project" .

It appears that the information in the points is factually incorrect and misleading. On the first two bullet points, Ian Hay, Principal Estates Surveyor (National Disposals), of the Ministry of Defence, wrote to MACC's Chairman, Mr Ian Wardrop, on 11 May 2010 stating that "with the exception of the ongoing land quality investigations and radiological remediation, the site will be "sold as seen" and all remaining liabilities will transfer to the purchaser in accordance with normal MOD policy. We have no funding or means to resolve any of the other issues nor is it our policy to pay compensation to communities affected by base closures". We have since clarified the position with MOD. On 7 June 2010 Ian Hay confirmed to the Scottish Government that the position remained unchanged as regards the ongoing LQA investigations and remediation of any defence specific contamination (eg radiological substances) and that MACC would become responsible for all other contamination and outstanding liabilities. He also informed that "contrary to the information leaflet issued by MACC, MOD has not agreed to meet these costs". The email went on further to state that "the information leaflet is therefore misleading, a fact acknowledged by MACC in recent conversations following my email to them of 11 May (attached)". The email of 11 May questions the accuracy of the two bullet points and notes that the information was "not quite true".

On the third point it is factually incorrect that the airbase requires £990K of capital investment. This figure was taken from the independent valuation report undertaken by CKD Galbraith. We are aware that while this figure was noted in the independent valuation report, that figure is a caveated "guestimate" of what a purchaser might spend on providing a modernised private water supply. This figure is also substantially less than in other recent reports on the airbase which suggest a figure of approximately £8.5M for all the contingent liabilities.

On the fourth bullet point, there was no business plan, as such, at the time of the ballot. MACC has informed us that this referred to figures extracted from the independent valuation report. However, the valuation report is, as its name suggests, a report on the valuation of the site rather than a business

plan, both of which have separate functions. Any business plan developed by MACC should develop its proposals for the site rather than simply state the value of the tenancies and any liabilities on the site.

MACC also provided information on the site with the accompanying information sheet "Its your decision!!!". It also raises a number of points. It suggests that the community is voting on whether MACC should go ahead and consider and develop a business plan to decide if purchasing the airbase is a viable option; it does not state that the purpose of the ballot is to ask the community whether it wants MACC to acquire the airbase for the benefit of the community. This misrepresents the purpose of the ballot. Second, the information sheet stresses what the £1 will bring to the community. However, not all of the assets are accurately described. The buildings are said to be in a good state of repair. However, the independent valuation report states that "the majority of the buildings on the site [are] nearing the end of their economic life".

The liabilities, while mentioned, are under represented, and the information sheet notes points (1), (2), (3) and (4) above from the "Why vote?" information sheet. However, the information sheet does state that MACC is investigating the costs of the liabilities further. Third, while the information sheet lists the assets on the airbase that the community would acquire, it does not state what MACC proposes to do with the airbase and the benefit that it would bring to the community.

Fourth, MACC notes in its information sheet "Its your decision!!!" that "if the company runs into financial difficulty then the company will be liable for £1". We do not consider that MACC is taking full responsibility for the site should the company run into difficulty. From the evidence received, we do not believe that MACC has presented factually correct information to the voters of the community and that this may have influenced a number of voters in coming to their decision on the ballot question.

SECTION 51(3)(c) OF THE LAND REFORM (SCOTLAND) ACT 2003

Ministers have observed that if they considered MACC's application in terms of section 51(3) of the Act that they would not have been satisfied that the application met the criteria set out in section 51(3)(c) for the following reasons:

- Section 51(3)(c) of the Act requires that before approval Ministers must be satisfied that what the community body proposes to do with the land is compatible with furthering the achievement of sustainable development. The "Report by the Machrihanish Airbase Community Company to Scottish Ministers" has been measured against economic, social, environmental, financial, risk assessment, displacement and strategic fit factors. MACC's proposals appear to be Zero scoring and High/Medium risk. We are not satisfied that the requirements of section 51(3)(c) of the Act have been met.
- Section 51(3)(d) of the Act requires that before approval Ministers must be satisfied that the proposed purchase of the land is in the public interest. We

are not satisfied that the proposed purchase of the land is in the public interest. While MACC's aspirations show some intent to address directly the needs of the local community, its plans do not show that the acquisition of the airbase will bring a real benefit to the community of South Kintyre. MACC's proposals do not show that it has fully addressed the issues of owning and maintaining a large and very complex piece of real estate which has a range of substantial contingent liabilities which we consider would also pose challenges to the professional developer.

- The aims of the legislation include creating opportunities to empower and strengthen communities where this would be in the public interest. There is no evidence to suggest that the proposals would disadvantage the wider community, or the environment, or cause direct harm to any private interest. However, there is adverse evidence that they could affect the economy in the area, for example in conflict of interest between MACC's proposed activities and those already being undertaken by existing tenants. No concerns have been brought to our attention from members of the community, though we have received concerns from one public body which has received concerns from a number of MACC's elected members regarding the liabilities on the site. We conclude that Ministers cannot be satisfied that MACC's purchase of the land is in the public interest. The criterion in section 51(3)(d) of the Act has therefore not been met.