

Agenda Item	5
Report No	CP/02/21

HIGHLAND COUNCIL

Committee: Communities and Place

Date: 24th February 2021

Report Title: Sleat War Memorial – Conservation Agreement

Report By: Executive Chief Officer Communities and Place

1. Purpose/Executive Summary

- 1.1 The report is seeking approval from the Committee for the Council to enter into a Conservation Agreement to secure the long-term management and maintenance of the site of the Sleat War Memorial.

2. Recommendations

- 2.1 Members are asked to note:
- I. The legal burden the agreement places on the tenant and landlord of the land on which the war memorial is sited.
- 2.2 Members are asked to agree:
- I. the Council enter into the Conservation Agreement as detailed in the report to secure the long-term management and maintenance of the site of the Sleat War Memorial.

3. Implications

- 3.1 **Resource** – The Landlord, the Clan Donald Lands Trust, supports the agreement and that through the agreement they will take on responsibility to preserve and maintain the Conservation Area in good condition and repair at all times to the satisfaction of the Highland Council.
- 3.2 **Legal** – The Title Conditions (Scotland) Act 2003 details restrictions or burdens that can be included in titles to land and property. A conservation body through a conservation agreement can introduce a conservation burden that can be used to protect aspects of the natural and cultural heritage. The Highland Council is designated as a conservation body by the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003.

The War Memorials (Local Authorities' Powers) Act of 1923 and subsequent amendments enables local councils to carry out work to war memorials within their area whether they officially 'own' them or not. It must be noted that although this Act gives such powers to local authorities it does not give an obligation to do so. The Council has records of over 180 War Memorials for which it is the custodian. The Civic Government (Scotland) Act 1982 section 96, provides powers to local authorities to address maintenance and repair of memorials and statues in public places.

- 3.3 **Community (Equality, Poverty and Rural)** – Consultation has taken place in recent years with the local community on conditions at the site and they are supportive of measures to improve the site. Local Members are supportive of this approach.
- 3.4 **Climate Change / Carbon Clever** – No significant implications are noted.
- 3.5 **Risk** – The agreement will support the conservation of the site.
- 3.6 **Gaelic** – In line with the Council's Guidelines on the use of Gaelic, where new signs are being erected or existing signs require to be replaced, bilingual signs will be erected.

4. Background

- 4.1 Sleat war memorial is located in Kilmore, Sleat, Isle of Skye. The memorial is approximately 50m from the main road on crofting land overlooking the Sound of Sleat. A map is attached at Appendix 1. The war memorial is a granite column that contains the names of local people who died in the service of their country in the First World War, the Second World War and the Aden conflict. The tenanted crofting land is owned by Clan Donald Lands Trust.
- 4.2 The war memorial was repaired in 2018 following grant from the War Memorials Trust and detailed photos of the site are available here: [Kilmore War Memorial](#) .
- 4.3 Concerns have been raised in the community in the last few years over damage by cattle to the unfenced grass path leading to the war memorial. Discussions on ways forward, including possibly moving the memorial, resulted in a community meeting in January 2018. The community decided their wish was for war memorial to remain in current position.

5. The conservation agreement

- 5.1 The Council have been working with the community, the Clan Donald Lands Trust and the tenant on a sustainable solution to secure the long-term appropriate management and maintenance of the site.
- 5.2 A conservation agreement is proposed as given in Appendix 2.

The Conservation agreement includes provision for:

1. all rights of pedestrian access for the purposes of use and enjoyment of the area and access to the War Memorial located thereon;
2. all rights of servitude and wayleave for the purposes of maintenance, repair and where necessary renewing the fences, pathways and all other erections on the Conservation Area;
3. It shall not be in the power of the Proprietor to develop the Conservation Area in any way whatsoever except with the consent in writing of the Highland Council;

4. The Crofting Landlord (Clan Donald Lands Trust) shall be bound to preserve and maintain the Conservation Area in good condition and repair at all times to the satisfaction of the Highland Council.
- 5.3 The Council under as a Conservation Body can create these legally binding agreements and the agreement is supported by the Clan Donald Lands Trust and the tenant.
- 5.4 The Clan Donald Lands Trust will take forward the erection of a new fence around the path and war memorial as shown in the plan in Appendix 2 when the agreement is in place.
- 5.5. It must be noted that the Council will retain overall responsibility for the war memorial. Any future works planned for the war memorial will be done in consultation with the Clan Donald Lands Trust and the War Memorials Trust.

Designation; Executive Chief Officer Communities and Place

Date 27.1.21

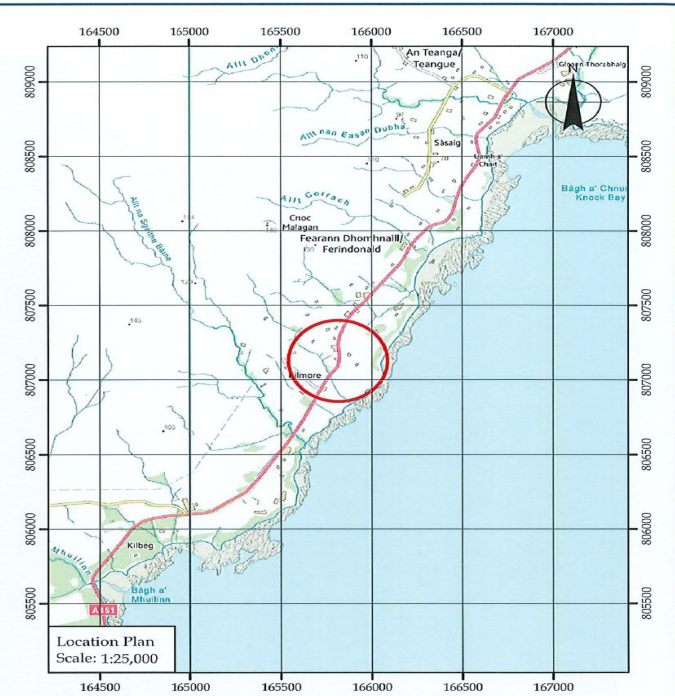
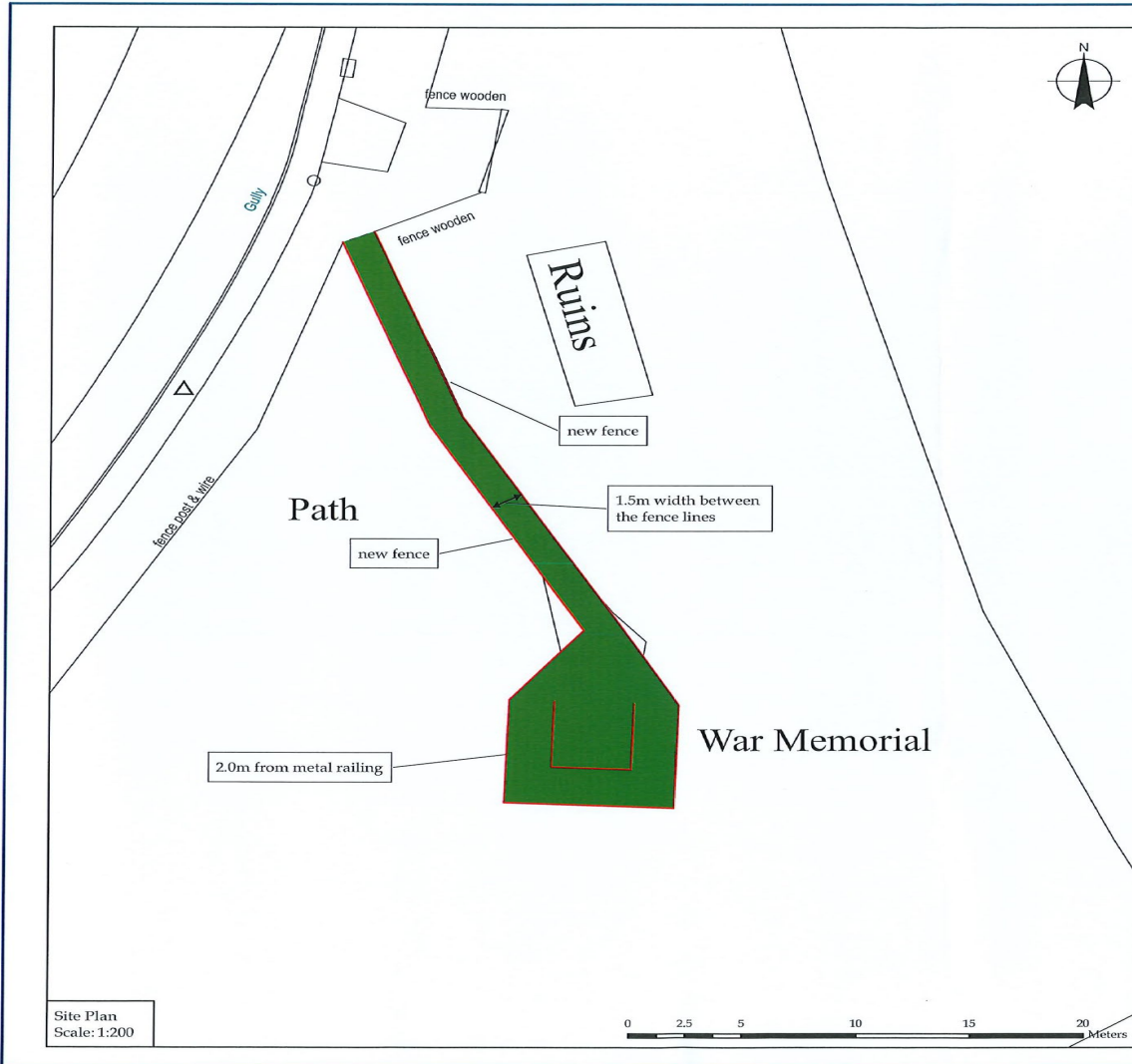
Author: Alan Yates, Environmental Health Manager


Background papers:

- Report to Community Services Committee on 20th August 2015 on improvement programme for war memorials:
https://www.highland.gov.uk/download/meetings/id/68681/item_20_war_memorials_improvement_programme
- War Memorials Trust <http://www.warmemorials.org/>
- War Memorials Trust paper on ownership of war memorials:
<http://www.warmemorials.org/uploads/publications/120.pdf>
- War Memorials Trust paper on law relating to war memorials:
<http://www.warmemorials.org/uploads/publications/121.pdf>

Location of the Memorial

Appendix 1



Rev:			
Client:	A. D. Macdonald Esq		
 Broomhall, Plockton, by Eglis, Moray IV30 8TZ Tel: 01463 888000 Fax: 01463 888022 Also at 22/23 of Foresters, Levenmouth IV2 2PA Tel: 01463 820000 Fax: 01463 820000 email: info@bowlts.com www.bowlts.com			
chartered surveyors			
Title: War Memorial Sleaet Isle of Skye			
Drawn:	CC	Scale: As noted @ A3	Date: 16/11/2020
Checked:	ADN	Dwg No: 3644	
<small>This plan has been prepared by the Chartered Surveyors in accordance with the provisions of the Chartered Institute of Surveyors (CIS) Rules of Professional Conduct, 2010.</small>			

WHEREAS (One) it is declared that the area shaded in green on the plan annexed and executed as relative hereto (hereinafter referred to as The Conversation Act) and forming part and portion of the Disponed Property hereinafter described is deemed worthy of conservation and it is desirous of ensuring the conservation of the said Conservation Area for the benefit of the nation; FURTHER CONSIDERING that The Highland Council incorporated under the Local Government etc (Scotland) Act 1994 of Council Buildings, Glenurquhart Road, Inverness (hereinafter referred to as the Conservation Body) (First) by virtue of ... empowered to enter into Agreements now known as Conservation Agreements with owners of heritable subjects whereby real burdens are created in favour of the Conservation Body; and (Second) by Section 38 of the Title Conditions (Scotland) Act 2003 empowered to create conservation burdens in their favour; and (Two) the Clan Donald Lands Trust, comprising Sir Iain Macdonald of Sleat, Bt, of Hazel Bush House, Hazel Bush Lane, York, YO32 9TR, James Garner-Smith Macdonald of Aird, of Hooke Farm, Beaminster, Dorset, England; Major Bruce W Macdonald CD of Eleven Brockman, James Island, Charleston, South Carolina, 29412, U.S.A., and Mark E MacDonald of 3765 Brighton Way, Reno, Nevada, 89509, U.S.A, the present members of the Executive Committee of the Trustees of the Clan Donald Lands Trust, as Crofting Landlords are about to sell the said Disponed Property and it is proper and expedient to set forth and declare the conservation burdens incumbent upon the said Conservation Area within the Disponed Property hereinafter described; (Three) the Conservation Body have agreed to create such necessary conservation burdens to conserve the Conservation Area for the benefit of the local and nation areas; Therefore I, ANGUS MacDONALD, residing at Six Kilmore, Sleat, Isle of Skye together with my successors in title to the said Disponed Property (hereinafter referred to as “the Proprietor”) and the Conservation Body agree that the conservation burdens aftermentioned shall be imposed on

the said Conservation Area within the Disposed Property and shall be conservation burdens thereon; NOW THEREFORE WE HEREBY AGREE as follows:-

PART 1

INTERPRETATION

(FIRST) In this Conservation Agreement the following words and expressions shall have the meanings ascribed to them:-

“Conservation Body” means the Highland Council incorporated under the Local Government etc (Scotland) Act 1994 of Council Buildings, Glenurquhart Road, Inverness;

“the Disposed Property” means ALL and WHOLE that area of ground forming Croft Six Kilmore, Sleat, Isle of Skye extending to ... hectares or thereby shown delineated in red on the plan annexed and signed as relative hereto;

“the Conservation Area” means ALL and WHOLE that plot or area of ground at Six Kilmore, Sleat, Isle of Skye forming part and portion of the Disposed Property shown shaded green on the plan annexed and executed as relative hereto;

“the Retained Property” the Lands and Estate of Clan Donald Lands Trust in the Parish of Sleat, Island of Skye and County of Inverness being the subjects described in and disposed by Disposition by the Executors nominate of the Right Honourable Alexander Godfrey Macdonald of Macdonald, Lord Macdonald, in favour of the Executive Committee of the Trustees of the Clan Donald Lands Trust dated the Ninth, Fifteenth and

Twenty-six days of November and recorded in the Division of the General Register of Sasines applicable to the County of Inverness on the Seventh day of December, all in the year Nineteen hundred and seventy-three (under exception of parts feued and disposed and also under exception of the disposed property as hereinafter defined).

under exception of:-

(a) parts previously disposed and (b) the Disposed Property;

“the Proprietor” means the owner for the time being of the Disposed Property and/or where two or more persons own the Disposed Property includes both or all of them and any real burdens and conservation burdens hereby imposed on them shall bind them jointly and severally;

“the Crofting Landlord” means Clan Donald Lands Trust and their successors as proprietors of the Retained Property.

SECOND

Where in the conditions of this Deed of Conditions and Conservation Agreement the consent or approval of the Conservation Body is required the Proprietor shall give not less than one month’s notice in writing and that the Conservation Body’s consent or approval shall not be unreasonably withheld or delayed.

THIRD

Nothing in the Conservation Agreement shall prevent or hinder the exercise and enjoyment by the Proprietor of all rights or privileges belonging to him in, or over or in respect of the Disposed Property except so far as necessary to give effect to the conservation burdens aftermentioned and in particular

nothing in this Conservation Agreement shall confer upon the public generally any right or interest in the said Disposed Property except in so far as it is in the interest of the locality and nation that the Disposed Property should be conserved for the benefit of the locality and nation.

FOURTH

If any dispute or difference shall arise between the Proprietor and the Conservation Body to the construction of the Conservation Agreement or the effect of the said real burdens, conservation burdens, servitudes or any of them or as to the exercise of the Conservation Body of any discretionary power vested in them the matter shall be referred to arbitration under the Arbitration (Scotland) Act 2010 and to a single arbiter to be appointed, failing agreement, at the option of the Conservation Body either by the Chairman for the time being of the Scottish Committee of the Royal Institute of British Architects or by any advisory panel appointed or recognised by the Local Planning Authority.

FIFTH

The conservation burdens and others contained in this deed are created conservation burdens upon the Conservation Area within the Disposed Property and as such are appointed to be recorded or otherwise be validly referred to in terms of law in all future conveyances, Dispositions and other such deeds relating to the subjects and shall continue to be expressly enforceable by (One) the Highland Council as a party to this Conservation Agreement under Contract Law; (Two) the Highland Council; and (Three) the Proprietor.

PART 2

The following servitudes are imposed on the Disponed Property in favour of the Retained Property:-

- (1) All rights of pedestrian access over the Conservation Area for the purposes of use and enjoyment of the area and access to the War Memorial located thereon;
- (2) All rights of servitude and wayleave for the purposes of maintenance, repair and where necessary renewing the fences, pathways and all other erections on the Conservation Area;
- (3) Reserving also to the Highland Council all existing rights of access through the Disponed Property whether exercised by the Highland Council or any third parties;

PART 3

REAL BURDENS

The following real burdens are imposed on the Disponed Property in favour of the Retained Property:-

- (1) The Proprietor shall have no claim against the Conservation Body for injury or damage claimed by Third Parties or claimed by himself caused by or arising from anything on or about the said Disponed Property;
- (2) The Proprietor shall be bound to notify the Highland Council in writing of any change in the ownership or occupation of the Disponed Property, and

shall advise the Conservation Body in writing of the name and address of a new proprietor;

PART 4

CONSERVATION BURDENS

The following conservation burdens are imposed on the Disposed Property in favour of the Conservation Body and the Retained Property:-

- (1) It shall not be in the power of the Proprietor to develop the Conservation Area in any way whatsoever except with the consent in writing of the Highland Council;
- (2) The Proprietor shall not make any external alterations or additions to the boundary fences, gates and footpaths around the War Memorial as shown on the plan as at the date hereof, nor erect any additional buildings or others on any part of the Conservation Area (including electric pylons, overhead tension cables, telegraph poles) nor demolish the War Memorial on the Conservation Area or any part thereof. The Crofting Landlord shall be bound to preserve and maintain the Conservation Area, including the War Memorial and others erected on the Conservation Area in good condition and repair at all times to the satisfaction of the Highland Council;
- (3) Save as before mentioned and after the execution of these presents no new act or thing shall be done or placed or permitted to remain on the Conservation Area which in the opinion of the Highland Council would tend to injure, prejudice, affect or destroy the present aspect, amenity and

condition of the Conservation Area or any architectural, historical or any other specific characteristics of the Conservation Area;

- (4) The Proprietor shall not, to the prejudice of the interests of the Highland Council persistently injure the Conservation Area by the dilapidation of the Sleat War Memorial or, after notice has been given by the Highland Council to the Proprietor not to commit or to desist from, the particular injuries specified in the Notice, by the deterioration of the soil;
- (5) It shall not be lawful to nor in the power of the Proprietor to sell, alienate or dispose the said Conservation Area or any part thereof to any person or persons whomsoever until the Proprietor shall have first made a written offer to sell the same to the Highland Council and Crofting Landlords at the like rate or price and that may be offered by any other person and which offer the Highland Council shall be allowed twenty-one free days to accept or decline and if declined, the Proprietor shall not be entitled to sell the same to any person or persons under the price at which the same shall have been offered to and refused by the Highland Council without making a new offer at such reduced price in similar manner and subject to the like conditions;

And it is hereby further provided that in case the Proprietor shall fail to fulfil or shall contravene the foregoing provision any writ or writs following thereon shall be ipso facto null and void and any act or deed or contravention shall be inoperative and ineffectual to all intents and purposes as against the Highland Council.

PART 5

LANDS TRIBUNAL

No application shall be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2003 in respect of the title conditions set out in this Deed for a period of five years after the registration of this Deed in the Land Register of Scotland and General Register of Sasines: IN WITNESS WHEREOF

CONSERVATION AGREEMENT

between

The Highland Council

and

Angus MacDonald with consent of Clan Donald Lands Trust

2020

Subjects: Sleat War Memorial

**Ferguson, MacSween & Stewart
Solicitors
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Isle of Skye
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