

**FIRST MINISTER
CABINET SECRETARY FOR THE RURAL ECONOMY AND CONNECTIVITY**

**MEETING WITH SANJEEV GUPTA, GFG ALLIANCE (LIBERTY/SIMEC) 14th
SEPTEMBER 2016, 10:00 – 12:30**

Purpose	<p>This is a working meeting to talk through the bid of the GFG Alliance for the Lochaber assets (smelter and hydro power station) of the UK business of Rio Tinto Aluminium (RTA). The meeting provides an opportunity to learn more about GFG's bid REDACTED and to hear about GFG's business plan for Lochaber.</p> <p>The latter part of the meeting would be concerned with detailed discussions of financing issues, principally the particular power purchase and guarantee models involving the Scottish Government proposed by Liberty/SIMEC. The last item covers community interest in the land (c. 115,000 acres) and potential for a right-to-buy bid.</p>
Who	<ul style="list-style-type: none"> • Sanjeev Gupta, Executive Chairman, Liberty House Group • Jay Hambro, Chief Executive Officer, SIMEC Group & Chief Investment Officer, GFG Alliance • REDACTED, Partner, Brodies Solicitors • REDACTED Barclays
Agenda	<p>We understand the First Minister cannot attend the whole meeting but may be able to join at the start of the meeting to meet Mr Gupta and receive a short overview of the business plan for the Lochaber site.</p> <ol style="list-style-type: none"> 1. Welcome and introductions 2. Scottish Government's approach to all bidders 3. RTA's bid process and REDACTED 4. Business plan of GFG Alliance (Liberty/SIMEC) – an overview 5. Financing and PPA models 6. Community land interests (e.g. community right-to-buy)
Where	Conference room A, 3 rd Floor, St Andrew's House
Attached documents	<ul style="list-style-type: none"> • Annex A: Agenda and attendee • Annex B: Overview note (RTA's strategic review) <p><u>Detailed briefing</u></p> <ul style="list-style-type: none"> • Annex C: Letter of intent (Mr Ewing to Sanjeev Gupta) • Annex D: GFG's PPA proposals – term sheet (received 5 Sept) • Annex E: Summary of PPA models • Annex F: Community land interests – right to buy
Official support	REDACTED

ANNEX A

AGENDA

Mr Ewing will chair the meeting

1. Welcome and introductions
2. Scottish Government's approach to all bidders
 - *Opportunity to outline SG's even-handed approach and clear wish to maximise economic value for the economy and local community*
3. RTA's bid process and REDACTED
 - *REDACTED*
4. Business plan of GFG Alliance (Liberty/SIMEC) – an overview
 - *Liberty to present their plans and the results emerging from the Grant Thornton study they have commissioned*
5. Financing and PPA models
 - *Detailed discussions with SG officials on the 'term sheet' proposed by Liberty/SIMEC (Annex D)*
6. Community land interests (e.g. community right-to-buy)
 - *The process for community right-to-buy (REDACTED of SG to lead off)*

Attendees

First Minister (attendance to be confirmed and likely to stay for first 30 minutes only)

Cabinet Secretary for Rural Economy and Connectivity

Sanjeev Gupta, Executive Chairman Liberty House Group

Jay Hambro, Chief Executive Officer, SIMEC Group & Chief Investment Officer, GFG Alliance

REDACTED Brodies LLP (Liberty's solicitors)

REDACTED, Barclays (one of Liberty's funders)

Liz Ditchburn, Director-General Economy

Kate Higgins, Special Adviser

Ian Howie, Deputy Director Collaborative and SG Procurement

REDACTED

Mary McAllan, Director Economic Development

REDACTED

REDACTED

Chris Stark, Director of Energy and Climate Change

Caroline Beattie, SGLD

[a representative of SG Finance, tbc]

[a representative of MacRoberts LLP, solicitors to SG]

RIO TINTO ALCAN LOCHABER STRATEGIC REVIEW

- Liberty House is one of the short-listed bidders interested in acquiring Rio Tinto Aluminium's (RTA) UK assets. The four main assets are the **Lochaber aluminium smelter**, the **two hydro-electric power stations at Fort William and Kinlochleven** and **estate lands east of Fort William and across the Highlands** (45,740ha).
- REDACTED (it has been suggested REDACTED have indicated to RTA the potential for smelting to continue as part of their bid. REDACTED has now pulled out of the bidding process).
- The **smelter plant in Fort William is one of the largest employers in the area, with 152 FTE employees** and key local businesses dependent on these businesses.
- In the past weeks, LH approached the Scottish Government (SG) with their sister company SIMEC, about the possibility of either REDACTED or the provision of SG providing a guarantee for the purchase power generation between LH and SIMEC.
- REDACTED **letter of intent from Fergus Ewing (Annex B)** was issued to LH in advance of the bid deadline stating SG's willingness to continue to assess these proposals to assist in the successful continued operation of the Lochaber smelter and wider industrial development in Lochaber.
- REDACTED Officials are continuing to assess these proposals and explore all options with LH and our advisors. SG will continue to engage with RTA and the remaining short listed bidders.

Key points to make

- The Cabinet Secretary and officials will continue to work Liberty/SIMEC on their particular proposals whilst being respectful of commercial boundaries and the need to take an even-handed approach to all bidders. We are very conscious of the economic potential of your bid and keen to be supportive within these parameters.
- The letter intent (Annex B) from SG encapsulates our approach to further assessment of the PPA proposals; we have shared an anonymised version with RTA and we have asked that they share it with the other short-listed bidders who want to operate the smelter.
- SG officials and our external advisors will continue to assess Liberty's proposals with a view to determining whether or not we can enter into such an arrangement. We will use due expedition to reach a conclusion as quickly as possible.
- We look forward to learning more about your business plan for the Lochaber site and your plans to work with the community group.

Background – Rio Tinto Strategic Review

- RTA is undertaking a strategic review of the company's assets in Scotland with a view to potential disposal.
- The deadline for firm bids from short-listed bidders was 9 September. RTA is hoping to conclude the strategic review this calendar year.

We were aware of six short-listed bidders, REDACTED

Scottish Government Engagement

- SG and HIE have been engaging with RTA and with strategic partners to ensure the best outcome for the Fort William and Lochaber area and RTA's employees at the Lochaber operation.

- Mr Ewing has led on the RTA strategic review with a view to try to secure the best economic result for the local area and Scotland. Since the announcement of their strategic review, he has met frequently with representatives of RTA.
- In addition, he has convened a working group of SG officials along with SE and HIE to consider the various facets of the strategic review. Officials from Energy, Economic Development, SG Procurement, State Aid, REDACTED

REDACTED

Liberty House

- LH's bid is based on REDACTED

LETTER OF INTENT FROM MR EWING

9 September 2016

Dear Sanjeev

RIO TINTO ALUMINIUM – POTENTIAL SALE OF LOCHABER HYDRO ELECTRIC POWER STATION / ALUMINIUM SMELTER

I refer to the above sale process and confirm that, as follows, the Scottish Government is willing to provide support to assist in the maintenance and creation of employment in the Fort William and Lochaber areas and in support of the Scottish Government's commitment to Scotland's industrial and commercial infrastructure and to renewable energy provision in the context of sustainable economic growth.

In that regard, the Scottish Government is prepared to provide support to any purchaser of the above assets who makes the necessary commitment to the local community in relation to employment, industry, commerce and renewables.

Appropriate safeguards

Any support which the Scottish Government is able to provide to GFG, and other potential acquirers of the Businesses, will require to be made in accordance with Scottish, UK and EU rules and on a Market Economy Investor Principle basis.

Further, any support will require to be on terms which are satisfactory in all respects to the Scottish Government including value for money, affordability issues and compatibility with its obligation to the Scottish Parliament for the use of public money.

Your proposals

We have discussed with you the ambitions of the GFG Alliance group of companies ("GFG") to acquire the Lochaber Hydro Station and smelter complex (the "Businesses") from Rio Tinto Aluminium ("Rio"), and GFG's intention to both continue and develop further operations at Lochaber via establishing a new industrial complex at the site. We are also pleased to see your REDACTED

As you know from our discussions, the Scottish Government is committed to continuing and developing industrial activity at Lochaber and has expressed interest in working with GFG, and other potential acquirers of the Businesses to help facilitate this. My officials and I, together with external advisors, have discussed with GFG your first proposed structure consisting of the following two transactions:

REDACTED We have discussed with you summary terms for this proposal and the legal framework and potential constraints to us entering into such arrangements. In particular in those discussions you have undertaken to de-risk at your expense any such arrangement designed to support the aluminium smelter at Lochaber.

Your second alternative proposal, that, REDACTED there would be a Scottish Government guarantee of Liberty House's obligations to purchase power from the SIMEC generation asset at Lochaber, is also being considered by us.

We offer you this firm letter of intent to continue to assess these proposals, and any development of them, with a view to determining whether or not we can enter into such an arrangement. We will use due expedition to reach a conclusion as quickly as possible.

Our willingness to consider your proposals is based on our desire to assist in the successful continued operation of the Lochaber smelter and wider industrial development at Lochaber. We will also continue to evaluate possible alternative approaches which would allow GFG to undertake the proposed investment programme.

Should GFG be selected by Rio Tinto Aluminium as a preferred bidder for the Businesses, or otherwise continue your evaluation of the Businesses, we would seek, in conjunction with you and your financing providers, to develop a suitable proposal.

Conclusion

The continued operation of the Lochaber smelter plus enhanced development of industrial activity at Lochaber, and the preservation and creation of employment and economic value that this entails, are high priorities for the Scottish Government. The sole purpose of the provision of this letter is to obtain our industrial development objectives. The Government's strong commitment to assist in the maintenance and creation of employment in the Fort William and Lochaber areas is being made known in similar terms to other relevant potential acquirers of the Businesses through Rio Tinto Aluminium.

Fergus Ewing

GFG'S PPA PROPOSALS – TERM SHEET OFFERED

Proposed Back to Back PPA Structure

Term Sheet For Discussion – Draft 3 September 2016

REDACTED

REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	<u>REDACTED</u>

REDACTED REDACTED

REDACTED REDACTED
REDACTED REDACTED

Security [Offtaker to have 2nd lien security on Lochaber Hydro assets]

Supplier Force Majeure [Terms TBD to enable supplier to halt delivery in case of force majeure event]

REDACTED

REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED

Scheduling TBD
REDACTED REDACTED

REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED

ALTERNATIVE APPROACH - GUARANTEE FOR PPA

REDACTED

REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED

REDACTED	REDACTED
REDACTED	
REDACTED	REDACTED
Guarantor	[Scottish Government Entity TBD]
Nature of Guarantee	Guarantor guarantees obligations of the Offtaker to pay for power under the PPA Offtaker Parent to provide first guarantee REDACTED
Guarantee fee	REDACTED
Risk Mitigation Measures	

SUMMARY OF PPA PROPOSALS

1. REDACTED If the original linkage between the hydro-electric power station and the aluminium smelter is broken the REDACTED

In order to maintain the necessary connection between the hydro and the smelter (as originally conceived) Liberty House has proposed two power purchase mechanisms, involving the Scottish Government. In either mechanism, the underlying purpose is to underpin the ability of the Lochaber smelter to secure low cost power REDACTED
REDACTED

2. Under both arrangements, the financial exposure of the Scottish Government would decrease over time, as the capacity for the Lochaber hydro station to export to the national grid is increased with future grid reinforcements.

3. We have discussed with Liberty potential constraints to us entering into such arrangements. In those discussions Liberty/SIMEC have undertaken to de-risk at their expense any PPA arrangement designed to support the aluminium smelter at Lochaber.

Summary

4. Though different in form, the two mechanisms serve the same purposes: (a) to provide long-term, stable and low-cost energy for the smelter, (b) provide revenue certainty to the hydro asset owner and (c) reduce the risk of stranded power arising from early closure of the smelter.

5. Both models are in essence a form of guarantee that helps reduce the exposure of any bidders who want to operate both the smelter and the hydro. Tying these assets together is in our view the model that best secures current direct and indirect employment at Lochaber.

6. Therefore, the policy rationale for considering an intervention to maintain the necessary close association between the hydro and smelter at Lochaber is clear. The task now is to work with Liberty (and potentially other bidders) to assess these proposals, and any development of them, with a view to determining whether or not we can enter into such an arrangement (see letter at Annex C).**REDACTED**

COMMUNITY LAND INTERESTS – RIGHT TO BUY

TOP LINE: Part 2 of the Land Reform (Scotland) Act 2003 gives communities the right to register an interest in land. Should the owner to subsequently seek to transfer that land, the community would then have first option to purchase that land.

SUMMARY OF CURRENT POSITION OF COMMUNITY BODY

East Lochaber and Laggan Community Trust have formed a community body compliant with the Act and are in the process of drafting an application. They are still some weeks from being in a position to submit a compliant application and continue to work with SG officials to this end.

The main areas in the application that require further development are: strengthening the outline business case, demonstration of public interest and production of a petition list to demonstrate community support. This list must contain at least 10% of the total population of the defined geographic area of the community.

SUMMARY OF COMMUNITY RIGHT TO BUY PROCESS

- **Stage 1:** A compliant application to register an interest in land is received by Ministers.
- **Stage 2:** Scottish Ministers send a copy of the application to the landowner (and any creditors in a standard security), invite the landowner and any creditor to provide views on the application, and **place a prohibition on any transfer of the land, or any action being taken with a view to transfer of the land. There are some exemptions to this which are detailed on the next page.**
- **Stage 3:** The landowner (and creditor) has 21 days to reply from the date of the invitation to provide views on the application (if they wish).
- **Stage 4:** If views are received, these will be forwarded to the community body (CB) who will have 21 days to provide any comments. (The CB will not be invited to comment on comments received on a late application. In this case, a late application is one which is received after the date on which the current owner has taken steps to transfer the land)
- **Stage 5:** Scottish Ministers have 63 days from receipt of a valid application to decide whether to register the interest or decline the interest.
- **Stage 6:** The community body and landowner (and any creditor) will be notified of the Scottish Ministers' decision.
- **Stage 7:** The community body, landowner, creditor or member of the community can appeal the Scottish Ministers' decision by lodging an appeal with the local Sheriff, within 28 days of the decision being made.
- **Stage 8:** The registered interest will remain for five years.

If the sale has been triggered:

- **Stage 1:** The CB will be notified that the right to buy has been activated and it will be asked to confirm whether or not it wishes to exercise its right to buy.
- **Stage 2:** If the CB decides to proceed, an independent valuation will be carried out on the land. The valuation process takes place over eight weeks.
- **Stage 3:** The balloter, appointed by Ministers, will normally have 12 weeks from the date of appointment of the valuer to conduct a ballot and submit the paperwork.
- **Stage 4:** If required, Scottish Ministers will have seven days to request further information to assist them in deciding whether to allow a CB to proceed with exercising its right to buy.
- **Stage 5:** The CB has seven days to return any requested information.
- **Stage 6:** Scottish Ministers will have 21 days from the return of the ballot results to consider the information provided and make a decision on whether the community body can proceed with its right to buy.
- **Stage 7:** The date of entry and payment of price must be within eight months from the date on which the CB confirmed it would exercise its right to buy. Any extension to the period for completing the purchase is possible only with the agreement of the landowner and community body.

POINTS TO NOTE ON EXEMPTIONS AND TRIGGERING THE RIGHT TO BUY

- There are exempt transfers with the Community Right to Buy which are;
 - A transfer otherwise than for value
 - A transfer in compliance with a court order
 - A transfer between spouses or civil partners as part of an arrangement after they have ceased living together
 - A transfer of croft land to the crofter tenancing it
 - **A transfer between companies in the same group**
 - A transfer to a statutory undertaker for the purpose of carrying out their undertaking
 - A transfer as part of an obligation or right under various others pieces of legislation, including this one.
 - A transfer as a consequence of the death of one or more partners in a firm or trustees of a trust.

- **However, Section 43 of the Act provides that, if any of these transfers are undertaken, whose main or sole purpose is for the avoidance of the requirements of the Act, that transfer shall not be deemed to be exempt.**
- It is also important to note that it is the sale of the land on which the application is placed that would trigger the right to buy. Should the company which owns that land be sold in its entirety, then the owner of the land remains the same, and the right to buy is not triggered.