

**To: Infrastructure, Land and Environment Policy Board**

**On: 24 March 2021**

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**Report by: Director of Finance and Resources**

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**Heading: Community Asset Transfer- Request for Review  
Barnbrock Farm- Application by UP-2-US Ltd.**

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**1. Summary**

- 1.1 The Community Empowerment (Scotland) Act 2015 includes provisions enabling community bodies to apply to the Council to take over Council owned land and facilities. This is referred to in the Act as an Asset Transfer Request. The Council is required to deal with Asset Transfer requests in a manner set out in the Act and following procedures established in Regulations.
- 1.2 The Council has received a request for a review of a decision by the Head of Property Services to refuse an Asset Transfer Request by Up-2-Us Ltd in respect of their application for the transfer of Barnbrock Farm.
- 1.3 The report provides information on the Asset Transfer Request and asks the Board to appoint the members of the Sub-Committee to decide the review and approve the procedures for considering the review.
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## **2. Recommendations**

2.1 The Board is asked to:

- a) note that a request has been received for a review of a decision to refuse an asset transfer request made in terms of Part 5 the Community Empowerment (Scotland) Act 2015.
  - b) note that the review is to be considered by the Community Asset Transfer Request Review Sub-Committee.
  - c) appoint Cllrs Jacqueline Cameron, Eddie Devine, Audrey Doig, Neill Graham and Cathy McEwan as the members of the Sub-Committee to consider the review and appoint Cllr McEwan as the Chair of the Sub-Committee.
  - d) authorise the Chair of the Sub-Committee in consultation with the Head of Corporate Governance to set the date and make all necessary arrangements for the first meeting of the Sub-Committee.
  - e) agree the procedure for dealing with the review as set out in the Appendix to this report.
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## **3. Background**

3.1 Part 5 of the Community Empowerment (Scotland) Act 2015 gives an organisation which meets the statutory criteria to be a “community transfer body” the right to apply to take over property owned by the Council. These applications are known as Asset Transfers Requests.

3.2 At its meeting on 23 February 2017, the Council agreed its process for dealing with such applications. As part of that decision, it was agreed that applications would be determined in the first instance by the Head of Property Services.

3.3 The 2015 Act prescribed that where an applicant is not satisfied with the outcome of their request the Council must provide for a review process. To meet that requirement, the Council agreed that reviews would be decided by a sub-committee of the Policy Board which was the precursor of the Infrastructure Land and Environment Policy Board to be called the Community Asset Transfer Request Review Sub-Committee.

3.4 The Council decided that the sub-committee was to comprise five members of the policy Board with three members from the administration group and two from the opposition groups. The Chair was to be either the convener or vice -convener.

- 3.5 The framework of the procedure for dealing with reviews is set out in Regulations although councils are able to decide on details of the procedure provided those details are in accordance with the Regulations. The proposed procedure which covers the points set in out Regulations, forms the Appendix to this report.
- 3.6 The Sub-committee has the option to decide the review based on the documentation proved to it or to hold a hearing prior to making a determination. However, it is proposed that an initial meeting of the Sub-Committee is held to consider how they wish to proceed with the review.
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#### **4. The Review**

- 4.1 The request for review has been made by Up-2-Us Ltd. The review is in respect of a decision taken by the Head of Property to refuse their request for an asset transfer of Barnbrock Farm, which was previously the offices of Clyde Muirshiel Park.
- 4.2 The Council must reach a decision on the review within 6 months of the date of receipt of the request for a review. The request for review was received on 10 February 2021, which means that the deadline for deciding the review is 9 August 2021.
- 4.3 The applicant has a further right of appeal to the Scottish Ministers if they remain unhappy with the decision if the Sub-Committee.
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#### **Implications of the Report**

1. **Financial** – The Asset transfer request if successful will involve the transfer of council property to a community body for a sum of money.
2. **HR & Organisational Development** – n/a
3. **Community/Council Planning** – There are no implication for community/Council planning arising directly from this report.
4. **Legal** – The report concerns the governance arrangements for dealing with a review of a decision to refuse a Community Asset Transfer request in terms of the Community Empowerment (Scotland) Act 2015.
5. **Property/Assets-** If the Asset transfer is approved, the property at Barnbrock Farm will be transferred out of the Council’s ownership.
6. **Information Technology-** n/a

7. **Equality & Human Rights -**
- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

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8. **Health & Safety – n/a**
9. **Procurement – n/a**
10. **Risk- n/a**
11. **Privacy Impact – n/a**
12. **Cosla Policy Position – n/a**
13. **Climate Change – neutral.**
14. **Fairer Scotland Duty (Strategic Decisions Only) – n/a**

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#### List of Background Papers

1. **Report by the Director of Finance and Resources to Council on 23 February 2017 headed: Community Empowerment (Scotland) Act 2015- Asset Transfer Request**

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**Author: Ken Graham, Head of Corporate Governance**

## **Community Asset Transfer Review Sub-Committee**

### **1. Remit**

- 1.1 The remit of the Community Asset Transfer Review Sub-Committee (“the Sub-Committee”) shall be to consider and decide applications for the review of decisions on asset transfer requests made under Part V of the Community Empowerment (Scotland) Act 2015.
- 1.2 The Sub-Committee will operate in accordance with the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016.

### **2. Membership**

- 2.1 The membership of the Board comprises five members of the Infrastructure, Land and Environment Policy Board (“the Board”) with three members appointed for the administration group and two members appointed from the opposition groups represented on the Board.
- 2.2 The Chair of the Sub-Committee shall be the Chair or Vice Chair of the Board.
- 2.3 A quorum for the meeting of the Sub-Committee shall be at least three members.

### **3. Application of Standing Orders**

- 3.1 The Council’s Procedural Standing Orders shall apply to the Sub-Committee except to the extent as expressly varied by these procedures.

### **4. Meetings**

- 4.1 The Sub-Committee shall meet to consider the review. All meetings may be held remotely using a system approved by the Council.
- 4.2 The arrangements for the initial meeting shall be made by the Chair in consultation with the Head of Corporate Governance. The date, time and venue for any subsequent meetings shall be agreed by the Sub-Committee.
- 4.3 Where any meeting is not open to the public to view as it happens, a recording of the meeting shall be published on the Council’s website as soon as possible after the meeting has ended.
- 4.4 Prior to the meeting, the Sub-Committee members will have read the papers and documents relevant to the review and note the reasons given for the initial decision to refuse the asset transfer request.

- 4.5 If new material has been submitted which was not included in the original request for review, then Sub-Committee members will decide whether to accept this.
- 4.6 No other parties have the right to speak at the meeting.
- 4.7 A decision will be taken by the Sub-Committee on whether there is sufficient written information to determine the review without further procedure. Where the Sub-Committee is satisfied that it does have sufficient information, it may decide the review at the first meeting where the Sub-Committee considers the review.
- 4.8 Where the Sub-Committee decides that further procedure is required, the Sub-Committee will follow the procedures in paragraph 4.9 below although it may hold further meetings to determine which of those procedures is the most appropriate.
- 4.9 Where the Sub-committee considers that further representations should be made or further information should be made available or provided, this may be by means of:
- a) written submission in which case Regulation 8 of the 2016 Regulations shall apply.
  - b) a hearing session, in which case the Hearing Session Rules in the 2016 Regulations shall apply.

## **5. Decisions of the Sub-Committee**

- 5.1 The Sub-committee may decide:
- a) to confirm the original decision to refuse the asset transfer request,
  - b) to modify the original decision, or any part of that decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or
  - c) substitute a different decision from the original decision.
- 5.2 The Sub-Committee must decide the review within 6 months of the date of request for review
- 5.3 A notice of the Sub-Committee's decision must be given to the community transfer body and every person who made (and did not subsequently withdraw) representations in respect of the review must be notified that a decision on the review has been made and how a copy of the notice of the decision may be inspected.

5.4 A copy of the decision notice must be made available for inspection on a website or by other electronic means.

## **6. Appeals**

6.1 Where following a review, the Sub-Committee

- a) refuses the asset transfer request to which the review relates,
- b) agrees to the request but the decision notice issued following the review specifies material terms or conditions which differ to a significant extent from those specified in the request, or
- c) does not issue a decision notice within the prescribed period.

The community asset transfer body making the asset transfer request may appeal to the Scottish Ministers.