



## REPORT TO KINCARDINE AND MEARN'S AREA COMMITTEE – 2 MARCH 2021

### MILL OF BENHOLM ASSET TRANSFER

#### 1 Reason for Report / Summary

- 1.1 Mill of Benholm Enterprise has given written notification of their decision to withdraw their Asset Transfer request. There is no statutory provision within the Community Empowerment (Scotland) Act 2015 for a community transfer body to withdraw its Asset Transfer request, therefore in line with the Scheme of Governance Section B.9.2.6 the Area Committee is required to make the final determination.

#### 2 Recommendations

**The Committee is recommended to:**

- 2.1 Acknowledge the withdrawal of the application by Mill of Benholm Enterprises for the Mill of Benholm and in view of the fact that the relevant legislation does not make provision for an application to be withdrawn give effect to Mill of Benholm Enterprises' intention to withdraw the application and so formalise and complete the process by refusing the Community Asset Transfer application; and**
- 2.2 Delegate authority to the Area Manager to issue the Decision Notice of Refusal.**

#### 3 Purpose and Decision Making Route

- 3.1 A report was presented to the Kincardine and Mearns Area Committee on 3 September 2019 recommending approval of the Asset Transfer request for Mill of Benholm subject to various conditions. The Committee took a decision which was not in accordance with the recommendation of Officers and in line with the Council's Scheme of Governance the matter was required to be referred to the Business Services Committee for a decision.
- 3.2 A report was presented to the Business Services Committee on 14 November 2019 where after careful consideration of the information presented the Committee voted to defer the matter in order that further information might be provided to Members.
- 3.3 Since then discussions have been ongoing with members of Mill of Benholm Enterprise to resolve the outstanding issue of being able to demonstrate progress towards securing commitments of funding for Phase 1 of the works.
- 3.4 On 29 January 2021 Mill of Benholm Enterprise submitted written notification of their decision to withdraw their Asset Transfer request. As there is no statutory provision within the Community Empowerment (Scotland) Act 2015 for a

community transfer body to withdraw an Asset Transfer request the only option open to the Council is to issue a Decision Notice of Refusal to formally close the process.

#### 4 Discussion

4.1 As stated earlier, Section 9.24 of the Asset Transfer guidance under the Community Empowerment (Scotland) Act 2015 sets out the ways in which the Asset Transfer request process can come to an end. In summary, the process is completed when:

- a contract for the transfer is concluded;
- the request is refused and the community transfer body has followed all routes of appeal without success, or
- the community transfer body fails to take the next action in the process within the time required.

It further goes on to say in Section 9.25 that “There is no statutory provision for a community transfer body to withdraw its request”.

4.2 Therefore, to conclude the withdrawal of the Asset Transfer request from Mill of Benholm Enterprise the matter is being brought before Committee to formally determine the application by issuing a Notice of Refusal and listing the withdrawal as the reason for the decision.

#### 5 Council Priorities, Implications and Risk

5.1 This report helps deliver Council Priority 2 - Our Environment (Infrastructure and Resilient Communities).

5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial	X		
Staffing	X		
Equalities		X	
Fairer Scotland Duty		X	
Town Centre First		X	
Sustainability		X	
Children and Young People's Rights and Wellbeing		X	

5.3 An Equality Impact Assessment is not required because the recommendations contained within this report do not have a differential impact on any of the protected characteristics.

- 5.4 There are staffing implications for Landscape Services as they will continue to have to maintain the site.
- 5.5 There are financial implications with annual running costs of circa £28,000 which the Council will have to continue to manage. These include costs incurred by Landscape Services and Property costs for utility charges.
- 5.6 The following Risks have been identified as relevant to this matter on a Corporate Level ([Corporate Risk Register](#)):
- ACORP001 – Budget Pressures
  - ACORP006 – Reputation Management

The following Risks have been identified as relevant to this matter on a Strategic Level ([Directorate Risk Registers](#)):

- BSSR001 – Balancing the Books
- BSSR004 – Community Empowerment

## **6 Scheme of Governance**

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 The Committee is able to consider and take a decision on this item in terms of Section B.9.2.6 of the List of Committee Powers in Part 2A of the Scheme of Governance namely the power to determine the granting of the transfer of an asset to a community or voluntary group and the terms and conditions of that transfer.

**Alan Wood**  
**Interim Director of Infrastructure**

Report prepared by Bruce Stewart, Area Manager Kincardine and Mearns  
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