

Community Asset Transfers

In Barr South Ayrshire

Lessons to be learnt

9 February 2023

Introduction

Two weeks ago, a group of residents asked me, as a lawyer resident of the village, to provide the Barr Community Council (“the BCC”) with a review of

- The proposals by the Barr Scottish Charitable Incorporated Organisation (“the SCIO”) for acquisition of the Village Hall:
- How the SCIO developed these proposals.
- The current willingness of the community as a whole to support these proposals:
- The role of the South Ayrshire Council (“the SAC”) in the matter.

I asked Tom Walker as chair of the BCC whether he would receive that report on behalf of the BCC. He said he would welcome the report subject to the following.

- (1) He invited me to take as constructive a position as possible.
- (2) Whilst any suggestions that I put forward must clearly be within the ambit of what is legally correct, he impressed upon me that it is existing BCC policy to maximise the possibility of community proposals obtaining the sustained support of a big majority of the residents of the village, the end result being a united rather than a divided village. He accordingly hoped that the report would focus heavily on this.

The SCIO announced on 3 February that they were indefinitely suspending further work on their project. However, there are very significant lessons to be learnt and we need as a community to be candid about what has gone wrong so that future projects of this nature succeed. Tom was happy to agree to the brief being extended in this way and we have made what we hope will be seen as a set of positive and constructive recommendations to bring this about.

The BCC approved and adopted this report on Friday 9 January with the changes incorporated into the text that follows.

Patrick Gardner

5 Glenginnet Road

Barr

Friday 9 February 2023

EXECUTIVE SUMMARY

On 3 February 2023, the SCIO announced that they were putting their plan for the future of the village hall on indefinite hold. The announcement to the village is attached as Appendix One. This report analyses what led to this decision so that future projects of this nature do not fail as well.

The SCIO's plan to acquire the village hall could not succeed because there is significant evidence that there is a lack of majority support for the SCIO's proposals. This lack of support isn't mere indifference. There was strong direct opposition to the SCIO's approach from many in the village.

It is not that the village was opposed to the idea of a SCIO acquiring the village hall. However, it was the way that the proposition had been developed that had led to the SCIO's proposals losing the support of the village community.

The report substantiates this viewpoint in considerable detail. However, there is a single and very basic failing that lies at the root of the detailed problems set out in this report.

This is that there is a long-standing culture of animosity in the village with two rival camps that are unable to cooperate together. Both camps feel that they and not the other camp are in the right. There are many examples of this with the community itself being the big loser.

This mutual animosity underpins all the problems set out in this report. Our conclusion is that nothing constructive will ever be agreed until this long-standing animosity is ended.

We have therefore looked at all the issues from that perspective and our concluding recommendations address the paramount need to resolve this root cause to problems that will otherwise continue to occur.

In PART ONE we set out a review of the statutory basis for Community Asset Transfer ("CAT") process. This will be known to the South Ayrshire Council ("the SAC") and some of the residents, but there are many residents without such background knowledge.

The critical factor underpinning the law relating to CATs is that it is designed to allow community organisations to request the transfer of local and central governments assets, in the current case the Barr village hall. The thinking behind the legislation is that such transfers will lead to better run and happier communities.

However, there was very little consideration of the operation of the CAT process in communities with long standing internal animosities.

The Scottish Government Review

There is a current Scottish Government review of how well the CAT process is working and we believe that this report would, if accepted by the Barr Community Council ("the BCC") provide valuable insights into how the CAT process can go wrong.

The background is that there has been extremely little reference in the legislation or guidance to communities such as Barr that are bitterly divided about CAT proposals. The main focus is instead on the support to be provided by the Local Authorities (or other governmental body) to facilitate and support eligible community groups through the process.

The simplest way to deter animosity driven processes is to require that where discord exists (and this would be very obvious) a CAT could not occur without a substantial majority of the village voting in favour. Our view is that it should be 75% of those voting, that being the same percentage that is required for changes to the constitutions of community organisations.

Two very significant benefits would flow from this.

- (1) The vote requirement would be a very big deterrent to CAT processes starting in communities with high levels of entrenched animosity as it would be obvious that neither camp could establish a 75% majority.
- (2) Secondly it would be obvious that a CAT in a divided community could be achieved if there was an outbreak of “community peace”. In effect communities would be incentivised to get their act together before being able to take advantage of the CAT process. There might be fewer CATs, but they would be likely to have much better outcomes.

Our view is that achieving this objective in Barr will be very difficult but not impossible. We set out a suggested way forward in the PART FIVE, the final part of this report.

In PART TWO we set out how the CAT process in Barr has gone wrong. In our view it is significant that the SCIO has failed to ask of their “opposition camp organisations” one important and very constructive question namely **“What would the SCIO have to be to obtain your support?”**

The question provides a totally different mindset starting point for the CAT process and we recommend to the Review body that this question be asked, and asked without exception, in every CAT process.

However, the Barr SCIO never asked this question. Indeed, it has never consulted in any serious way with “opposite camp” organisations. The consequence has been the series of missteps by the SCIO set out in PART TWO with an end result of every major organisation in the village save the Bowlers losing support for what the SCIO was proposing.

Additionally, three independent Trustees of the SCIO Board submitted their resignations on the basis of major unhappiness with how the SCIO was operating. What is significant is that all three were saying that they resigned for very much the same reasons. We set this out in the main body of this report.

So, what we have today is a community that is completely divided, and which is wracked by high levels of acrimonious discord.

Regrettably the SAC got drawn into this toxic discord. We set out in PART THREE why they could legitimately be strongly supportive of a CAT. Indeed, the legislation **requires** them to be so, unless there are clear reasons why they should not.

The problem for Authorities is the situation where, as in Barr, there is a long history of internal animosities. The danger for such Authorities is that initially legitimate support for CATs could evolve into bias in favour of one camp and against the other.

As set out in PART THREE this appears to be what happened in Barr culminating in the SAC suspending the BCC on 11/18 November. As a (retired) lawyer I had significant concerns that the suspension was unlawful. Given that the suspension precluded any BCC actions I personally wrote to the SAC outlining these concerns. To be sure that my concerns were valid I took advice from the Chair of a major firm of solicitors in Edinburgh who confirmed that the suspension was indeed unlawful. The SAC tacitly accepted that their actions were unlawful in the reasons that they gave when they allowed the BCC's appeal against the suspension.

The suspension led to significant disquiet within the community and there is reputational ground for the SAC to recover. The BCC has constructive role to play here.

In PART FOUR we report on governance policies and the function of a business plan for the operation of a CAT scheme. Both are crucial. There are lessons to be learnt from the failures of the SCIO in this area.

One of the key benefits of strong governance provisions is that they provide a "back stop" to prevent bad decisions being reached or reached in an inappropriate manner. Good governance policies and procedures could have prevented some if not all of the SCIO's missteps that are set out in PART TWO.

From what has been publicly stated it appears that the SCIO planned to spend £1.2 Million on renovations of the village hall. This would have stripped the coffers of what could be available for all sorts of different purposes (e.g., mental health, dementia or educational projects.) The SCIO never produced a business plan to support its current proposals. With no business plan there was no way of evaluating whether this very large commitment to a single project was the right course of action.

Additionally, the lack of a business plan meant that there was no way of judging the financial viability of the ongoing operations.

Everyone becomes a loser if the governance and financial management of any SCIO was poor. So strong governance and a clear and robust business plan must be central elements of any future proposals for a CAT of the village hall.

PART FIVE sets out our suggestions as to what should be done to rectify the situation.

We do not think that **ANY** constructive way forward can be found whoever the proposer unless the mutual animosity is largely eliminated

We recommend the following.

- (1) A pause for at least six months as a “cooling off period.”
- (2) The appointment of a consultant / consultancy organisation to assist the community to find a “peace plan” that would bring the current discord to a close. Clearly any such organisation would need to be acceptable to both camps.
- (3) For the same consultant to investigate alternative options for the use of the available funds with all community organisations. We think it likely that there would be clear grounds for some budgeted expenditure on the village hall. However, there is an obvious alternative to what the SCIO was proposing, namely to spend much less than the £1.2 million. This would mean that funds would be available for other functions such as mental health / the dementia journey, repairing Covid related damage to education and other functions of this nature..

NOTE: The SCIO provided possible sources for some of this £1.2 million. However, there was a very large amount without any identified funding source. The BCC and the community should not assume that £1.2 million is available.

PART ONE: THE LAW

1. Introduction

This Part of the report sets out the current law in so far as it is relevant to the potential Community asset transfer.

The Scottish Government's Community Transfer Bodies' Guidance sets out the main purposes behind the legislation as follows: -

Ownership or control of land and buildings is a powerful tool for communities to drive change and achieve their own goals. In the first place it provides a base for activities and services that might not otherwise be accessible to members of a particular community, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement.

Accordingly, PART 5 of The Community Empowerment (Scotland) Act 2015 provided a statutory basis for the transfers of central and local government assets to local communities.

The wording set out above is very expansive. More realistically the guidance (page 15) simply states that

“If the community organisation's plan is better for the people, they will be allowed to buy, lease or have the use of it. This is called asset transfer.”

Note that even management agreements for an eligible property falls within this omnibus description of “asset transfer.”

The property in question in Barr is the village hall and arrangements for its sale or lease or even a detailed agreement for management, to a “community transfer body” can all potentially be asset transfers under the legislation.

The **sale** of the asset requires that a SCIO be the acquiring body; leases or management contracts need not be.

We now set out what happens on a substantially chronological basis.

2. Establishing a “Community transfer body”

Step One in the process is for the potential acquirer to be recognised as a community transfer body. The procedure is set out on pages 10-11 of the guidance. It is a straightforward application by email to assettransferguidance@gov.scot giving details of a community controlled organisation including its constitution, trust deed or other governing documents. If it meets the (quite basic) requirements it becomes recognised as a “Community transfer body” and as such can make “Community Asset Transfer Requests (see below)

The legislation doesn't define what a "community" can or must be. The applying body itself defines the community to which it relates; however, the body must be controlled by members of the community (as defined) and use its assets to benefit that community.

3. An asset transfer Request

The Authority (here the SAC) may offer to agree a lease or other arrangements with a community transfer body without going through asset transfer. However, this loses the protection of the asset transfer legislation, including the right to a review or appeal.

The guidance says the following: -

"8.6. If there is more than one community transfer body interested in the same land, you should try to work together to agree a single Request. However, sometimes that is not practical. A community transfer body can put in an asset transfer Request for any land, at any time, even if there is already a Request in place from another body. You do not have to wait until an earlier Request has been completed before submitting yours. All Requests must be processed in accordance with the timescales in the legislation."

The basic timescale is that the "relevant authority" (i.e., here the SAC) must reach a decision on the Request within six months of the Request being made.

There is a proscribed format to follow. We only discuss those areas where there will likely to be both discussion and debate when a Request is made and evaluated.

8.15. You must state clearly whether your Request is for:

ownership (under section 79(2)(a))

lease (under section 79(2)(b)(i)), or

other rights (section 79(2)(b)(ii))

Request for ownership

8.16. For ownership, you must state the price that you are prepared to pay for the land.

Request for lease

8.17. For lease, you must state

the amount of rent you are prepared to pay

the duration of the lease

any other terms and conditions you want to be included in the lease.

8.18. Leases can cover a variety of arrangements, from a few months' use of an office or piece of land to several decades with full responsibility for maintaining the property.

8.22 The reasons for making the Request and the proposed use of the land.

8.22. You should explain the reasons behind your project and why this land or building is necessary or particularly suitable for it. This section should also set out what you plan

to do there: what will the land or building be used as and what activities will take place there? If you are Requesting ownership or a substantial lease, do you plan to make any physical changes to the land, redevelop any buildings or create new ones?

8.23 The benefits of the proposals

8.23. This is one of the most important sections of the Request. It is your opportunity to explain the good things your project will make happen in your community, which are key to the relevant authority's decision.

This would be very much the meat of any Request.

4. Criteria to be used by the SAC in considering a request from the BCA and / or the SCIO.

There are sets of criteria to be considered and a statutory requirement under Section 82 (5) to agree to a Request unless there are reasonable grounds for refusing it.

Significantly the guidance in 10.5 explicitly states that circumstances under which requests are declined *“include cases where the benefit of the asset transfer request are judged to be less than the benefits of an alternative proposal,”*

There is extremely little reference in the legislation, or the guidelines to the presence or absence of discord. However, 10.19 of the guidelines states

"There are often differences of opinion within communities, and you should not expect unanimous support for a proposal. However, one of the intended benefits of community ownership and community-led activity is to increase community cohesion and resilience. A scheme that attracts substantial opposition and causes division in the community may not have a net benefit. It could also result in fewer people becoming involved or using the services."

and

“The final paragraph of section 82(3) requires the relevant authority to consider "such other matters (whether or not included in or arising out of the request) as the authority considers relevant". This is the heading under which we recommend relevant authorities consider community support for the proposals and any potential impact on other community groups.

PART TWO: WHAT WENT WRONG?

The central theme of this report is that the series of events described in this section are symptoms that all flow from the underlying malaise that afflicts the Barr community with two camps that are unable to communicate with each other and with each camp believing the other to be at fault.

The result in this type of situation is that reasonable people take bad decisions and the whole community suffers.

There have been a number of minor events. In our view there is little to be gained from delving into these as this will merely ignite further discord. However, there are some major events that do need to be examined and explained.

(1) “Save our hall.”

The SCIO ran an event at the village hall in late 2021 that could cause confusion about what would happen if “The SCIO option” (the acquisition of the village hall by the SCIO) did not succeed.

The problem was the suggestion that the SAC would close the hall if the SCIO Option didn’t succeed.

The SAC has confirmed that the future of the hall would simply go back into the melting point if the SCIO Option didn’t succeed.

The SCIO has since rowed back on this but many in the village might well not be aware of this.

(2) The SCIO’s relationship with the Barr Community Shop and Café (“the BCSC”), a non-profit distributing company that manages the village shop.

Much that has gone wrong clusters around the very poor relationship between the SCIO and the BCSC.

What is indisputable is that the shop is by far the largest community operation in the village with an annual turnover of around £120,000 p.a. It is clearly well run with a very tight control over cash and finances generally and the BCSC has been steadily improving its financial position over the last few years.

It has a set of exemplary governance policies and its then shop manager received specific mention in an early day motion at the House of Commons on 18 May 2020 where the House praised *“the exceptional work and commitment of Judy Brzezinski, of the Barr Village Shop for her part in organising home deliveries to elderly and vulnerable people within the village during the initial Covid outbreak.”*

Given all of this a SCIO’s very first step should have been to approach the BCSC to win their fullest possible support for the SCIO Option. (e.g. “What would the SCIO need to be to win your support?”)

As a direct consequence of the underlying malaise in the community the SCIO did not, however, adopt this enlightened policy. It was a huge mistake with many negative consequences.

We should be clear that the SCIO Trustees who took this decision will have believed that their decision was correct. The crucial question, however, was whether their belief was justified.

2.2 The meeting between the SCIO and the BCSC on 6 May 2022

This meeting was led by SCIO Chair and on behalf of the SCIO and the Chair of the BCSC and on behalf of the BCSC.

At this meeting the Chair of the SCIO said that the SCIO would not grant a lease of parts of the hall to the BCSC.

The BCSC board responded on May 26 in an email to the SCIO Chair.

Many thanks for meeting with us on the 6th of May.

Can you formally confirm that the SCIO does not intend to offer Barr Community Shop and Cafe Ltd the use of space in the Hub to operate the shop and cafe? You stated this during the meeting and we need to be sure that this is indeed what the SCIO intends.

We would like to restate our willingness to assist you in the development of options, if these include Barr Community Shop and Cafe Limited.

Thank you

The Directors of BCSC Ltd

The SCIO Chair's response didn't answer this fundamentally important question.

He has subsequently said that he was merely putting forward his personal opinion. Given the critical importance of what he was saying, it is inconceivable that he would have said what he did without a strong belief that his Board would be in support. Given that what he said effectively became the SCIO's policy this looks very likely to be the correct explanation.

Given the very high importance of the decision the policy should have been formally discussed with the SCIO Board with papers being prepared setting out the reasons why those proposing the course of action considered it to be correct. There should then have been a formal appraisal of why the SCIO felt that they should rule out the approach of a carefully negotiated lease with BCSC.

2.1 The Plunkett Meeting on 12 July 2022

The Plunkett Foundation was engaged by both the SCIO and the BCSC to provide advice. Under their contract with the SCIO, they led a meeting in the Village Hall on 12 July to outline and advise on the possible strategies of the SCIO should they acquire the village hall. This led to considerable discussion about options for the village shop.

Plunkett's first option was that space for the shop be leased to the BCSC. Plunkett are an organisation with substantial experience and expertise in this area and they put this option first whenever there was an established organisation in the community already carrying out the function.

The Chair of the SCIO was the chair of the meeting but neither he nor any SCIO Board trustees that were present suggested that there was a policy that the BCSC not be given a lease.

The debate was a positive one with general agreement that there be follow up talks between the SCIO and the BCSC. However, these talks never happened,

2.3 "The preferred option" (12 September 2022)

On September 12, the SCIO's Development Officer emailed the BCSC to say that their preferred option was to set up a subsidiary wholly owned by the SCIO that would operate a shop in the village hall on behalf of the SCIO. It was suggested that the BCSC would go into liquidation. (*"It is understood the current BCSC would need to dissolve"*) There was an offer that the subsidiary employ BCSC staff and be members of the subsidiary Board if they so wished.

The suggestion was rejected by the BCSC.

The offer confirmed that the comments by the Chair of the SCIO on May 6 did indeed represent the policy of the SCIO. Again the question that arose was the grounds on which SCIO decided on this "preferred policy" option and the criteria they used to make the decision.

2.4 The BCSC AGM on 16 December 2022

The BCSC AGM was held in the village hall on the 16th of December 2022. It was a very troubled meeting where the Chair of BCSC and the BCSC came under almost constant attack from SCIO trustees and SCIO supporters.

There were two major votes taken at the meeting. In the first the members were asked whether they would in principle prefer the shop to move to the village hall or to within the Barr church. The members voted by 47 to 32 to move to the Church or roughly 60:40.

The meeting then voted on the composition of the Board, with five SCIO supporters having applied to become additional directors. Four supporters of the BCSC Board also stood for election.

The four new directors supportive of the current management won the most votes leaving one unfilled post that was filled by a SCIO supporter. The votes are set out in the minutes but in summary the SCIO lost this vote by much the same margin as they had lost the previous vote about where the shop should be located.

This was a very bad result for the SCIO. They had in effect sought to control the decisions of the BCSC by appointing a majority of SCIO supporters to the BCSC Board (an extraordinarily divisive course of action in itself) but had failed to do so.

There was one very serious sidelight to the AGM. The Board prior to the AGM had only three directors having been run for many years with between 3 and 5 directors, However the Articles allowed for up to eight directors. There were therefore five available places.

Nominations to become directors had a closing date and time. The nominations of SCIO supporters were put in very shortly before the closing date and time. This meant that there was no time for the BCSC to respond should they not have already organised nominations for significant additional directors.

As it happened there were four such “pro Board” nominations and these four nominees comfortably topped the vote. We know from this that the SCIO **did** lose the vote of the members as to the composition of the Board.

The troubling factor is that if “pro Board” nominations had not been made the SCIO could have got a significant, perhaps a controlling share of the BCSC Board **even if this was not the will of the members.**

In our view the SCIO should have informed the BCSC of its intentions to put forward a rival set of nominations well in advance of the closing date and time.

3 The resignations of three independent Trustees from the SCIO Board

(We have asked the three ex-Trustees of the SCIO referred to below for permission to include the italicised words set out above. They each have agreed.)

The three trustees of the SCIO that resigned from were all what might be called independent trustees with two of the three having been high profile leaders in Barr community decision taking for over a decade. It states the obvious, but they joined the SCIO Board to facilitate and support the SCIO to achieve its CAT related objectives.

All three resigned in the autumn of last year. We have talked to all three and what was striking is that all three resigned for much the same reasons.

(1) Very poor attitudes towards other village organisations including a number of the leaders of such organisations.

(2) The absence of any effective governance procedures.

(3) The manner in which the Board responded to views that did not coincide with those of the inner core of SCIO Trustees. There was a culture that prevented Trustees fulfilling their statutory responsibilities to speak up and if necessary, challenge proposals that they thought were wrong.

This all related to the “underlying malaise” issue. Nothing good will ever happen unless these underlying issues have first been successfully addressed.

PART THREE: THE SOUTH AYRSHIRE COUNCIL

The South Ayrshire Council (“SAC”) has obvious reasons to be positive about the idea of Community Asset Transfers and the situation as it existed in Barr would, for good reasons, have been seen by the SAC as a very good option.

- (1) There was a village hall that was a cost to the SAC and the hall would significantly benefit from investment.
- (2) There was a possible sale price of £100,000 alongside the cost savings for the future.
- (3) The Scottish Government had passed legislation fully supportive of Community Asset Transfers. Indeed, as set out above, the legal presumption was that requests to buy or lease the hall would be granted, subject only to the absence of good reasons not to proceed.
- (4) A special legal entity had been created to become the new owner if a sale was to take place – The Scottish Charitable Incorporated Organisation or “SCIO” which is a legal form unique to Scottish charities which is able to enter into contracts, employ staff, incur debts, own property, sue and be sued.
- (5) Once transferred there were outside sources of funding available to carry out improvements to the asset being transferred.

In addition to this, the legislation and the guidance encouraged the SAC to play an active role in assisting local communities navigate their way to a successful conclusion.

So, there can be no criticism of senior officers of the SAC for being supportive to the SCIO and lower level staff would naturally follow this; so if this put them in the SCIO camp, that would be the normal place to be in the types of situations envisaged by the legislators.

We don’t know when the SAC might have begun to realise that there was significant opposition to the SCIO within the village; additionally, we also don’t know whether, and if so when, knowledge at a junior level percolated its way upwards to the senior management.

Putting this all together our view is that the BCC should not be critical of the SAC’s position prior to the suspension.

However, something very different occurred with the suspension of the BCC on (variously) the 11th or 18th November of last year. As the BCC was suspended its ability to act was very circumscribed. As a resident and a former barrister, it appeared to me the suspension was unreasonable and likely to be unlawful. I took advice from the Chair of a major Edinburgh firm of solicitors, who confirmed my view. So as a resident I wrote to the SAC setting out these concerns.

Two areas were of specific legal importance. The first was that the suspension took place without any investigation of the circumstances involved. In particular they suspended the BCC without getting the BCC’s view about what had happened. The law is that an

appropriate level of investigation is mandatory. As this had plainly not occurred the suspension was unlawful.

In the event the SAC lifted the suspension and in their letter to the BCC accepted that the lack of investigation was wrong.

The second key point was that there was apparent bias. The widely recognised test of bias is the *Magill* test, namely

'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal (in this case the SAC) was biased.'

The lack of any investigation prior to the decision to suspend would seem to clearly meet the *Magill* test for how otherwise could a decision to suspend without investigation be taken if the SAC was NOT biased?

The key point is that the law does not require proof that bias was present, merely that a fair minded and informed observer could conclude that there was a real possibility that bias might have been present.

This is a serious situation that was worsened by an SAC employee emailing the BCC with concerns relating to the BCC on 12 January 2023.

The troubling issue was that he raised the concerns at much the same time as that of multiple complaints from supporters of the SCIO. The question therefore was whether his actions were taken in concert with the SCIO or the SCIO supporters. As such his complaint provides grounds for an informed and fair-minded viewpoint that the apparent SAC bias that had led to the suspension of the BCC might have continued. It is a serious and currently unresolved issue.

The matter clearly needs to be openly discussed between the SAC and the BCC as soon as possible. From the BCC's perspective the optimum result would be for the BCC to be satisfied that the issue has been resolved and that that there is no continuing bias against it.

PART FOUR:

GOVERNANCE AND THE SCIO BUSINESS PLAN

Governance and the business plans are closely related with elements of Governance often becoming integral parts of the organisation's business plan and elements of the business plan becoming integral parts of the governance procedures. So, we have combined the two elements in this PART FOUR of the report.

1.0 Governance

It is apparent that the SCIO had an inaccurate concept as to what governance was all about. We give examples of what their perception is in subsequent sections; however, we start by very briefly setting out what Scotland's Third Sector Governance Forum ("the Forum") defined the elements of Governance for Scotland's charities, of which the SCIO is one. The Forum divided governance into five sections.

(1) As relating to the Organisation's purpose.

The Forum states that *"A well-run board is clear about the purpose and values of the organisation and how it will achieve its aims."*

The key responsibility of the Board is to *"make sure that our organisation delivers what it was set up to do."*

For the purposes of this report the key words of the SCIO's constitution that describe the purpose of the SCIO (section 4) are that the SCIO *"has been formed to benefit the community of Barr Parish"*. The purposes go on to state a second purpose namely *"to protect the Barr Community Hall asset as the heart of the rural community"* and as a third purpose to *"establish a viable and sustainable facility for all ages and abilities in Barr Village and the wider rural residents."*

The sequence is important. Clearly the ultimate purpose is *"to benefit the community of Barr Parish"*. We accept that the SCIO Board believed that its actions would achieve this end. We are not questioning this; but we are questioning whether the SCIO would have actually achieved this end.

(2) Leadership

The Forum's formulation of leadership related governance policies and procedures provides detailed provision as to how the organisation should ensure that its leadership operates to implement its core purposes. This section of their recommendations starts as follows: -

A well-run board is clear about its role and responsibilities, and provides strategic direction in line with the organisation's purpose, vision and values.

As the board we are here to lead our organisation, and we are individually and collectively responsible for our decisions. We need to make sure our organisation has a clear strategy to achieve our purpose. We will do this by identifying and embedding the vision and values of our organisation, making sure these underpin all our decisions and activities

(a number of other actions follow)

This emphasises again that it is the purpose (and values) of the SCIO that drives everything else. We believe that it is fair and reasonable to suggest that a constant question should be “does what we do benefit the community?” .

This does, of course, apply equally to every organisation within the village and it is the collective responsibility of all of the community organisations to achieve this.

(3) Board Behaviour

This third part of the Forum governance policies and procedures provides detailed recommendations relating to the conduct of Board meetings.

We identify two that are of significant importance to the current situation. Again, we make the point that these recommendations are ones that should be followed by all organisations within the community.

The actions and decisions of the governing body should include the following

- The Board should be “*transparent, open and accountable*” and its actions should follow on from “*listening to beneficiaries*”
- The Board should create “*a constructive board environment where diverse, and at times conflicting views are respected and welcomed, and decisions are reached collectively.*”

The common reasons that the three independent SCIO trustees gave for resignation indicates that a lot of work was required in this area, combined with attitudinal changes.

(4) Control

(5) Effectiveness

These two sections provide detailed recommendations as to how to make the organisation good at what it is seeking to do.

The views put forward by the SCIO on what was called “governance”.

A SCIO trustee put forward what he termed “governance procedures” on behalf of the SCIO.

His idea for what he called “governance” was simply that everything would be decided by monthly meetings of the residents of the community.

Unfortunately, this was not a workable procedure (what for example would be the quorum for these meetings, who in the village would receive Board papers and how could it be established that attendees would be representative of the whole community?).

What is worrying is that this communication bears little reflection of what the governance of Scottish charities involves.

2.0 The SCIO business plan

With the SCIO's decision to suspend work on the CAT indefinitely it appears that we will never see a business plan reflecting the current plans of the SCIO. In looking at what has gone wrong so as to prevent history repeating itself in the future, we suggest the following: -

A good quality business plan should be a formally worked out plan that had the informed support of all the community organisations in the village and which sets out: -

- (1) Clear definitions of the governance that is in place at the date of the business plan and what in broad terms would be the key governance principles for areas that had not yet been formalised. From the matters put forward immediately above it appears that there was significant work still left to be done when the SCIO decided to suspend its operations for the indefinite future.
- (2) Clear and detailed statements as to the benefits that the project would bring to the community and how these objectives would be achieved.
- (3) Clear and evidenced accounts of the degree of informed community support for the SCIO's detailed plans as set out in the business plan.

There is little doubt that Barr residents as a whole like the idea of a hub on an in-principle basis. The question that the business plan would have needed to address was whether there was community support for what it was that would actually happen.

Finally, we would expect to see acknowledgement of any significant opposition in the village to the SCIO's proposals and constructive proposals as to how to ameliorate these divisions.

- (4) An in depth analysis of the financial viability of the SCIO. What is critically important here is that the assumptions (upon which spread sheets were built) need to be clearly set out with, in each case, evidence that they are realistic.

The key point is that everyone is a loser – most noticeably the community itself – should a SCIO fail financially. A clear and well evidenced business plan is very important.

PART FIVE: CONCLUSIONS

Any CAT process needs to be built upon a united community, not a divided one, and certainly not for a community that is as bitterly divided as that in Barr. There should also be recognition that the actual community benefit work is heavily dependent on unpaid volunteers who bear the brunt of the fallout from the current toxic environment.

Ultimately what the community needs to do is to resolve this underlying malaise, following which, but only following which, all things become possible.

The premise underlying the whole of this report is that nothing constructive will ever emerge unless and until the malaise of rival camps is very substantially minimised if not permanently ended. Our suggestion is that it is pointless to proceed with ANY form of CAT in the community without first ending the malaise.

(1) A six months pause

Given the very high current levels of discord we suggest that there be a “cooling off” period of at least six months before any of the steps set out below are taken.

(2) A “peace treaty”

After this cooling off period all organisations in the village should work together to establish how best to end the underlying discord that plagues the community.

It is likely that this could only be achieved with the assistance of an outside contractor accepted as being independent by all organisations within the village.

(3) Alternative business plans for the village hall

The above contractor should also be engaged to start a consultation as to the future of the village hall. Asking what people and organisations want will almost certainly bring forward many ideas that haven’t yet been considered.

One specific area could be mental health with Barr, like everywhere, having a number of families with sometimes significant health issues. Another is educational responses to repair the damage done to education by Covid – often being linked to mental health issues. A third is support for patients on the dementia journey and their families.

These additional options often require money and there is plainly legitimate room for debate as to whether spending over a £1 million on renovations is the best use of the money that is available. We aren’t advocating any specific initiatives. What we recommend is wide and deep consultation on the many possibilities that are present.

We suggest that this all starts quietly on a “bottom up” rather than a “top down” basis. There is no reason why these options should not be investigated (though not debated) during the cooling off period.

APPENDIX ONE

SC049703

February 2nd, 2023

Dear community member,

Barr Community SCIO was set up to create **a social space in the form of a Community Hub**. This group, and its predecessors, looked at various venues for the Hub, including the pub and the village hall. Following discussions with South Ayrshire Council, it became clear to some that continued public funding of our hall is unlikely. With that position, the SCIO focused on developing proposals and gathering community support for **a community asset transfer (CAT) of the hall and grounds**.



The project looked at the hall and concluded that some major improvements would be needed to create a fit-for-purpose facility capable of satisfying community needs. Designs were produced with **a governance model which would put the community in charge**. New jobs would be created, and monthly village meetings would guide the Hub to deliver what the community wants.

Unfortunately, the last 12 months has seen opposition from some community groups and individuals. This **opposition has been largely ill-informed and at times malevolent**. The SCIO has been accused of many things, from being inept to seeking to take control of other groups. Whilst nothing could be further from the truth, these accusations have created a view of disharmony within the community. This situation makes doing anything constructive for Barr particularly difficult.

Regardless of the SCIO having conducted many surveys and votes and having been constantly encouraged by most to "just get it done", **an extremely vocal minority has managed to harm the credibility of the project** in the eyes of outside organisations. We need those organisations on board and instead, they have themselves been subject to criticism and abuse.

The community will no doubt have heard at least some of **the rumours and accusations made against the SCIO trustees**. Whilst that form of behaviour is unpleasant, the trustees have endeavoured to reply to all communications professionally and courteously. However, these highly motivated activists, who **see themselves running a campaign to undermine the project**, are becoming even more aggressive, and the accusations even more unbelievable.

For this reason, and the reality that South Ayrshire Council is itself now being accused of acting unlawfully or illegally, **the SCIO Board is recommending that the CAT process is paused indefinitely**. It simply isn't feasible to progress the project whilst part of the community is actively campaigning against it. A recent decision by the shop directors to support the creation of a potentially competing facility in the parish church has further demonstrated a lack of cohesion within the community.

We had wished for better news as we feel **Barr needs a space where we can all meet and talk**. The reality is that we need to talk with outside parties and those parties have themselves been targeted by the 'campaign'. We have committed to the Hub project, but **the current climate appears to be tearing the village apart**. This is the opposite of what we all should be doing, and the SCIO trustees do not wish to add to that. **A general meeting for SCIO members and the wider community will be arranged as soon as is practical**. In the meantime, there will be no further updates unless this campaign ends or at least stops harassing those we need to live and work with.

With great sadness,

Barr Community SCIO Trustees