



LANARK COMMUNITY DEVELOPMENT TRUST

ANNUAL GENERAL MEETING 2020

PROPOSED AMENDMENT TO ARTICLES OF ASSOCIATION

Resolution Proposed by the Board of Directors -

That the Articles of Association be amended by the exclusion of the following Article -

“4(7) To relieve those in need by the promotion of trade and industry within the Community for the benefit of the general public;”

Footnote

Article 4 generally deals with the Objects of the Trust, and states

“The Company has been formed to benefit principally the community of Lanark..... (The Community), with the following objects” – There are 10 Objects, 4(1) to 4(10).

Background

Following the resolutions of the Extraordinary General Meeting in September 2019, amended articles were sent to the office of the Scottish Charity Regulator (OSCR) to effect a change in geographical definition of our community so that we are compliant with the Community Right to Buy legislation. OSCR took the opportunity to review the whole document for the first time since the Trust was set up in 2009.

The review established that our articles retained this clause which had been removed in the interim from OSCR’s model articles for the reason that the promotion of trade and industry is not considered to be a charitable purpose nor to clearly relate to any of the charitable purposes. It is considered that the inclusion of such a purpose could cover activities such as the promotion of profit-distributing companies which would have a high degree of private benefit to those companies.

OSCR reminded us that the charity test is the legal set of requirements that an organisation must pass to be a charity and remain in the Scottish Charity Register. The charity test is in two main parts:

1. an organisation has to show that it has only charitable purposes and
2. that it provides public benefit in achieving those purposes

It is suggested to us that the retention of 4(7) fails the first part of this test. While a charity does not have to use the wording from the 16 charitable purposes in the Charities and Trustee Investment

(Scotland) Act 2005, it must be easy to see from the organisation's purposes how they relate to the ones set out in the 2005 Act.

Consideration

The board has considered the issues arising from this request from OSCR in view of this article being adopted originally in 2009 and being the basis on which the Trust promoted the establishment of the BID company and would wish to take into account areas of social need in the Community. The board considered whether the removal would hamper its ability in future to carry out charitable activities supporting business and hence address the matters of employment and welfare in the community, especially if the future of the BID is not guaranteed after its current 5 years. It consulted Voluntary Action South Lanarkshire (VASLAN) who advised that, in their view, our desire to promote trade and industry is already covered in our first charitable objective in Article 4(1) (the advancement of community development including rural regeneration), so we can remove article 4(7) without removing any powers to deliver activities in the future.

VASLAN further advised that if the Trust is an active member of the BID and continues to work together under a partnership agreement, this will not affect its charity status. Accordingly, the board is now considering developing more formal working relationships with its key partners, something that has arisen from the emerging Interpretive Strategy being promoted by the Trust, New Lanark Trust and the BID company.

Recommendation

The board has now consulted OSCR on the proposed amendment and have obtained its support. It is therefore recommended that the above resolution should be agreed and the amended Articles of Association registered with Companies House.

April 2020