Agenda Item	
Report No	

The Highland Council

27 June 2013

Nairn Common Good Fund - Sandown

Report by Director of Finance

Summary

The purpose of this report is to consider options for addressing the sum owed to The Highland Council of £734,410.78 and to reach agreement on a way forward for resolving this issue.

1. Background

1.1 At its meeting on 13 December 2012 Highland Council noted the legal position that prevents lending to Common Good Funds under the Local Government (Scotland) Act 1975, and agreed to waive all interest on the sum outstanding and refund all interest charged to date.

1.2 This action was taken to confirm that the original transactions had simply been a payment on behalf of the Nairn Common Good Fund, and that this was intended to be short term to enable the Common Good Fund to manage cash flow, recognising that expenditure had to be incurred before a significant capital receipt could be realised. In the event, due to unforeseen circumstances, the capital receipt has not materialised.

1.3 In reaching this decision the Council did however recognise that the issue of the outstanding debt had to be resolved, and asked for a report on possible options be brought back to a future meeting.

1.4 The matter was considered by Audit Scotland as part of their audit on the 2011/12 accounts. Whilst recognising the situation as it currently stands and being supportive of the reasons behind the original decision, Audit Scotland would also wish the Council to take action to resolve the legal position and a situation whereby this long-term debt remains outstanding in the Council's accounts.

2. Financial Options

2.1 In considering the following options, Council has to recognise the different responsibilities in acting in the best interests of the Council, whilst not prejudicing its responsibilities as Trustee of the Nairn Common Good Fund.

Five options have been identified for consideration. These are listed below, with a detailed analysis of the advantages and disadvantages of each.

2.2 The five options are:-

- The Council writes-off all of the outstanding debt
- The Common Good Land is advertised for sale immediately
- The Council transfers from the Common Good account a percentage of the land equivalent to the value of the outstanding debt
- The Common Good Fund uses income generated to write-down the balance of the debt over a period of time or when the land is sold
- The Council writes off all or part of the debt that relates to the fee of £390,000 paid to acquire vacant possession of the land, and transfers a percentage of the land equivalent to the value of the remaining debt

2.3 **Option 1** The Council writes-off all of the outstanding debt

Advantages

2.3.1 Writing-off the debt would remove the sum from the Council's balance sheet and resolve the legal position.

2.3.2 This is the best option for the Common Good Fund as it removes the liability to repay the sums advanced.

Disadvantages

2.3.3 This would represent a significant cost to the Council as the write-off would require to be charged against the accounts for the year, and would effectively have to be met from balances.

2.3.4 This is a material sum, and future budget provision would likely have to be made to replenish balances, placing further pressure on Service budgets at a time of financial constraint.

2.3.5 There are other options that allow the Council to recover the outstanding balance.

Comment

2.3.6 In light of the significant disadvantages associated with this option, it is recommended that this option in not pursued. The land asset still has a significant value that in time will accrue to the Common Good Fund.

2.4 **Option 2** The Common Good Land is advertised for sale immediately

Advantages

2.4.1 The sale proceeds would be more than sufficient to realise a cash sum to clear the outstanding sum.

2.4.2 The debt would be removed from the Council's balance sheet and this would resolve the legal position.

Disadvantages

2.4.3 Current market conditions would not attract a fair value for the land, and sale proceeds, if a sale was achieved, would be significantly lower than previously anticipated.

2.4.4 A sale at significantly below previous estimates would not be acting in the interests of the Common Good Fund, and the Council could be deemed to be breaching its legal responsibilities.

Comment

2.4.5 In light of the significant disadvantages associated with this option, it is recommended that this option is not pursued.

2.5 **Option 3** <u>The Council transfers from the Common Good account a pro rata share of the land equivalent to the value of the outstanding debt</u>

Advantages

2.5.2 This option allows the Council to create an asset on its balance sheet.

2.5.3 The debt would be removed from the Council's balance sheet and this resolves the legal position.

2.5.4 This option removes the indebtedness of the Common Good Fund, and leaves it no worse off in cash terms than it currently is, as this cost had to be met to facilitate any sale of the land.

Disadvantages

2.5.4 The Common Good Fund loses absolute control over land currently within its control, and the current market conditions will impact on the extent of the pro rata share of the land transferred.

2.5.5 The Common Good Fund would lose control over potential future uses for any land that is transferred to the Council. However the proposal recommends the transfer of a pro rata share rather than a proportion of land, to ensure that the Common Good Fund retain an interest in the whole site.

Comment

2.5.6 Although the lands at Sandown form part of and are administered as part of the Nairn Common Good, title to the lands is held in the name of The Highland Council. It is not therefore possible to transfer title. However a pro rata share of the land could, with the agreement of the Trustees, be transferred for a consideration to the Council's General Fund account.

2.5.7 The market value of the land could increase or decrease, therefore this proposal would mean that the Council takes a share of this financial risk. However previous valuations suggest that in time the valuation should increase.

2.5.8 Consideration needs to be given to what (if any) conditions need to be applied. This is dealt with at paragraph 3.5.

2.5.9 This is a viable option, and is recommended, as it addresses the current legal and accounting issues, and can be developed in such a way that all interests are protected, without affecting the value of the land held by the Council.

2.5.10 All councillors have a responsibility to manage the Common Good. Ultimately any decision to dispose of any part of the assets of the Fund rests with the Council in terms of the Scheme of Delegation (paragraph 1.20)

2.6 **Option 4** <u>The Common Good Fund uses income generated to write-down the balance of the debt over a period of time or when the land is sold</u>

Advantages

2.6.1 This leaves the debt outstanding, but enables repayment to be made as and when the Common Good Fund has funds to repay.

2.6.2 There is an immediate opportunity to use the repayment of interest paid to date, as agreed by The Highland Council in December 2012, to repay an element of the loan £83,355.

2.6.3 The Common Good Fund has an opportunity to generate rental income from the land through the creation of a grazing or cropping let, so there is an income stream that can repay a percentage of the debt on a regular basis.

Disadvantages

2.6.4 There is no immediate sign of improving market conditions, or current interest in the site from private developers, therefore the debt could remain outstanding for a significant period of time.

2.6.5 This option does not address the legal position, and is an option that does not have an end date in sight due to the relatively small sums of income that could be generated in comparison to the total sum outstanding. This may give rise to further audit challenge or concern.

2.6.6 It reallocates income from other potential purposes that would fulfil the aims and objectives of the Common Good Fund.

Comment

2.6.7 This is a viable option, although it does fail to resolve the underlying problem. It also does not offer the hope that the situation will be fully resolved in the foreseeable future, although does provide evidence that the Common Good is committed to full repayment at the most opportune time.

2.6.8 Sandown is approximately 90 acres in size. It is reasonably estimated that a grazing let may generate £2,700 pa, assuming a let of £30 per acre. The land has been assessed and is currently not suitable for grazing and a cropping lease would have to be pursued. Any proposal to generate income from the land from an agricultural use will incur costs and will require to be examined carefully in order to prevent the potential delay of the future development of the lands.

2.7 **Option 5** <u>The Council writes off all or part of the debt that relates to the fee of £390,000 paid to acquire vacant possession of the land, and transfers a pro rata share of the land equivalent to the value of the remaining debt</u>

Advantages

2.7.1 This option allows the Council to create an asset on its balance sheet.

2.7.2 The debt would be removed from the Council’s balance sheet and this resolves the legal position.

2.7.3 This option removes the indebtedness of the Common Good Fund, and leaves the Fund in a better financial position as the Council will have met part of the costs originally incurred to enable the Sandown land to be sold.

Disadvantages

2.7.4 The Common Good Fund loses control over a pro rata share of land currently within its control, and the current market conditions will impact on the extent of the share transferred.

2.7.5 The Common Good Fund may lose control over potential future uses for the site acquired by the Council. However the proposal recommends the transfer of a pro rata share rather than a proportion of land, to ensure that the Common Good Fund retain an interest in the whole site.

2.7.6 This would represent a significant cost to the Council as the write-off would require to be charged against the accounts for the year, and would effectively have to be met from balances.

2.7.7 This is a material sum, and future budget provision would likely have to be made to replenish balances, placing further pressure on Service budgets at a time of financial constraint.

2.7.8 There are other options that allow the Council to recover the outstanding balance.

Comment

2.7.9 This option is a combination of options 2.3 and 2.5. Consultation has taken place with the four local members who feel that the Council should acknowledge some responsibility for the original officer advice, and decisions taken by Nairn District Council, that resulted in the creation of an agricultural tenancy and the subsequent payment of £390,000 to acquire vacant possession.

2.7.10 Whilst the current issue results from decisions taken some considerable time ago and can be viewed with the benefit of hindsight, officers are of the view that there is no evidence to suggest that the original decisions taken by Nairn District Council were flawed.

2.7.11 The opportunity to sell the land to a developer at the time of a significant increase in land value could not have been foreseen by the predecessor authority. It was accepted by the Highland Council that a payment would have to be made to acquire vacant possession to the land.

2.7.12 Other comments in relation to this option have been previously reported at paragraphs 2.3.6 and paragraphs 2.5.6 to 2.5.10

3. Discussion

3.1 This has been a very difficult situation to resolve. The original decisions were taken in the best interests of the Nairn Common Good Fund to generate a substantial capital receipt. The Council assisted in advancing monies on behalf of the Common Good Fund to enable certain costs to be met that would facilitate the sale.

3.2 The actions taken at the time have been subject to scrutiny by the Council's external auditors and they are supportive of the reasons behind the original decisions taken. However Audit Scotland is keen to see the matter resolved and has reaffirmed its view that this should happen as soon as possible. Failure to do so may lead to future accounts being qualified due to an unlawful transaction.

3.3 Section 2 of this report has outlined five options for Council to consider. The report outlines the advantages and disadvantages of each option, and provides officer comment on the practicality, financial and legal aspects of each option.

3.4 Officers would wish to advise Council that the first two options, which involve the Council either writing-off the debt, or proceeding with a land sale, are not appropriate. Either option 3 or 4 is viable, but only option 3 provides a way forward in resolving all the outstanding legal and financial issues and addresses audit concerns.

3.5 Option 5 represents a compromise position, proposed by local members, that requires the Council to write-off part of the debt. This option would mean that there would be a greater benefit to the Common Good Fund as it would benefit financially to a greater extent in the event of a future sale of the land. It would also require the Council to meet the one-off cost that would have to be met from balances.

3.6 If Council is minded to support Option 5 as a compromise position then consideration should be given to whether the two conditions outlined in Paragraph 3.7 (previously 3.5) should apply. If the Council does decide to write-off part of the debt at present, then it could seek reimbursement through a future increase in land value that would precipitate a sale of the land.

3.7 Option 3 will require the Council to transfer a pro rata share of land equivalent to the value of the debt from the Common Good Fund account. If the Council is in agreement then it is proposed that the following conditions should apply:-

(a) any gain in land value is returned to the Nairn Common Good Fund

(b) Highland Council does not gain financially from any future sale of the land

3.8 There are currently no conditions attached to the title deeds of the Sandown land.

4. Implications

4.1 Resource and Legal implications are highlighted in the report. There are no Equalities, Climate Change and Risk implications to draw to the Council's attention.

4.2 In terms of option 3 and option 5, the correct legal term for a pro rata share should read pro indiviso. This is to clarify that the proposal transfers control of a share of the ownership of all the lands.

Recommendations

The Highland Council is asked to:-

1. Consider the five options outlined in paragraph 2.2 and detailed in Section 2 of this report;

2. Note an Officer recommendation that Option 3 should be pursued;

3. Determine the preferred option to allow the current situation to be resolved.

4. If Option 3 is approved then agree the two conditions set out in paragraph 3.5.

5. If Option 5 is approved then consider whether the conditions outlined in paragraph 3.7 should apply.

Designation:	Director of Finance
Date:	17 June 2013
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Background Papers:	None