

The Highland Council

30 October 2014

Agenda Item	18
Report No	HC/32/14

Nairn Common Good Fund, Restitution of Rental Income – Lochloy Caravan Park, Nairn

Report by the Director of Finance

Summary

The Council administers property, including land and cash, held on the account of the Nairn Common Good Fund (NCGF).

This report confirms that the Council has not met the standard of administration expected in relation to the management of a Leasehold interest at the Lochloy Caravan Park, Nairn.

Accordingly, Council is recommended to agree to make restitution of sums lost to the NCGF.

1. Background

- 1.1 During a review of the management of the assets of the NCGF, commenced in July 2013, it was established that the Council had not met the standards required in relation to the management of a Lease. The property concerned is the Lochloy Caravan Park presently leased to Parkdean Limited and operated as a Caravan Site.
- 1.2 The original 20 year lease dates from 1976 but was replaced by a lease agreement between Nairn District Council and Scotia Caravans for 60 years from 1 November 1985. The lease provided for the rental to be increased in line with the increase in Retail Price Index (RPI) on 31 October 1992 and on the expiry of each subsequent seven year period. In 1992, in accordance with the rent review provisions in the lease, the rent was increased in line with RPI. (The lease was assigned in 1992 to Parkdean Holidays Limited and extended on 1 November 1994 to run for a period of 99 years.) In terms of the lease the rent was due to have been reviewed on the expiry of subsequent seven year periods on 31 October 1999 and 31 October 2006.
- 1.3 On discovery of the issue in July 2013, negotiations took place with the Tenant to ensure that the position was rectified. Accordingly, a revised rent was agreed. In accordance with the terms and conditions of the lease, the RPI rental increase was applied from 31st October 2013. This revised rent was agreed by the Nairn and Badenoch and Strathspey Area Committee on 10 June 2014.
- 1.4 Legal advice confirmed that the Council could not demand payment of the increased rental from the Tenant. As a result £0.187m has been lost in both

increased rent and interest as a result of the Council's failure to meet the standard of administration reasonably expected. £0.147m relates to the loss of rental income; and £0.040m relates to the loss of interest on that money, based on the average rate of interest earned by the Council in each year over the period on other investment funds.

- 1.5 At the request of the Chief Executive, a review of the Council's management of the NCGF has been undertaken by the Head of Audit and Risk Management in relation to the Lease to establish why the Council failed to apply successive rent increases since 1992. Whilst these errors happened some considerable time ago, this review has concluded that there were a number of failings with regard to proper record keeping and administration over the period concerned. This is subject to an ongoing review.

2. Governance

- 2.1 The Council is obliged to exercise the same duty of care and diligence for funds held within the NCGF account as it does for general funds under its control. Even though the NCGF did not pay the Council for advice and general administrative support, the Council is legally obliged to apply the principles of Best Value to the maintenance of all Common Good Fund assets under its control.

- 2.2 As a result of the management review, the following measures have been implemented:

- Quarterly reports to Area Committee
- Standing item on Ward 19 Business Meeting agendas.
- Regular liaison meetings with the Finance Service
- Monthly budget monitoring
- Complete review of all Common Good files
- Ongoing review of the NCGF Asset Register
- Annual review of leases and rentals

- 2.3 Work to date has not identified any further issues and update reports are being taken to the Nairn and Badenoch and Strathspey Area Committee.

- 2.4 Management of the NCGF is now in good order and under the direction of the Finance Service and the Inverness City Manager.

- 2.5 Local authorities, under Section 95 of the Local Government (Scotland) Act 1973 have a general responsibility to secure the proper administration of their financial affairs. In addition Section 222 of the 1973 Act transferred responsibility for the administration of Common Good funds to the previous District Councils. This responsibility passed to Highland Council following local government reorganisation in 1996.

- 2.6 The Council therefore has the same duty of care to the Common Good funds as it has to the general provision of services and the wider administration of these functions. The Council also has previously obtained Senior Counsel's

Opinion which advises that the Council has no statutory power which might allow it to transfer this duty to administer the Common Good funds to a third party, or to delegate that responsibility.

3. Options for Restitution

3.1 All Members of the Highland Council have responsibility to ensure the proper administration of the Nairn Common Good Fund. NCGF has no separate legal status but those inhabitants who benefit from the fund may be entitled to raise proceedings seeking restitution of the sums lost. There is a potential conflict of interest in Members opting to consider the financial implications for the Council as opposed to the interests of the NCGF. However the investigation that has taken place would confirm that liability exists as stated above and so the Council is asked to confirm acceptance of liability as recommended and if accepted, the level and method of recompense to be made to the NCGF account.

3.2 **Option 1 – Cash Settlement** – The sum of £0.187m could be paid from Council Balances.

Option 2 – Asset Reduction - The Council currently holds a 5.76% share in the ownership of Sandown Lands which equates to £0.344 in cash terms. The Council could opt to reduce its interest in this asset, allowing the NCGF to benefit to a greater extent from the potential future sale of the land.

4. Next Steps

4.1 In the event that the Council agrees the recommendations, a report will be taken to the next meeting of the Nairn and Badenoch and Strathspey Area Committee detailing the decision and updating on management decisions and budget monitoring.

4.2 A report on an Investment Strategy for the NCGF will be brought to a future meeting of the Area Committee and as appropriate, to Council.

4.3 Update reports on the ongoing review of the NCGF Asset Register, governance and management will continue to be brought forward to Area Committee for Members consideration.

5. Implications

5.1 Financial – Council Balances presently stand at £14.384m. Either of the two options outlined in paragraph 3.2 above, cash payment or reduction in investment, will require the cost of £0.187m to be charged against the General Fund in the current financial year and will reduce balances by this amount. The financial implications for the Highland Council are therefore the same for both options.

In terms of the Nairn Common Good Fund, Option 1 would give the Fund an immediate cash increase and allow resources to be allocated by the Area

Committee in line with a Fund Strategy that is currently being developed.

Option 2 would only give the NCGF additional revenue in the event of the Sandown Lands being sold, as the Council's interest in the land would be reduced.

- 5.2 Climate Change/Carbon Clever – There are no climate change/Carbon Clever implications resulting from this report.
- 5.3 Equalities - reducing the debt owed by the NCGF or making cash payment will help enable the NCGF to develop schemes which aim to bring benefit to the inhabitants of the Burgh of Nairn. In doing so this will allow the benefit of the NCGF to be shared amongst the people of Nairn in accordance with the Council's Policies.
- 5.4 Rural – The additional sums will allow for the NCGF to help address the pressures experienced by the Nairn economy in a modest way.
- 5.5 Gaelic – There are no Gaelic implications.
- 5.6 Legal - all legal responsibilities for the management of the NCGF are being applied by the Council. In considering the strategy for the NCGF, full account will be taken of the need to adhere to the Council's Policies detailed above.
- 5.7 There are no other implications to be highlighted.

Recommendation

Council is invited to:

- i. Agree to accept that the Council has not met the standard of administration expected in respect of its duty to manage the funds and assets of the Nairn Common Good Fund account under control of the Council.
- ii. Agree to pay restitution to the Nairn Common Good Fund Account totalling £0.187m.
- iii. Consider whether the Council should pay a cash settlement to NCGF or write down its investment in the Sandown Lands, as per paragraph 3.2
- iv. Note progress with the ongoing review of the Nairn Common Good Fund

Designation: Director of Finance
Date: 17 October 2014
Authors: Derek Yule, Director of Finance and David Haas, Inverness City Manager