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East Dunbartonshire Council

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**PLACE NEIGHBOURHOOD &
CORPORATE ASSETS
COMMITTEE**

THURSDAY, 25 JANUARY 2024

REFERENCE:

PNCA/007/24/DG

LEAD OFFICER:

**EXECUTIVE OFFICER - LAND PLANNING &
DEVELOPMENT**

CONTACT OFFICER:

**DAVID GEAR, PLACE & BUSINESS
DEVELOPMENT MANAGER**

SUBJECT TITLE:

WEST OF SCOTLAND LOAN FUND

1.0 PURPOSE

- 1.1** The purpose of this Report is to update the Place, Neighbourhood and Corporate Assets Committee on the Business Loan Scotland (BLS) and the return to the Register of Companies of West of Scotland Loan Fund (WSLF) after its dissolution in March 2021 and to request various authorisations to complete certain work and transactions before WSLF is dissolved once again.

2.0 RECOMMENDATIONS

It is recommended that the Place Neighbourhood & Corporate Assets Committee:

- 2.1** Delegates authority to the Executive Officer for Land, Planning and Development and the Chief Solicitor and Monitoring Officer to work with BLS to agree and carry out, as required, the necessary procedures and approvals to: i) discharge the various financial instruments currently in favour of WSLF; ii) agree to the transfers of any outstanding assets and/or liabilities from WSLF to BLS as appropriate; iii) put WSLF in a position to facilitate the above noted actions; and iv) take such action as appropriate to then approve the wind up of WSLF.

HEATHER HOLLAND

EXECUTIVE OFFICER – LAND PLANNING & DEVELOPMENT

3.0 BACKGROUND/MAIN ISSUES

- 3.1** The WSLF was a group of twelve Scottish Local Authorities that formed a company limited by guarantee, which was incorporated in June 1996, following local government re-organisation. WSLF provided loan finance to local businesses and operated successfully by filling the funding gap to support new and growing small and medium sized enterprises.
- 3.2** The WSLF was replaced when the BLS fund was created in 2019. The WSLF continued to exist until 2021 to collect repayments and interest from existing WSLF loans. In 2019 a Business Transfer Agreement (BTA) was put in place to transfer the business, assets and liabilities of WSLF, including the loan portfolio, to BLS.
- 3.3** Member local authorities were recently notified by the BLS Fund Manager of items of security, financial instruments and personal guarantees granted by borrowers in favour of WSLF for loans taken through the former WSLF that were omitted from the 2019 Business Transfer Agreement (BTA).
- 3.4** When work was carried out in 2019 to identify the assets, liabilities etc which were to be included in the BTA, focus was restricted to the 'live' loan portfolio and associated securities and instruments. As a result, loans which had been repaid, but where the relevant securities had not yet been discharged, were omitted from the BTA. In simple terms the impact of this for borrowers of repaid loans is that it could present an issue when they try to discharge the loan security. Elected Members should note the BTA was managed by the fund managers, and this omission did not result from any action taken by any of the member local authorities.
- 3.5** BLS Fund Managers took independent legal advice to examine options about how to remedy this issue. One option, was for borrowers to seek a court declarator to confirm that the security they provided against their WSLF loan had been fulfilled and was no longer due. Borrowers would have to undertake this process and incur court costs that could be (as a minimum) £2,500 plus VAT. This was not an option favoured by BLS due to the costs and burdens that would be put on the borrowers. The option therefore that was agreed by the BLS Board was to re-raise WSLF and put in place a new BTA between WSLF and BLS to capture the loans and financial instruments omitted from the previous exercise and for securities on paid loans to be discharged. This approach took the onus away from the borrower to remedy an issue which was not caused by them.
- 3.6** To put a new BTA in place, the WSLF company requires to be restored to the Register of Companies. Elected Members should note that the WSLF will not resume its previous function as a loan provider. The business loan programmes will continue to run from BLS. The reinstatement of the WSLF with Companies House is purely to enable a new BTA to be put in place and remedy the issue outlined above. The intention is then for WSLF to be put back into dissolution. The Council has been provided with copies of BLS petition for restoration to the Register of Companies that was submitted to Kilmarnock Sheriff Court.
- 3.7** Overall, it is expected that the restoration of WSLF and the BTA will be concluded by spring 2024. There will be administrative and professional services costs which will be paid for through the BLS Fund Management. It is not anticipated that there will be any costs borne by the member local authorities.

- 3.8** In terms of risk there is no foreseen material risk to the member local authorities through this approach. The main driver for this is to prevent the previous borrowers of WSLF from being burdened by administrative and legal costs for loans that are no longer due and as such to allow the omitted loan agreements and relevant securities to be identified and included in a new BTA.
- 3.9** It should be noted that re-raising any company back to the Register of Companies, puts the company in the position it was in prior to dissolution and it is treated as having continued in existence as if not been dissolved. Members are therefore exposed to a degree of risk related to their membership of an entity that is once again “live”. All liabilities that WSLF previously held will once again become valid and enforceable. From the information provided to date no obvious risks are apparent however officers will continue to monitor WSLF’s restoration and progress to ensure this remains the case.
- 3.10** Delegated authority is therefore sought for the Executive Officer for Land, Planning and Development and the Chief Solicitor & Monitoring Officer to work with BLS to discharge various financial instruments currently in favour of WSLF, to agree to the transfers of any outstanding assets and/or liabilities from WSLF to BLS as appropriate, to undertake all such work in respect of WSLF to facilitate this and thereafter to action as appropriate work required to then approve the wind up of WSLF.

4.0 IMPLICATIONS

The implications for the Council are as undernoted.

- 4.1** Frontline Service to Customers – n/a
- 4.2** Workforce (including any significant resource implications) – n/a
- 4.3** Legal Implications – n/a
- 4.4** Financial Implications – n/a
- 4.5** Procurement – n/a
- 4.6** ICT – n/a
- 4.7** Corporate Assets – n/a
- 4.8** Equalities Implications – n/a
- 4.9** Sustainability – n/a
- 4.10** Corporate Parenting - n/a
- 4.11** Other – n/a

5.0 MANAGEMENT OF RISK

The risks and control measures relating to this Report are as follows:-

- 5.1** In terms of risk there is no foreseen material risk to the member local authorities or to BLS through this approach. The main driver for this is to prevent the previous borrowers of WSLF from being burdened by administrative and legal costs for loans that are no longer due and as such to allow the omitted loan agreements and relevant securities to be identified and included in a new BTA. For businesses that are no longer trading where there is a Bond & Floating Charge outstanding, this will not represent any risk simply because the granter of the security no longer exists. Legal documentation and new BTA will be reviewed by the Council's legal service.
- 5.2** Re-raising any company back to the Register of Companies, puts it in the position it was in prior to dissolution and it is treated as having continued in existence as if not dissolved. Members of WSLF are therefore exposed to a degree of risk related to their membership of an entity that is once again "live". All liabilities that WSLF previously held will once again become valid and enforceable. From the information provided to date no obvious risks are apparent however officers will continue to monitor WSLF's restoration and progress to ensure this remains the case.

6.0 IMPACT

6.1 ECONOMIC GROWTH & RECOVERY – n/a

6.2 EMPLOYMENT & SKILLS - n/a

6.3 CHILDREN & YOUNG PEOPLE - n/a

6.4 SAFER & STRONGER COMMUNITIES - n/a

6.5 ADULT HEALTH & WELLBEING - n/a

6.6 OLDER ADULTS, VULNERABLE PEOPLE & CARERS - n/a

6.7 CLIMATE CHANGE - n/a

6.8 STATUTORY DUTY - n/a

7.0 POLICY CHECKLIST

7.1 This Report has been assessed against the Policy Development Checklist and has been classified as being an operational report and not a new policy or change to an existing policy document.

8.0 APPENDICES

8.1 None.