

Agenda Item	13
Report No	PLA 28/17

HIGHLAND COUNCIL

Committee: Places Committee

Date: 16 August 2017

Report Title: Highland Opportunity Limited

Report By: Director of Development and Infrastructure

1. Purpose/Executive Summary

- 1.1 This report seeks to update Members on company arrangements for Highland Opportunity Limited and its subsidiary company, Highland Opportunity (Investments) Ltd.

2. Recommendations

- 2.1 Members are asked to:
- i. note new arrangements for Highland Opportunity Ltd. and its subsidiary company, Highland Opportunity (Investment) Ltd.;
 - ii. agree to assume responsibility for the Highland Opportunity Ltd. Pension Fund net liability and to undertake repayments as detailed in Table 1; and
 - iii. agree to appoint the Chair of Highland Opportunity (Investments) Ltd. as the sole Director of Highland Opportunity Ltd.

3. Background

- 3.1 In January 2016 the Board of Highland Opportunity Ltd. (HOL) agreed to wind up the company, and in February 2016 the Council agreed to assume direct delivery of Business Gateway service (previously contracted to HOL), the Princes Trust services (delivered under contract to Princes Trust) and Highland Opportunity (Investments) Ltd. (a subsidiary company owned by HOL). Allied to this a decision was taken to transfer ownership of the Business Gateway shop at 81 Castle Street, Inverness to the Council.
- 3.2 On 1 April 2016, the Council took over direct delivery of the Business Gateway service and by July 2016 the remaining services. Since then, upon resignation of the officer involved, the Prince's Trust now delivers their service direct. Also, while envisaged in February 2016 that the three staff delivering the Enterprise Europe Network (EEN) contract would leave at the end of their contracted period (December 2016), an opportunity was presented and taken to extend their employment for a further two years to deliver a new ENN contract (with full cost recovery from EU and Scottish Enterprise).
- 3.3. As efforts have progressed to wind up HOL and take direct ownership of HOIL, two issues linked to the pension liability and distribution of assets and have arisen. This in turn has generated governance implications which need to be resolved.

4. Pension Liability

- 4.1 A factor linked to the decision to wind up HOL was the increasing pension liabilities and the impact this was having on net assets. The outstanding pension liability, as calculated on the day HOL left the Pension Scheme (30 June 2016), was £889,500.
- 4.2 The agreed repayment plan is as follows:

Table 1

		Pension Payment Required
		£889,500
2016/17	HOL Lump Sum Payment	£300,000
2017/18	Council (Pension Pressure to D&I)	£100,000
2018/19	Council (Pension Pressure to D&I)	£100,000
2019/20	Council (Pension Pressure to D&I)	£100,000
2020/21	Council (HOIL)	£289,500
Total		£889,500

- 4.3 Agreement was secured in the Council's 2017/18 Budget to provide £100k per annum for 3 years to the Development and Infrastructure Service to meet this pension liability. Investigations with external tax advisers have indicated that if these funds were then transferred from the Council/Development and Infrastructure Service to HOL/HOIL to meet this pension liability, it would be considered as income and subject to corporation tax. To address this issue it is proposed that the Council assume responsibility for the outstanding pension liability (£589,500). The Council will then pay the Pension Fund direct on a £100k phased basis over the next three years. In 2020/21 this issue will need to be revisited and if alternative funds are not available to pay the pension liability, the Council will look to HOIL to meet the residual sum.

5. Asset Distribution

- 5.1 The current company structure is that The Highland Council is the sole shareholder for HOL, and HOL is in turn the sole shareholder for HOIL. The original proposal was that the HOL shareholding in HOIL would transfer to the Council, thereby allowing HOL to be wound up once all liabilities resolved (as above) and assets distributed (cash at bank, property).
- 5.2 Following external tax advice it has been identified that the particular Enterprise Trust tax status of HOL, which gives it exemption from corporate tax, will be removed if HOL seeks to distribute assets outwith the company, i.e. to the Council. Corporate tax would therefore be incurred. The means to resolve this matter is to retain HOL and allow it to distribute its assets to HOIL (its subsidiary company). It is therefore proposed that HOL is retained (in effect as a dormant company) rather than being wound up.
- 5.3 As this distribution of assets specifically affects the Business Gateway shop at 81 Castle Street, Inverness the Council has had to purchase the property rather than securing its transfer at nil value. The purchase cost involved (£117k) has been provided for within the Council contribution towards the Pension deficit.

6. HOL Board

- 6.1 As per normal practice, prior to the Council elections in May 2017 when existing Council appointed Directors stood down, the Director of Development and Infrastructure was appointed as the sole Director of HOL. The intention, prior to the revised proposal above to retain HOL as a dormant company, was that this appointment would continue until HOL was wound up. As it is now proposed that HOIL will be a subsidiary company of HOL, it is appropriate and offers improved governance that there is continuity between both Boards. It is therefore proposed that the Chair of HOIL also is appointed as the sole Director of HOL, thereby replacing the Director of Development and Infrastructure.

7. Implications

- 7.1 Resource - as detailed above, the pension and tax implications have been identified and actions proposed to resolve.
- 7.2 Legal - as detailed above, the company structure and Director appointment to HOL, seeks to resolve any legal issues. In addition, the Memorandum and Articles of Association for both companies are been reviewed and will be updated accordingly.
- 7.3 Community (Equality, Poverty and Rural), Climate Change / Carbon Clever, and Gaelic - there are no direct implications arising from this report.
- 7.4 Risk - The actions proposed address the financial and legal risks identified.

Designation: Director of Development and Infrastructure

Date: 5 July 2017

Author: Andy McCann, Economy and Regeneration Manager