

Agenda Item	<b>16</b>
Report No	<b>EDI/28/18</b>

## HIGHLAND COUNCIL

**Committee:** Environment, Development and Infrastructure

**Date:** 17 May 2018

**Report Title:** Inverness Airport Business Park Ltd – Unsecured Loan Stock

**Report By:** Director of Development and Infrastructure

### 1. Purpose/Executive Summary

- 1.1 This is a further report on the outstanding Loan Stock due to the Council from Inverness Airport Business Park Ltd. As requested at the November 2017 Committee meeting this report examines the possibility of any further action that could be taken by the Council to recover the amount due within the current terms of the contractual agreement known as the Loan Stock Instrument. The outcome is that there is very little scope within current terms to recover the sum due and also very little scope to allow the Council to amend the terms to effect a successful action.

### 2. Recommendations

- 2.1 The Committee is asked to:
- i. Note the outcome of the review of Loan Stock Instrument and in particular note that:
    - a) there was no scope to take further action to recover the sum due within the current terms of the Loan Stock Instrument; and
    - b) little scope to vary the terms of the Instrument.
  - ii. Note the implications for repayment of the Council's Outstanding Loan Stock.

### **3. Background**

3.1 As was reported to November Committee, the Council entered into a Loan Stock Instrument for £1,175,000 Unsecured Loan Stock 2010/2015 with Inverness Airport Business Park Ltd ('IABP') on 16 May 2005. Under the Loan Stock Instrument IABP can exercise a right to defer the repayments due to be made to the Council in May 2010 and in May 2015. IABP have exercised this right on both repayment dates so that the full amount of Loan Stock due to the Council currently remains outstanding.

3.2 The Council originally intended to be a full shareholding party to the business park joint venture, and in so doing, the intention at that time was to contribute a mix of land (in the form of the freehold assets of Dalcross Industrial Estate) and cash. However, whilst all other funding partners were able to agree the basis of valuation for their respective contributions to the joint venture, the Council could not reach agreement around the shareholding it should take in return for its land and cash contributions. The Council therefore withdrew from the joint venture structure.

3.3 The other partners continued to form the joint venture, and contributed the following:

- Moray Estates and Lord Doune – 192 Ha of land [held under option]
- Highlands and Islands Enterprise - £500k capital
- Highlands and Islands Airports - £1.4m capital and 29 Ha of land [owned by IABP]

3.4 The parties were also able to successfully secure ERDF funding of around £1.5m, on the basis that this funding together with the initial capital contributions were used to fund the construction of the airport link road running from the A96 at Mid Coul to the airport entrance. This had the dual effect of replacing an unsatisfactory road that ran adjacent to the end of the runway, delivering on the road listed in the Council's project plan (a road which the Council had examined as a necessary project prior to the IABP project and which they would have had to 100% fund), as well as opening up the development potential of the business park project.

3.5 The withdrawal of the Council from the proposed joint venture left a shortfall in the funding for the road, and so it was the Council that proposed to address this problem with the Loan Stock instrument. It should be noted that the Loan Stock was drafted specifically to provide flexibility to IABP and to ensure the company did not have a situation where it was forced into repayments that damaged the ability to make progress with the development project.

### **4. The Loan Stock Instrument**

4.1 Under the Loan Stock Instrument, the Council, as holders of the Loan Stock can require the financial ability of IABP to be independently assessed by a firm of Chartered Accountants in order to ascertain if IABP can make repayment without prejudicing the realisation of the Company's proposals for the Development.

4.2 Under the terms of the Loan Stock Instrument, IABP shall not pay any dividends to its shareholders from the date on which written notice to defer the second repayment date is made until such time as the balance of the Stock has been redeemed; and sums which would otherwise have been paid to shareholders by way of dividend will be accumulated with a view to maximising the sums available to fund the redemption of the stock. This means that repayment of the outstanding amount owed to the Council ranks above IABP's obligations to repay capital and pay dividends to its

shareholders. As a result the shareholders in the Company cannot withdraw monies from the company until after the Council's Loan stock has been fully repaid.

- 4.3 To date, the Corporate Resources Service has reviewed IABP's Annual Accounts to ascertain if there would be any likelihood of a successful outcome to the Council from commissioning this independent assessment. The outcome of these assessments has been that there would be no benefit to the Council from commissioning this independent assessment of IABP's financial ability to make repayment of the Loan Stock
- 4.4 In the meantime, development of the first distribution centre on IABP for the Co-op should be complete and occupied by late summer. The infrastructure works to open up phase one, supported by HIE, are substantially complete. Further discussions are underway with a number of other potential occupiers. The proposed hotel site, adjacent to the terminal building carpark, is attracting interest, reflecting growth in airport usage and the general upturn in the tourism market in the Highlands.

## **5. Review of the Loan Stock Instrument**

- 5.1 In considering a report on the position of IABP at its November meeting Committee agreed that a further report be brought to the Committee updating Members with officer investigations as to the position on recovering the repayment of the Council's Outstanding Loan Stock.
- 5.2 The review of the Loan Stock Instrument was undertaken by Legal and Corporate Resources officers.

## **6. Outcome of the Review**

- 6.1 The primary purpose of the review was to establish if any further action could be taken by the Council within the terms of the Instrument to pursue the repayment of the loan stock. The outcome of the review is that there is no scope to take further action within the current terms of the Loan Stock Instrument.
- 6.2 The review of the Instrument identified there was also little scope to allow the Council to vary its terms. Whilst an amendments clause was included this simply provided a mechanism that allowed IABP, with the agreement of all Stockholders, to vary the terms of the Instrument or the rights of Stockholders.
- 6.3 Part 2 of the Schedule to the Instrument sets out a number of conditions including those which govern repayment. The detail of these conditions has been reported to Committee previously. In essence in the event of IABP exercising their entitlement to postpone redemption as they have elected to do, the Council has the right to request an independent assessment by a firm of Chartered Accountants of IABP's financial ability to effect the redemption. The costs of such an assessment are to be met by the Council. In the event that the assessment determines that IABP have sufficient funds (without prejudicing the company's proposals for realisation of the development) the company would have four weeks from the date of the assessment to effect the redemption. To date it has been evident that the Company is not in a position to effect redemption and therefore the Council has elected not to instruct the independent assessment.
- 6.4 The Instrument offers no other means of amendment or variation.

## 7. Implications

### 7.1 Resource

7.1.1 The main financial risk is that there remains a high degree of uncertainty on when the Loan Stock will be repaid to the Council. If everything should proceed as per IABP's forecast from 2016 it will be March 2022 before the Council begins to receive any payment towards the outstanding loan stock and based on a repayment of £100k pa it will take 12 annual payments to recover the total amount due to the Council. This means it will be March 2033 before the full amount has been repaid.

7.1.2 There are caveats around IABP's forecasts which could accelerate or further defer the repayment due to the Council. These caveats are subject to market conditions and are a risk that the Council will have to carry.

7.1.3 The outstanding Loan Stock has been subject to previous External Audit review and there will be continuing external audit interest in this issue through the auditing of the Council's Annual Accounts.

### 7.2 Legal

There are no direct legal implications arising from the report.

7.3 Community (Equality, Poverty and Rural), Climate Change/Carbon Clever, Gaelic  
No implications to these risks are envisaged from this report.

### 7.4 Risk

The main risks are as outlined in the text of this report.

Designation: Director of Development and Infrastructure

Date: 30 April 2018

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Background Papers: Loan Stock Instrument and previous Committee Reports