
NORTH AYRSHIRE COUNCIL

20th February 2018

Cabinet

Title: **West Of Scotland Loan Fund (WSLF) – Amendment to Members Agreement**

Purpose: The purpose of this report is to seek approval for a change to the Articles of Association of the West of Scotland Loan Fund Ltd (WSLF) to enable member authorities to access funds no longer required for lending purposes.

Recommendation: That the Cabinet approves:

- (i) The proposal to amend the Articles of Association of the West Of Scotland Loan Fund (WSLF)
- (ii) That NAC withdraws their unused funds subject to all Board members agreeing the amendment
- (iii) That unused funds are earmarked to be utilised for the purposes outlined in the objects of the WSLF company and to support new EU applications being submitted in 2018.
- (iv) Delegate to the Executive Director – Economy and Communities to ensure that draft resolution is signed in accordance with the requirements of WSLF

1. Executive Summary

- 1.1 The West of Scotland Loan Fund has been in existence since 1996 with North Ayrshire being a key member authority. During this time the fund has provided significant lending to local SMEs and as a loan repayment fund has grown in size over the years.
- 1.2 Following advice from Scottish Government, a new body, Business Loans Scotland (BLS) was set up in 2017. Funding was transferred from WSLF to BLS and all new loans are now considered by BLS.
- 1.3 In order to access remaining WSLF funds it requires all member authorities to agree to a change in the Articles of Association and the WSLF Board unanimously agree to any funds being paid out to partner authorities.
- 1.4 Approval of the changes in the Articles of Association by the 12 local authorities and the WSLF board of this proposal has the potential for surplus funds to be repaid to North Ayrshire Council.

- 1.5 As WSLF benefited from ERDF funds, government confirmation is required on the proposals and any future compliance issues.

2. Background

- 2.1 The West of Scotland Loan Fund Ltd (WSLF) is a consortium of the 12 West of Scotland local authorities and was incorporated as a company limited by guarantee in June 1996. The fund has provided loan finance in individual amounts up to £100k and has successfully operated across the West of Scotland filling the funding gap to new and growing, small and medium sized enterprises.
- 2.2 To support this activity, each participating local authority has had an allocation of ring fenced loan funding based on its individual budget commitment matched by European Regional Development Fund (ERDF) monies and bank finance. Loan applications have been dealt with by business advisers within the relevant authority for initial scrutiny and appraisal and the WSLF team has subsequently undertaken compliance and verification checking, including a full analysis of all financial aspects of the business and its proposal, prior to any loan being approved by management within the relevant local authority.
- 2.3 Since 1996 North Ayrshire Council has issued 274 loans to local business totalling £6,321,475 through WSLF. Loans outstanding to WSLF are currently valued at £656,326 (Dec 2017).
- 2.4 In 2014, the Scottish Government indicated its desire to see a move away from regional loan funds to a pan Scotland Local Authority Loan Fund and advised that such a mechanism would be required to access any further EU resources. To this end Business Loans Scotland has been established and in line with North Ayrshire Council's previous Cabinet approval on 8th December 2015 £211,512 of North Ayrshire's cash in bank has been transferred from the West of Scotland Loan Fund to Business Loans Scotland as match funding and has attracted ERDF and bank finance to the overall funds we have available. Any new loan inquiries received by the Economic Development Service from local companies are being channelled through this new mechanism and WSLF now only exists to collect repayments on existing WSLF loans.
- 2.5 North Ayrshire Council along with a number of other member authorities within WSLF has considerable legacy resources remaining within the WSLF following the initial transfer of match funding to BLS. As a result it is deemed that the full value of legacy resources will not be fully required for lending purposes. However the existing WSLF Company constitution, which consists of a Members Agreement and Articles of Association, prevents members from withdrawing funds which they do not wish to be used for lending within WSLF.
- 2.6 In addition to the constitutional restrictions, WSLF received ERDF funding through a number of European Funding programmes with most recent being 2007-2013. The rules attached to this requires the funds received to be reinvested in the support of Loans to SMEs. That said Scottish Government have confirmed that historic ERDF allocations can be treated as "clean" funding not restricted for EU Funding reasons and will revert back to

each members ring fenced balance within WSLF. Further guidance is still required on the treatment of recent ERDF allocations.

- 2.7 In order to move forward and enable member authorities to access their funds three key actions are required:
- The Articles of Association needs to be amended by unanimous agreement by all 12 member authorities
 - Final confirmation from Scottish Government as to the value for each member authority regarding ERDF Allocation relating to 2007-2013 programme.
 - Agreement needs to be reached as to the future fund administration arrangements for the residual WSLF loan book. Agreement will be sought by all members at board meeting planned for Feb 2018.
- 2.8 As part of our considerations on the future use of available funding we are aware of new guidance that is emerging on the 2nd phase of what is expected to be the last EU Structural Funds in Scotland. With significant uncommitted funds available in Scotland there is an opportunity for local authorities to maximise draw down of EU funds but this will be subject to the Council providing match funding.
- 2.9 The Council is starting to scope ambitious plans for the new programmes whether on an Ayrshire or North Ayrshire basis. The current programmes that the Council operate secured the £5m of EU grant in the last round. It will be important that the Council secures and maximises its external grant to support the Council and Community Planning priorities given the uncertainty of future UK based funds that will replace structural funds.

3. Proposals

- 3.1 The current Objects of the company which in legal terms lay out the overall objectives of WSLF are relatively broad and wide ranging, and in particular state that the Fund must be used: "to promote commerce by giving financial assistance by way of loans, donations or subscriptions or otherwise to any firm, company, individual, association or other body (whether incorporated or unincorporated) carrying on a commercial enterprise whose business is or is to be carried on in whole or in part" within the WSLF (Section 4.1 of Articles of Association). The Council would continue to be bound by the current Objects of the Company in relation to the future use of funds.
- 3.2 However, Section 4.2 of the Articles of Association, states that "the income and property of the Company, howsoever derived, shall be applied solely towards the promotion of the objects of the company as set forth in Article 4.1 and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus to otherwise howsoever by way of income or profit, to the Members..."
- 3.3 It is therefore being proposed that Article 4.2 be amended by Special Resolution to enable the Funds to be accessed and applied solely towards the promotion of the objects of the company as set forth in Article 4.1. If this is unanimously agreed by all 12 member authorities, this would enable the funds not required for Business Loans to be accessed and utilised by the Council for purposes related to the creation, sustainability and growth of local businesses within the area. The draft special resolution is attached at Appendix 1.

- 3.4 The current cash at bank for North Ayrshire is £986,883 and once agreement is reached from Scottish Government regarding ERDF restrictions and taking account funds that will be required to continue lending to SMEs (through BLS) it is envisaged that c£600k may be available for economic development purposes. Appendix 2 shows a calculation for all member authorities at Dec 2017. This will obviously fluctuate as loans are repaid and further amounts may be repaid the NAC in future years up until all loans are repaid and all costs associated with WSLF have been paid.
- 3.5 It is proposed that the funds received by the Council be used as match funding to support fresh applications for EU Funding support. Details on the approach and proposals will come to Cabinet May 2018. It is anticipated that applications will be submitted in June 2018.

4. Implications

Financial:	There is no cost associated with this report. Financial benefit will be seen in agreement of proposal to amend Articles of Association. Subject to agreement being reached by all parties and the income being recovered further details and agreement on use of the funding will be brought forward.
Human Resources:	There are no impacts regarding HR issues.
Legal:	The proposed changes to WSLF Articles of Association set out above have been the subject of scrutiny and review by colleagues within Legal Services and there are no additional implications beyond what is articulated within this report.
Equality:	There are no specific positive or negative equality impacts of agreement to the recommendations therefore an Equality Impacts Assessment is not required.
Children and Young People:	N/A
Environmental & Sustainability:	There is no immediate impact resulting from this report however the addition of legacy resources should have a positive impact to businesses going forward.
Key Priorities:	This proposal supports the Council Plan core priority 1: Growing our economy, increasing employment and regenerating our towns.
Community Benefits:	There are no Community Benefit implications arising from the report.

5. Consultation

- 5.1 The proposals have been developed with considerable consultation with all 12 member authorities.



Karen Yeomans
Executive Director Economy and Communities

For further information please contact **Matt Strachan** on **01294 324926**.

Background Papers

Insert titles of any background papers or N/A

THE COMPANIES ACT 2006

DRAFT SPECIAL RESOLUTION

of

**WEST OF SCOTLAND LOAN FUND
("the Company")**

Company No. SC1667363

PASSED: _____ 2017

CIRCULATION DATE: _____ 2017

Pursuant to chapter 2 of part 13 of the Companies Act 2006, the directors of the Company propose that the following Special Resolutions be passed as detailed below (the "Resolutions").

SPECIAL RESOLUTIONS

- 1 Article 4.2 of the existing Articles of Association of the Company be deleted and the following be substituted therefor:

["4.2 The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of the objects of the company as set forth in Article 4.1, save that the Company may distribute funds it holds to the Members in the proportions agreed among them"] and
2. Article 20 of the existing Articles of Association of the Company be deleted and the following be substituted therefor:

["20 If, upon a winding up or dissolution of the Company there remains, after the satisfaction of all of its debts and liabilities, any property whatsoever, the same may be paid to or distributed among the Members in the proportions agreed among them"]

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

I, the undersigned, being the person entitled to vote on the Resolution on the Circulation Date hereby irrevocably agree to the Resolution.

.....

Date:

2017

MEMBER

NOTES:

- ¹ If you do not agree to the Resolution, you do not need to do anything: you will not be deemed to agree if you fail to reply.
- ² Once you have indicated your agreement to the Resolution, you may not revoke your agreement.
- ³ Unless, within 28 days of the circulation date referred to above, sufficient agreement has been received from the required majority of eligible members for the Resolution to be passed, they will lapse. Therefore, if you agree to the Resolution, please ensure that your agreement to the Resolution reaches the Company within 28 days of the Circulation Date.
- ⁴ If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.
- ⁵ In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the Register of Members of the Company.

Option A	Bank	ERDF Position				Option 1 - ERDF taken from Cash at Bank			
		ERDF received 2007/13	Transferred to BLS	Bad Debt: ERDF element	ERDF to be used for future debt finance	Already transferred to BLS	Cash at Bank as at 30/06/2017	Minus ERDF for Future Debt Finance	Total Surplus Cash Available
Local Authority	Cash at Bank as at 30/06/2017	£0	£26,439	£0	£0		£155,213	£0	£155,213
Argyll & Bute	£155,213	£423,206	£124,263	£86,859	£212,084		£1,068,236	£212,084	£856,152
East Ayrshire	£1,068,236	£161,256	£97,824	£7,516	£55,916		£82,541	£55,916	£26,625
East Dunbartonshire	£82,541	£41,929	£34,371	£0	£7,558	£65,000	£153,938	£7,558	£81,380
*East Renfrewshire	£153,938	£1,550,493	£317,267	£195,663	£1,037,563		£1,684,211	£1,037,563	£646,648
Glasgow	£1,684,211	£94,151	£42,302	£22,813	£29,036		£197,859	£29,036	£168,823
Inverclyde	£197,859	£742,893	£211,512	£146,142	£385,239		£986,883	£385,239	£601,644
North Ayrshire	£986,883	£764,727	£211,512	£117,915	£435,300		£1,161,221	£435,300	£725,921
North Lanarkshire	£1,161,221	£376,981	£105,756	£54,727	£216,498		£523,993	£216,498	£307,495
Renfrewshire	£523,993	£363,907	£277,609	£34,822	£51,476		£595,756	£51,476	£544,280
South Ayrshire	£595,756	£783,801	£211,512	£167,320	£404,969		£1,316,713	£404,969	£911,744
South Lanarkshire	£1,316,713	£159,971	£105,756	£4,931	£49,284		£222,015	£49,284	£172,731
West Dunbartonshire	£222,015								
Total	£8,148,579	£5,463,315	£1,739,684	£838,708	£2,884,923	£65,000	£8,148,579	£2,884,923	£5,198,656

*East Renfrewshire has already agreed to transfer the sum of £65k from WSLF to BLS therefore demonstrating that all ERDF received has been utilised for future debt finance