
SCOTTISH LANDFILL COMMUNITIES FUND

Report by Chief Executive

EXECUTIVE COMMITTEE

2 February 2016

1 PURPOSE AND SUMMARY

- 1.1 To provide an overview of the Scottish Landfill Communities Fund (SLCF) and to agree the Council's provisional involvement in the scheme for 2015/16 and 2016/17.**
- 1.2 The SLCF is a tax credit scheme, linked to Scottish Landfill Tax, which encourages Landfill Operators to voluntarily participate in providing funding to facilitate community and environmental projects in areas affected by landfill activity. The SLCF replaced the UK scheme in Scotland on 1st April 2015.
- 1.3 SEPA is the Regulator of the Scottish scheme and responsible to Revenue Scotland. BCCF Environmental is the Approved Body registered to receive funding generated by the scheme.
- 1.4 The Council has actively and successfully participated in the UK scheme since 1999 and it is recommended that we continue to facilitate a landfill community fund through participation in the new SLCF scheme.
- 1.5 As with the previous UK scheme, 90% of the SLCF budget will be funded from the Council's Scottish Landfill Tax liability with the additional 10% funded by the Waste Services budget as normal. The Council will continue to bear this 10% cost provisionally for 2015/16 and 2016/17 and will forego the need for projects to identify a Contributing Third Party payment.
- 1.6 This report recommends the SLCF process for 2015/16 and 2016/17 only. During 2016/17 the impact of the new scheme will be assessed, particularly in relation to the Council's 10% budget commitment and any potential for the scheme processes to benefit from the use of the SBC Community Enhancement Trust.

2 RECOMMENDATIONS

- 2.1 I recommend that the Executive Committee agrees to:**
 - (a) participate in the SLCF through its Landfill Tax Liability credits for 2015/16 and 2016/17 (90% of fund);**
 - (b) continue to provide the additional 10% of the fund from its Waste Services budget for 2015/16 and 2016/17; and**
 - (c) consider a further report in December 2016 recommending the longer term approach to the SLCF from 2017/18 onwards.**

3 BACKGROUND

- 3.1 The Scottish Landfill Communities Fund (SLCF) is a tax credit scheme, linked to Scottish Landfill Tax, which encourages Landfill Operators to voluntarily participate in providing contributions (funding) to Approved Bodies, who can then pass the funds on to community and environmental projects in areas affected by landfill activity. The SLCF is a private scheme which generates funds which are classified as private funds as opposed to public funds. The SLCF replaced the UK scheme in Scotland on 1 April 2015.
- 3.2 Although the scheme was replaced on 1 April 2015, the Scottish Government expected the SLCF to be operational by "late 2015". Following continuing delays and refinements to the national scheme, the Borders scheme must now be operational before the end of 2015/16 with the first awards expected in March 2016.
- 3.3 Approved Bodies are only those registered by SEPA, the regulatory body responsible to Revenue Scotland for the new scheme. There are now only 14 Approved Bodies in Scotland and BCCF Environmental is the body approved to receive funds from Borders landfill site operators.
- 3.4 BCCF Environmental is a Charitable Company Limited by Guarantee and wholly run by volunteers. BCCF Environmental has enabled some £1.3m of landfill funds (mainly from Scottish Borders Council's tax liability) to be distributed to approved Borders projects since 1999.
- 3.5 Under the SLCF, Landfill Operators can continue to claim a tax credit equal to 90% of any funds they agree to make to an Approved Body for projects which meet the objects of the scheme, subject to a maximum percentage of landfill tax liability. The maximum percentage, which is subject to change annually as part of the Scottish Budget process, is currently 5.6% of landfill tax liability.
- 3.6 As Landfill Operators are required to provide funds at the full 100% level, Landfill Operators can either bear the cost of the additional 10% themselves or require all funded projects to refund it to them through the identification of a Contributing Third Party (CTP) payment.
- 3.7 Under the UKLCF, the Council fully participated in a Landfill Communities Fund and enabled some £1.3m of landfill funds to be invested in the Borders. In addition to facilitating the UK scheme, the Council also showed its commitment by bearing the cost of the additional 10% via its Waste Services budget with no requirement for projects to return the 10% by identifying a CTP payment.
- 3.8 It is recommended that the Council facilitates a SLCF and continues to bear the 10% additional cost from its Waste Services budget for 2015/16 and 2016/17 until more is known about the key changes contained within the SLCF. A further report (by December 2016) will assess the impact of the SLCF overall and particularly in relation to the Waste Services budget commitment.
- 3.9 Although BCCF Environmental is the SEPA Registered Approved Body, the December 2016 report should also assess if there are any benefits to the SLCF of using the SBC Community Enhancement Trust to facilitate any element of the scheme, should SLCF Regulations allow.

4 HOW THE NEW SLCF WILL OPERATE DURING 2015/16 AND 2016/17

4.1 The SLCF has 6 **Objects** as follows:

- (a) The reclamation, remediation, restoration or other operation on land to facilitate economic, social or environmental use.
- (b) Community based recycling, re-use and waste prevention projects.
- (c) To provide, maintain or improve a public park or other public amenity.
- (d) The conservation or promotion of biological diversity through the provision, conservation, restoration or enhancement of a natural habitat or the maintenance or recovery of a species in its natural habitat.
- (e) The maintenance, repair or restoration of a building, other structure or a site of archaeological interest which is a place of religious worship, or a site of historic or architectural or archaeological interest and is open to the public. Must be in the vicinity of a landfill or transfer station.
- (f) The provision of financial, administration and other similar services to projects that are enrolled with an Approved Body.

4.2 In the Borders, the SLCF is expected to provide the same **geographical eligibility** as the UK scheme. SEPA considers that all landfill sites in Scotland with a valid Waste Management Licence or Pollution Prevention & Control permit are eligible including those that are closed or non-operational. These sites may not be accepting waste deposits on a temporary or permanent basis but until a licence or permit is surrendered, the operators must continue to meet conditions and obligations. When the licence or permit is surrendered, SEPA would consider that landfill site to be ineligible. As coverage may change over time, a postcode "Screening Tool" is available on the SLCF Website to check the eligibility of project locations.

4.3 A **key change** under the SLCF is that, in addition to being eligible to apply for Borders funds via BCCF Environmental, projects can, subject to funds being available, apply to any Approved Body on the SEPA Register. Projects can also apply to more than one Approved Body for the same project. An Approved Body must, under the regulations of the scheme, give equal consideration to any project regardless of project location or project type.

4.4 This change may provide additional funds to Borders projects, however, it may also result in the Borders generated funds being allocated elsewhere in Scotland. The effects of this key change will be assessed during 2015/16 and 2016/17, particularly in relation to its impact on the Council's ability to continue to bear the cost of the additional 10% where there may be potential for Council funds to be invested in other Local Authority areas.

4.5 BCCF Environmental, as the SEPA registered approved body, will be responsible for the receipt of **applications**, the formal **approval** of projects and the **award** of funds. As Landfill Operators cannot directly fund projects and cannot control how SLCF is spent in any way, the Council will no longer operate a Landfill Working Group and awards will no longer be approved by Executive Committee. BCCF Environmental will be fully regulated and inspected by SEPA (on behalf of Revenue Scotland) in relation to the SLCF.

- 4.6 BCCF Environmental has developed a range of new **application and guidance materials** and criteria and assessment processes and these are currently at SEPA awaiting approval. Six Borders' requests for funding are currently sitting with BCCF Environmental awaiting the new application materials and it is expected, subject to approval of this report, that they will be allocated funding by March 2016 (2015/16 qualifying tax year).
- 4.7 Once the BCCF Environmental processes are in place and they have approved the award of funds to specific projects, they will simply invoice the Council for the **release of funds**. The invoicing will include copies of all funding applications in order that the Council can be informed of the progress of the scheme, the projects supported and individual awards made. Any unclaimed funds at the end of the financial year will also be invoiced and these will be held by BCCF environmental until they are allocated to specific projects (this year-end solution is in line with previous procedures under the UKLCF as all funds must be allocated by the landfill operator within the same qualifying tax year).
- 4.8 As a **provisional approach** and for 2015/16 and 2016/17 only, it is proposed that the Council will continue to bear the 10% additional element (as explained at Para 3.5, 3.6 and 4.4) from its Waste Services budget until the **risks** outlined at Para 5 are more fully understood and assessed. A further report will bring forward recommendations on the longer term approach to the SLCF by December 2016.
- 4.9 Members should note that, included in all requests for funds made by BCCF Environmental will be SEPA **fees** of 1.82% and BCCF Environmental fees at 5.68% (total 7.5%).

5 IMPLICATIONS

5.1 Financial

- (a) In 2015/16, a total of £145,000.93 has accrued to November 2015. An additional £70,000 is estimated to March 2016.
- (b) The £145,000.93 consists of £130,500.84 generated through the 5.6% tax credits elements to achieve 90% of the available funds. The Waste Services budget element of £14,500.09 enhances the fund to 100%.
- (c) All funds generated in the qualifying year must be transferred to an Approved Body within the same year. BCCF Environmental will ensure they invoice for all funds within the same qualifying year. Should any funds remain uninvoiced as at 31 March 2016, the 90% element will revert to Revenue Scotland. There is no carry forward facility under the scheme.

5.2 Risk and Mitigations

- (a) Overall, although the application and decision-making processes under SLCF are different to the UK scheme, these changes in themselves present no identified risks to the Council.
- (b) However, the key change identified at Paras 4.3 and 4.4 may pose a risk to the Council's Waste Services 10% element as there is the potential of funds being allocated to projects outwith the Borders.
- (c) The perceived unfairness of this regulation and the effect on the 10% element, especially where the Landfill Operator is also the Local Authority, has been discussed with SEPA but to no avail. A variety of mitigation measures has also been discussed with SEPA but none have been acceptable under the SLCF Regulations. Any proposal to

request a CTP payment from non-Borders based projects only cannot be permitted on the grounds that the Landfill Operator must not set geographic conditions on what projects may or may not require a CTP payment.

- (d) As a further mitigation approach, consideration has been given to the requirement for a CTP payment from all projects (Borders and non-Borders based). However, it is felt at this early stage, that this would have a disproportionate effect on Borders projects. CTP payments are very difficult to achieve as they are effectively required for the purposes of paying the Council back. Such a requirement may also impact on the achievability of local projects and the spend levels of the SLCF locally.
- (d) It is also not clear at this stage what the demand will be from projects in other areas. Some limiting BCCF Environmental procedural factors, yet to be tested, may mitigate the risk. For example, there is a "value for money criterion" and projects outwith the Borders may not score well on the basis of the additional costs of inspection, grant management and the burden on BCCF Environmental volunteer time, particularly in relation to overnight stays and travel, etc. It is also expected that the invoicing process on an "as and when" basis will prove a factor when BCCF Environmental is asked about availability of funds.
- (e) Due to a range of uncertainties at this stage, it is proposed to manage the risk by recommending approval of the Council's participation in the SLCF for 2015/16 and 2016/17 only and to assess the implications in more detail as the scheme progresses and the interpretation of the regulations by SEPA are more clearly defined.

5.3 **Equalities**

There are no apparent equality impacts on the Council. The SLCF is operated by Revenue Scotland and regulated by SEPA. The Approved Body, BCCF Environmental, is responsible for ensuring that funded projects are fully compliant with Scottish Landfill Tax Regulations, including equality of access. SBC holds BCCF Environmental Equal Opportunities Policy.

5.4 **Acting Sustainably**

The proposal to facilitate a SLCF will impact positively on Borders communities and the built and natural environment.

5.5 **Carbon Management**

The proposal to facilitate a SLCF will have a positive impact, particularly in relation to the new Object B and the project opportunities for community based recycling, re-use and waste prevention projects.

5.6 **Rural Proofing**

N/A.

5.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals contained in this report.

6 CONSULTATION

- 6.1 The Chief Financial Officer, the Service Director Regulatory Services as Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and their comments have been incorporated into the final report.

Approved by

Tracey Logan
Chief Executive

Signature

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Background Papers:
Previous Minute Reference:

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