

Report To: Cabinet

Date: 24 April 2012

Lead Members: Councillor Hugh Evans
Leader

Lead Officers: Hywyn Williams
Corporate Director: Learning & Communities
Paul McGrady
Head of Finance and Assets

Title: Creating a 'Denbighshire Community Endowment Fund'

1. What is the report about?

- 1.1** To provide the information about a number of moribund or ineffective trust funds and their attaching assets which are administered by the Council, and to recommend a way forward to release funding from these funds.

2. What is the reason for making this report?

- 2.1** To recommend that, subject to the absolute agreement of the Charity Commission, that the moribund and ineffective trust funds and their attaching assets are transferred to the proposed 'Denbighshire Community Endowment Fund' to be managed and administered by the Community Foundation in Wales.

3. What are the Recommendations?

- 3.1** To note the information about 55 moribund and ineffective trusts and their attaching assets held by the Council and the proposed 'Denbighshire Community Fund.' (Appendix 1)
- 3.2** To agree that, subject to the full support of the Charity Commission, that the 55 moribund and ineffective trusts and their attaching assets are transferred to the proposed 'Denbighshire Community Endowment Fund' to be managed by and to become the legal responsibility of the Foundation.
- 3.3** To authorise to undertake the necessary legal actions and enter into the required agreement with the Community Foundation in Wales.

4. Report Details

- 4.1** The Council holds a number of funds in trust (as sole trustee) following bequests and investments made to and for various issues and causes in the county borough. In some cases, the funds have become moribund or ineffective as the original intentions or objects within the governing documents of the funds are now out of date. In other cases the assets comprise the net sale proceeds of property and land originally owned by respective trust funds.
- 4.2** In order to prevent the Council being negligent in charity a review of these trust funds and their attaching assets has been undertaken by a group of officers of the Council led by Hywyn Williams, Corporate Director Learning & Communities. The

review has identified 55 education trusts together with the net sale proceeds of a property known as Stansty Cottage and the net sale proceeds of a piece of land, which have been determined as moribund or ineffective. Six of the Trust Funds are registered with the Charity Commission of England and Wales and 49 relate to unregistered trust funds. Assets total circa. £268,000 held in the form of cash.

- 4.3** Action needs to be taken to make these trust funds and their attaching assets workable again, but this is not Council money and it can never be absorbed into mainstream budgets. It might be possible to agree new arrangements with the Charity Commission to update the purpose of the trust funds and enable them to be distributed, but any new fund would have to be a charity in its own right, and the Council would still have to act as sole trustee, accountable to the Charity Commission for its management.

4.4 Release of Moribund and Ineffective Funds and their Attaching Assets

The Charity Commission is keen to see the release of the many moribund and ineffective trust funds locked into local authorities around the country, and the Commission particularly supports the release of these funds to leading charitable bodies.

Following formal consultation with the Charity Commission, it is apparent that the most effective use of these moribund and ineffective funds and their attaching assets would be to transfer them to a body who will act as trustee and manage the funds, converted into a new small grants scheme (working title: 'The Denbighshire Community Endowment Fund') for charitable distribution to eligible organisations, broadly in line with the trust funds' original objectives.

The Community Foundation in Wales (the Foundation) has been identified as a possible organisation to manage these funds on behalf of the county. Based on a model of philanthropic giving started in the USA nearly 100 years ago, Community Foundations are now a well established and recognised part of the UK voluntary sector. They have been established to cover specific geographical areas and to support their local communities at grassroots level. They are set up as charitable trusts to enable many donors to collaborate in creating a permanent capital fund for the benefit of defined local areas. This will generate income for grant making that will be available for the long term, responding to local needs and issues at the time.

The Foundation is a respected national charity which operates and is effective across Wales, whose board members include senior representatives from the business, law and charitable sectors. Trefor Jones CBE, HM Lord Lieutenant of Clwyd is appointed Vice President. The Foundation is an administrator and distributor of charitable funds and manages a number of corporate and statutory grant programmes which directly benefit Denbighshire. Over the last five years the Foundation has distributed over £4.5 million of grants to support over 600 groups and individuals and projects across Wales working to meet a range of needs. Denbighshire groups and individuals alone have benefited from £35,000 through 15 awards in the last three years. The Foundation is quality accredited by the Community Foundation Network to standards endorsed by the Charity Commission and manages a Capital Endowment Fund in excess of £5 million, utilizing the services of professional fund investment managers.

The Foundation is being assisted by an advisor from the Community Foundation Network who has completed a similar transfer processes with 30 local authorities across the United Kingdom including five local authorities based in Wales.

Community Foundations across the UK have successfully assumed responsibility from local authorities for in excess of £20million of moribund and ineffective trust assets creating in excess of £1.3million per annum increased capacity of grant making to individuals and grassroots community groups. This person also acts as the Community Foundation's 3 representative on the Charity Commission's working group to liberate moribund and ineffective trust funds.

Given the governance arrangements of the Foundation, their experience of managing funds and small grants schemes, and their reasonable administration charges, it is possible to recommend the Foundation as the body to administer the 'Denbighshire Community Endowment Fund'. No other locally based organisation has been identified which has the relevant experience or expertise to deal with the release of such moribund and ineffective funds and their attaching assets and to deliver the resulting benefits.

Transfer of the funds will require the absolute agreement of the Charity Commission linked to a transfer agreement between the Council and the Foundation.

4.5 The 'Denbighshire Community Endowment Fund'

The Board of Trustees of the Foundation will be the Trustees of the 'Denbighshire Community Foundation Fund'. If the transfer takes place the Council will no longer hold any of the funds or their assets or be responsible for their distribution. The agreement of the Charity Commission and the transfer agreement between the Council and the Foundation will set out the charitable purposes of the Fund.

The capital sum of approximately £268,000 will form the initial capital fund with interest from the fund distributed by the Foundation as the 'Denbighshire Community Endowment Fund' small grants programme. The amount available for distribution each year will depend on interest rates and other investment returns.

The Foundation will continue to identify possible sources of additional funds so that the 'Denbighshire Community Endowment Fund' can be potentially used for match funding purposes.

Initially, it is proposed to set aside £10,000 from the 'Denbighshire Community Endowment Fund' capital for distribution in 2012/13 and £10,000 for distribution in 2013/14 so that is possible to make grants immediately. It is believed that this will encourage donations from individuals, companies, businesses and organisations situated within the county who will be attracted to contribute to a Fund which is capable of making an immediate impact in servicing the needs of the community. The combined total of £20,000 represents income accrued over many years from the moribund and ineffective assets in scope. The Charity Commission have formally sanctioned this approach.

In establishing the 'Denbighshire Community Endowment Fund', the Foundation will set funding themes that are complementary to the Council's Big Plan, to include and could include:

- ❖ Community Safety, including crime and disorder
- ❖ Sustainable neighbourhoods including the environment and housing
- ❖ Prosperity, skills and jobs
- ❖ Lifelong learning including early school years
- ❖ Transport
- ❖ Health and healthy living

- ❖ Culture, arts and sports
- ❖ Community cohesion including issues of race and disability
- ❖ Improving the lives of people with limited resources
- ❖ General charitable purposes which align to the Foundation's ethos of inspiring local giving

For individuals a maximum grant award of £750 is proposed and for groups only activity that is itself charitable could be funded to a maximum grant of £750.

Initially applications to the fund will only be received from applicants seeking support for educational purposes (to include prize awards, educational attainment and bursaries) thereby ensuring that the assets from the liberated moribund and ineffective trust funds are used broadly in line with their original objects. This is a Charity Commission condition of approval and one which we are keen to support. Communications to educational establishments across the county will be despatched announcing the launch of the Denbighshire Community Endowment Fund and the process for accessing grant funding at the appropriate time.

The Foundation will publish guidelines and eligibility criteria for the 'Denbighshire Community Endowment Fund'. Applications will be restricted to applicants residing within the county and in accordance with the Foundation's respected custom and practice, a grants panel comprising local people will assess all applications received and make funding recommendations. The trustees of the Foundation, as the accountable body, will review and approve all recommendations made. Applications which do not meet the criteria of the 'Denbighshire Community Endowment Fund' will, wherever possible, be signposted to alternative funds administered by the Foundation, as will occur if the 'Denbighshire Community Endowment Fund' is overbid. This will assist in reducing the risk of applicants being disappointed. Assets will be used broadly in line with the original objects and areas of benefit. This will be a condition of 'absolute sanction' from the Charity Commission for England and Wales.

The grants panel will be made up of a number of people and the Council can appoint representatives onto this group to give Members an involvement in the distribution of the funds.

When the 'Denbighshire Community Endowment Fund' is established, information about the fund and application process will be circulated to all members, publicised on the Council and the Foundation's respective websites, and promoted in the local media and by appropriate community support networks.

4.6 The 'Denbighshire Community Fund' Administration

A one-off establishment fee of up to 3% of the value of the assets at the time of transfer to be negotiated with the Council to represent the direct costs aligned to the work undertaken by the Foundation to establish the Fund and to liberate, through the Charity Commission, the moribund and ineffective trust funds in scope and their attaching assets.

The value of all assets held in the form of endowment will incur an annual management charge of 1.25% of the market value of the Fund.

The management and administration of the distribution element of the fund will incur a fee of 10% per annum of all income passing to the fund. This is based on interest earned and any one-off donations.

4.7 Options

There are three options:

- (a)** To continue as at present, with the 55 trust funds and their attaching assets continuing to be dormant and or ineffective.
- (b)** To seek new arrangements with the Charity Commission to update the purpose of the individual trust funds and enable them to be distributed again, but any new fund would have to be a charity in its own right, and the Council would still have to act as sole trustee accountable to the Charity Commission for its management.
- (c)** To transfer the dormant and ineffective trust funds and their attaching assets to a body who will act as trustee and manage a new trust fund the proposed Denbighshire Community Endowment Fund with annual income , converted into a new small grants scheme for charitable distribution broadly in line with the contributory funds' original objective.

Option (a) would continue the present situation, whereby the Council is in danger of becoming negligent in charity and there the trust funds are not meeting the needs of local people as envisaged by the original donors. Option (b) would result in the Council continuing as the trustee with greatly increased administrative commitments and, whilst the costs could be charged to the individual trust funds, it would be undertaking work that is not core to the Council's objectives. Option (c) would result in the trust funds and their attaching assets being used to meet the needs of local people through an independent organisation regulated by the Charity Commission which would also be best placed to grow the size of the funds by attracting resources that are not available to the Council.

5. How does the decision contribute to the Corporate Priorities?

The Council has a clear statement of intent about being a 'high performing Council close to the community'. Releasing dormant funds will enable the Council to support individuals and organisations within the community to achieve and succeed. Releasing these dormant funds will also link up with the process of reviewing the way that community based funding is administered within the County.

6. What will it cost and how will it affect other services?

There are no direct financial implications for the Council. The Council is the sole trustee of the trust funds and their attaching assets but the money can never be absorbed into Council mainstream budgets.

7. What consultations have been carried out?

The Corporate Director: Learning & Communities, together with the Section 151 Officer have been holding discussions with the Community Foundation for Wales who would administer this fund. The Foundation has also been in consultation with the Charities Commission in order to gauge how practical this approach would be, and this report was presented to the Communities Scrutiny Committee and supported by that Committee at their meeting on the 1 March 2012,

8. Chief Financial Officer Statement

There are no obvious costs to the council and the proposal has the potential to release funding to support worthwhile educational schemes in communities. The report confirms that there are no other suitable organisations based locally that could deliver the service. The set up cost and annual charge for the service is below the council's tendering threshold and would be met from the value of the trust funds, rather than from the council's revenue budget.

9. What risks are there and is there anything we can do to reduce them?

These funds are currently dormant and are not used for any purpose. Future administration of these funds will be undertaken by the Community Foundation in Wales, which will mean that decisions around the allocation of these funds will be outside of the Council's remit and power. However, the Community Foundation in Wales are keen to retain a local decision making process to administer the funding that will be released on an annual basis. The Council will ensure that it is represented on the local decision making panel.

10. Power to make the Decision

Section 2 Local Government Act 2000 provides that a local authority may do anything which it considers is likely to achieve the promotion or improvement of the economic, social or environmental well being of its area."