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<b>Report To:</b>	<b>Policy &amp; Resources Committee</b>	<b>Date:</b>	<b>10 August 2021</b>
<b>Report By:</b>	<b>Interim Head of Legal Services</b>	<b>Report No:</b>	<b>LS/069/21</b>
<b>Contact Officer:</b>	<b>Anne Sinclair</b>	<b>Contact No:</b>	<b>01475 712710</b>
<b>Subject:</b>	<b>Report On Opinion Of Counsel Regarding Previous Settlements Reached With Former Clune Park Owners</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to update the Policy & Resources Committee on the legal advice regarding any potential claim by any former owner of property in the Clune Park Estate who has sold their property to the Council and in respect of whom sums were deducted from the purchase price in respect of Long Term Empty (LTE) levy and to provide an update on the estimated financial implications of the Valuation Appeals Committee decision.

## 2.0 SUMMARY

- 2.1 At its meeting on 24 June 2021 the Policy & Resources Committee considered a report by the Interim Service Director, Corporate Services and Organisational Recovery on the decision of the Valuation Appeals Committee dated 25 May 2021 which refused the appeal in respect of Council Tax, but upheld the appeal by the landlord in respect of the LTE Levy.
- 2.2 The decision of the Policy & Resources Committee on 24 June 2021 was that approval having been given to officers not to appeal, that officers would proceed with the following:
- The LTE Levy for properties owned by the successful appellant would be cancelled and Council Tax bills for the relevant properties re-issued (**Complete**);
  - Any LTE Levy billed in respect of properties not held by the Council within the Clune Park Estate would be cancelled (**In progress**);
  - Where the Council currently owns property within the Clune Park Estate then officers should review the application of any LTE Levy recovered from former owners when the Council acquired properties and report back to the Committee with recommendations for consideration (**Covered by this report**).
- 2.3 The 24 June decision above excluded those former owners from whom the Council made no LTE recovery as part of the purchase of the properties due to their Council tax accounts being up to date. In these circumstances it would be recommended that the LTE debt be cancelled and Council Tax bills re-issued.
- 2.4 Following the June 2021 decision the Interim Head of Legal Service instructed an opinion from the Council's expert external legal adviser on a number of issues arising out of the Council's purchase of properties in the Clune Park Estate, particularly relating to settlements which included deductions from the sale price in respect of LTE Levy.
- 2.5 In light of the VAC decision in respect of LTE Levy Officers considered that it would also be prudent to seek the views of Senior Counsel in relation to the period to be covered and what is to be classed as LTE levy in respect of empty properties in the Clune Park Estate. The opinion of the QC is included as an appendix in the private papers.

2.6 Based on the legal advice provided then the maximum value of the LTE debt which could be cancelled is £705,000 covering the period 2012-2022 of which £101,000 relates to this financial year. As the Council has already included a provision of £ 290,000 in the Unaudited 2020/21 accounts then, depending on decisions by Committee, a further £314,000 should be added to the provision with the 2021/22 impact reflected in Revenue Budget monitoring updates to Committee.

### **3.0 RECOMMENDATIONS**

3.1 It is recommended that the Committee :

a ) considers the contents of the report and private appendix ;

b ) notes there is no legal obligation to make settlement payments in terms of LTE debts recovered from former Clune Park owners who have previously reached settlement agreements with the Council to sell their properties;

c) agrees that LTE debts be cancelled for former owners within the Clune Park estate from whom no LTE recovery was made as part of the missives of sale;

d) notes the increased financial impact arising from the QC opinion of the period to be covered and discounts to be applied to Council Tax bills in respect of long term empty properties within Clune Park

e) notes that the estimated reduction in Council Tax income for the period 2012-2021 will be reflected in the 2020/21 Annual Accounts and will result in a reduction in the General Fund Free Reserves.

**Anne Sinclair**  
**Interim Head of Legal Services**

## **4.0 BACKGROUND**

- 4.1 The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations issued in 2005 gave Councils the ability to reduce the 50% discount applied to second homes and long term empty properties. The Council agreed to reduce the discount on long term empty properties to 10% from 1 April, 2012. The extra income raised required to be ring fenced to support Affordable Housing developments.
- 4.2 Long Term Empty (LTE) Levy was added to Council Tax charges by the Council after 1 April 2016 in terms of The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013. The levy was set by the Council at 30% for 2016/17 and 2017/18 increasing to 50% for 2018/19 and was increased to 100% with effect from 1 April 2019, bringing the Council in line with most Councils in Scotland.
- 4.3 At the meeting of the Policy & Resources Committee on 24 June 2021 the Committee accepted the recommendation of officers and decided against appealing the VAC decision of 25 May 2021 in respect of LTE Levy. The Committee also decided that in addition to cancelling the LTE levy for properties within the Clune Park Estate owned by the Landlords who had successfully appealed and other properties within the Estate not owned by the Council, where the Council owns a property officers were asked to review the application of any LTE levy recovered from former owners when the Council acquired those properties and report back to the Committee with recommendations for consideration.
- 4.4 The Council has purchased 197 properties within the Clune Park Estate to date. In particular a portfolio of properties was purchased from one owner as part of a global settlement. This settlement was subject to bespoke Conveyancing Missives. The remaining properties purchased by the Council were subject to Standard Missives of Sale.
- 4.5 Sums in respect of outstanding Council Tax, including LTE levy, were deducted from the Purchase Price paid to the owner of the portfolio and some of the other owners who sold their properties to the Council in transactions which were subject to the Standard Missives of sale. It should be noted that other former owners will have paid LTE levy during their period of ownership but no deductions were made as their accounts were up to date.
- 4.6 The Interim Head of Legal Services has obtained an opinion from the Council's external legal expert, regarding the prospects of success of claims against the Council for deduction of LTE Levy in respect of acquisitions under both of the above circumstances.
- 4.7 In light of the VAC decision in respect of LTE levy Officers considered that it would also be prudent to seek the views of Senior Counsel in relation to the period to be covered and what is to be classed as LTE levy in respect of empty properties in the Clune Park Estate.

## **5.0 Opinion of Senior Counsel**

- 5.1 The Council's QC has provided the Council with a very comprehensive and clear opinion in relation to the undernoted issues:
  - a) Settlement Agreement reached which was subject to the bespoke Missives of Sale;
  - b) Settlements subject to Standard Missives of Sale;
  - c) Amount of Discount due on Council Tax: Empty Properties in the Clune Park Estate.
- 5.2 The QC opinion is set out in the appendix included in the private papers and confirms that there is no legal obligation to make settlement payments in terms of LTE debts recovered from former Clune Park owners who have previously reached settlement agreements with the Council.

## 6.0 IMPLICATIONS

### 6.1 Finance

Officers within Finance continue to recalculate the Council Tax bills for all affected properties within the Clune Park estate for the 10 year period covered taking into account both the VAC decision and the opinion of the QC detailed in the appendix. The latest worst case scenario is an estimated reduction in Council Tax bills of £705,000 over the 10 year period of which £101,000 relates to the current financial year.

Officers will therefore make an adjustment to the 2020/21 Annual Accounts and this will reduce the General Fund Free Reserves from the position reported in the Unaudited 2020/21 Accounts.

#### Financial Implications:

##### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
Council Tax	Income	2012-22	Up to £705k		£355k previously reported in June, 2021

##### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### 6.2 Legal

The advice from the Monitoring Officer is included in the private appendix.

### 6.3 Human Resources

There are no HR implications arising from this report.

### 6.4 Equalities

#### Equalities

- (a) Has an Equality Impact Assessment been carried out?

	YES
x	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

- (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
x	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
x	NO

**6.5 Repopulation**

There are no repopulation implications arising from this report.

**7.0 CONSULTATIONS**

7.1 The Councils Auditors have been consulted on the issues raised within this report and appendix.

**8.0 BACKGROUND PAPERS**

8.1 None