Update Report for the Chief Executive and Director of Finance

Purpose

The purpose of this report is to update the Board on the progress in relation to the negotiations with Celtic for their acquisition of circa 50 acres of the Upper Site at the former Lennox Castle Hospital.

Current Position

1. Celtic.

We are at an advanced stage of the discussions with representatives of Celtic, and have now reached a point where the Club are unwilling to accept a point of detail which is, in our opinion, fundamental to the transaction. This is in relation to Clawback. While Celtic accept the principle of clawback, they have two stumbling blocks. The first is our position that the clawback must be protected by a Standard Security. This is a critical point as the purpose of this security is to ensure that when any clawback payment is due, that the NHS has a mechanism for ensuring it is paid. Ordinarily, we would seek a First Ranking Security, but we have, in other transactions, accepted a Second Ranking behind the bank. We have offered Celtic this Second Ranking as we appreciate that their funders may have a problem with a First Ranking security. The NHS in Glasgow has contracted with a multiplicity of developers over the years and our position has always been the same in relation to protecting the clawback payment. While there are other mechanisms which may offer similar protection such as a bank or parent company guarantee, the advice of our legal adviser, [Name] of McClure Naismith, is that this is the only practicable means of addressing this in this transaction. Celtic have now confirmed that they are willing to consider the Standard Security, but are not necessarily agreeing to committing to this. Given the importance of protecting the Board's future interests, if their final position is not to accept this condition, then my advice and that of the Board's solicitor and external property adviser is that the transaction should not be concluded.

The second stumbling block for Celtic is the percentage and timescale associated with the Clawback. In our opinion the percentages should be as follows:

- Years 1-10 95%
- Years 11-20 75%
- Years 21-40 50%

The purpose of this clawback provision has to be borne in mind here. It is to ensure that if Celtic seek an enhanced use value by developing the site in whole or in part for an alternative use, then the NHS should share in any profit by the percentages shown above. While there is no typical percentage, this is broadly in line with other transactions, albeit that other transactions did not see the sale of circa 50 acres for £500,000 or thereby. We believe the differential between the purchase price and any potential value is such that the percentages and timescales are not unreasonable, although we believe that there could be some relaxation around the 75% and the 50%. Celtic are not willing to accept this position which causes the me and the Board's advisers concern. If Celtic's sole intention is to develop the site purely for the training purposes, then we can see no reason why they see
these provisions are unacceptable. In Gartloch we had the clawback in perpetuity and I have been advised of a CALA deal where it was 100% over 25 years. Celtic's intransigence in this matter and further developments involving the Initiative have strengthened our view that Celtic have a strategy which sees some kind of development in the Upper site at some point in the future which has a higher value that that being proposed. While we are willing to be flexible around the percentages in later years, we believe that they reflect the risk associated with this transaction, given the scale of land acquisition and purchase. If their final position is not to accept the percentages or the timescales, then my advice and that of the Board’s solicitor and external property adviser is that the transaction should not be concluded.

2. Lennoxtown Initiative

The Initiative will be the recipients of the receipts from the sale of the Upper Site in accordance with the Tripartite Agreement. In pursuance of their wish to attract Celtic to Lennoxtown, they have agreed in principle with the Club to enter into a service level agreement for the provision of access to the facility as well as community engagement by the club’s professional coaching and specialist staff. As Chief Executive of the Initiative, I have, as we agreed, absented myself from detailed discussions in relation to any agreement with the Initiative, given my clear role in dealing with the transaction of land on behalf of the NHS.

I have now been advised by the Initiative that in discussion with Celtic, they are aware of stumbling blocks for the club which might prevent them from relocating their facility to Lennoxtown. I am aware that these discussions have centred around the issues detailed above and that the Initiative may have given an indication to the Club of percentages which they believe are acceptable which are significantly lower than that proposed by the NHS. Ordinarily, this would not be a concern as transactions are a matter for the NHS as the landowner and the purchaser. However, in this instance, the Initiative’s intervention could have an impact on the risk associated with clawback and a potential receipt to the NHS.

The Initiative are now actively pursuing the possibility of requesting that the Option Agreement in the Tripartite Agreement is triggered by East Dunbartonshire Council. This would have the effect of transferring the site to the Council for £1 for it then to be transferred to the Initiative and finally to Celtic. Celtic would then, in turn, enter into a 10 year SLA. While this process would free the NHS of any issues in relation to the transaction, the concern is that if the Initiative agrees to terms in their transaction such as a dilution of the clawback provisions then a potential receipt to the NHS would be diminished. My discussions with representatives of the Initiative lead me to believe that such is their anxiety to attract Celtic that the NHS/Celtic stumbling block may be overcome by a relaxation of the Clawback provisions. Given that there has been the discussion with Celtic in relation to Clawback, I regard this as an attempt by the club to circumvent conditions which are designed to protect the public asset and potential receipts to both the Initiative and the NHS.

The Board should be aware that an approach by the Initiative and/or East Dunbartonshire Council is likely to be made shortly in relation to these matters. Given the importance of this and the urgency with which the Initiative wish to proceed, I have instructed our legal adviser to give an Opinion in relation to the Tripartite Agreement and the Option Agreement. However, it is the informal view of the Board’s legal adviser that if the Board is so minded, then there are mechanisms and conditions within the Tripartite Agreement
which would give the Board justification for not allowing the Option Agreement to be triggered.

I am conscious that there are bigger and wider issues at stake in relation to the socio-economic regeneration of Lennoxtown and the NHS relationship with the Initiative and the Council. However, the matter of the land transaction has, by necessity, divorced itself from these in order that the guidance, practice and procedure of the NHS Transactions Handbook could be followed. It has been the primary role and aim of the advisory team to ensure that receipts, both immediate and future have been protected from the whole site and not just the Upper Site.