
CAIRNGORMS NATIONAL PARK AUTHORITY AUDIT & RISK COMMITTEE

FOR DECISION

**Title: STRATEGIC RISK REVIEW: LEADER ACCOUNTABLE
BODY RESPONSIBILITIES**

Prepared by: David Cameron, Director of Corporate Services

Purpose

This paper presents an in depth review of the strategic risk included in the Authority's Strategic Risk Register associated with the Authority's role as the Accountable Body for the Cairngorms LEADER programme.

Recommendations

The Audit & Risk Committee is asked to:

- a) **Consider the in depth review of the strategic risk associated with the Authority's role as Accountable Body for Cairngorms LEADER;**
- b) **Endorse the proposal to maintain this risk as escalating at the current time;**
- c) **Endorse the proposed mitigation strategy.**

Overview: Strategic Risk – Role as Accountable Body for Cairngorms LEADER

1. The Authority's strategic risk register, as most recently approved by the Board at its meeting on 15 June 2018, includes a risk around the Authority's role as the Accountable Body (AB) for the Cairngorms LEADER Programme. This risk highlights the underlying possibility of significant financial clawbacks being imposed on the Authority should expenditure be proven to be ineligible, while the Authority also carries the employment responsibilities for the staff team supporting the programme.
2. This risk has been noted as escalating over the previous cycles of risk monitoring and reporting.
3. The Committee has received a number of updates on the delivery of the LEADER Programme and associated risks. In particular as regards the risk evaluation, there have been a number of disputes between the Cairngorms LEADER team and Authority as the Accountable Body on one side, and the Scottish Government LEADER teams, on interpretation of regulation and guidance in establishing eligibility of projects or their sub-elements for LEADER funding. Risk status has been escalated over recent periods as a consequence of these ongoing disputes, the associated

uncertainty over the clarity of guidance, and over the positions being taken by the central LEADER team.

Update on Monitoring and Evaluation Process

4. Since the last update to the Committee in May 2018, all matters of significant judgement made by the Authority as the AB and by the Cairngorms LEADER team have been agreed to be correct. We now have written confirmation that one project which had been considered ineligible for LEADER funding, the “Spors Gaidhlig” project, is in fact eligible as originally assessed by Cairngorms. We also have had an oral indication that a second project, the “Abernethy Outdoor Classroom” also appears appropriate and eligible for LEADER funding, again in line with the original decision making within Cairngorms. This is clearly a very positive step forward in this area of our activities and risk management. Discussions on these projects have been open in some form since February 2017.
5. The combination of length of time taken to resolve matters, and also uncertainty over interpretation of regulations and guidance by the central LEADER teams, had led to the escalation of the strategic risk. Additionally, the threat over the LEADER funding status of these projects, and consequent potential liability to the Authority as the AB, also made a significant contribution toward the risk escalation.
6. As a further positive development, the Authority has now began to receive payments from Scottish Government against our claims for LEADER grants. Around £100,000 has been received in July with a further significant repayment of grant of around £250,000 expected in August.
7. It is reassuring that all matters of significant judgement by the AB and LEADER team in these and other projects has been established as well founded in the project reviews. The commencement of LEADER grant repayments to the Authority is also evidence that the previous heightened risk established pending resolution of the monitoring and evaluation dispute has now significantly diminished. The monitoring and evaluation process necessitated by the dispute resolution process agreed by the Authority and Scottish Government team has resulted in around 50% of all Cairngorms LEADER projects now having been retested and evaluated in some way. We can therefore have some confidence that the overall judgement and decision making within the Cairngorms LEADER programme is sound.
8. There have been a small number of findings of administrative errors in testing transactions and document handling. However, these matters are to be expected, to a degree, within such a high volume transaction handling process. Moreover, a small number of administrative errors do not pose the same risks to funding eligibility and potential for penalties as the technical, interpretative and judgement issues previously being dealt with.
9. In the absence of wider considerations, as lead Director for LEADER I would be recommending a reduction in risk status of this risk at present, given these very positive outcomes over the summer months. However, there are two wider issues which also need evaluated and potentially acted upon:

- a) The degree of confidence in coordination of LEADER audit processes which may continue to impact on the Authority as AB, and may result in disallowance penalties being raised;
- b) The dispute resolution process now adopted by Scottish Government.

LEADER Audit Processes

- 10. A meeting with the LEADER Delivery Team in July confirmed that the Business Services and Assurance Team (BSAT) will continue to act as the key point of coordination for the Scottish LEADER Programme with Audit Scotland in any audits they undertake. I understand that Audit Scotland are engaged to undertake external audit of programme activity on behalf of the European Commission and it is such audit activity that could lead to penalties being imposed if expenditure tested is judged to be ineligible. These penalties can be very significant – in the magnitude of €250,000 in some cases.
- 11. The Service Level Agreement (SLA) between Scottish Government and ABs establishes that, should any penalties be levied following audit, an assessment of responsibility for any error between central processes and the AB will be undertaken and the liability for the financial penalty split accordingly. There is therefore a very clear risk of liability to the Authority as the AB in any such circumstances.
- 12. The Accountable Bodies as a collective group have been pressing at LEADER Accountable Body Board meetings for a greater and earlier involvement in audit processes. However, the minute of the most recent meeting of 27 June sets out that ABs would be “more involved, wherever possible, following release of audit findings”.
- 13. In my view, this position continues to be unsatisfactory. The term “audit findings” suggests that a final position will already have been established before the AB can become involved. If this is the case, the Authority would have no opportunity to inform the audit review. Yet our experience, summarised very generally in the foregoing section of this paper, is that the AB judgement and view of a project and its interpretation is crucial in establishing a proper understanding of the eligibility of the project or sub-activities and of the nuances involved in interpretation of EU regulation and guidance.
- 14. In the absence of direct AB input to external audit of LEADER activities, the only influence as far as we understand the process, will be through the interaction of the BSAT team coordinating the audit process with Audit Scotland. Again, however, given that all of the monitoring difficulties experienced by Cairngorms LEADER to date stem from judgement and interpretation of some members of BSAT staff which have not proven to be accurate, there is little confidence in this process at this time as the sole interaction with external audit.

Dispute Resolution Process

- 15. The dispute resolution process now adopted by Scottish Government also exacerbates concerns in the event of penalties being raised.

16. The AB Group has been pressing for adoption of a dispute resolution process which at least includes some independent advisors, if not independent “Dispute Panel” members, to review cases and present recommendations to the Deputy Director within Scottish Government, who is the Accountable Officer for LEADER, prior to a decision being made on any dispute. The ABs submitted that independent advisors with a legal and / or financial background would be able to provide advice on the respective merits of the AB’s and central team’s cases as regards respective liability, and therefore allow the dispute resolution process to be viewed with greater confidence by ABs. However, after extended discussions, the Scottish Government team has refused the “minimum” request to include advisors, and the final decision on a dispute will be taken by the Deputy Director as Accountable Officer alone.
17. The minutes of the June AB Group meeting notes that “residual concerns remain around the independent nature of the appeal [dispute resolution] process”.
18. Effectively this position means that, should a penalty be levied against a Cairngorms LEADER project and the Authority as AB disputes any liability, then the Scottish Government Accountable Officer who would have to accept responsibility for the liability also has the sole decision on resolution of the dispute. It is fair to reflect that disputes over the judgements on eligibility of our Cairngorms projects have resolved in our favour as set out earlier in this paper when such a dispute process has been used. It is also worth noting in this regard that this did not involve any financial outlay by the Scottish Government team and took a great deal of ongoing pressure from the Authority over an extended period in order to reach this settlement.

Conclusions and Risk Assessment

19. Overall, therefore, the interaction of the lack of direct representation to external audit and potential lack of balance in the adopted dispute resolution processes appear to leave the Authority exposed to significant ongoing risk at this point in time. While all the evidence now compiled on the extended monitoring and evaluation of Cairngorms LEADER suggests the likelihood of expenditure which would lead to disallowance and penalty is low, this is undermined by our lack of opportunity to directly explain our position should an external audit issue be raised. Risk likelihood therefore is increased to between 3 and 4 out of 5. Risk impact, given the large scale of penalties, is very high and scored at 5 of 5. This therefore suggests an ongoing high / red strategic risk.

Risk Mitigation Recommendation

20. In terms of risk mitigation, the only approach appears to be to register dissatisfaction with the arrangements put in place and to highlight that the Authority as AB does not believe that these arrangements proposed adequately fulfil the responsibilities required by the SLA. The Authority would also indicate it will not accept any share of liabilities apportioned where there is a deemed breach of the SLA by the central teams.

21. The Committee is therefore asked to endorse the risk assessment set out in this paper and also the risk mitigation steps to be taken by the Director of Corporate Services as Lead Director for Cairngorms LEADER.

David Cameron

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Davidcameron@cairngorms.co.uk