

ABERDEEN CITY COUNCIL

COMMITTEE	Urgent Business
DATE	17 March 2014
DIRECTOR	Angela Scott
TITLE OF REPORT	Finalisation of Transfer of Property Interests and Financial Matters in connection with AECC
REPORT NUMBER	CG/14/042
CHECKLIST RECEIVED	Yes/No

1. PURPOSE OF REPORT

The purpose of the report is to summarise the actions taken in relation to the decisions previously made by the Council to transfer the property assets of Aberdeen Exhibition and Conference Centre Ltd (“AECC”) and Mountwest 343 Ltd (“Mountwest”) to Aberdeen City Council and to find the most tax efficient way to remove the debt burden that remains (the “Transfer”).

The report seeks final approval for the various aspects of the transfer ahead of legal agreements being signed prior to 31 March 2014.

Additionally it seeks authority to an amendment to the Articles of Association of AECC.

2. RECOMMENDATION(S)

It is recommended that the Committee:

1. Note the actions taken and steps that are required to address the property and financial matters that remain between AECC and the Council;
2. Approve the financial package that is required to support the Transfer, as described in the Financial Implications section; and
3. Delegate to the unanimous approval of the Head of Legal and Democratic Services and Head of Finance the negotiation and approval of the contract documents noted below, and any other contracts, letters or documents which are required to be signed and/or sealed in connection with the implementation of the Transfer, on such terms and conditions, consistent with the key legal and commercial terms set out below, as they think fit. The contract documents referred to above are:

- a. the restructuring agreement between the Council, AECC and Mountwest;
 - b. the assignation of the lease from Mountwest to the Council;
 - c. the sub-lease renunciation between the Council and AECC;
 - d. the ground-lease renunciation between the Council and AECC;
 - e. the discharge of the standard security granted to it by AECC in respect of the ground lease;
 - f. a deed of release in respect of (i) the floating charge and (ii) the guarantee granted by Mountwest in favour of the Council;
 - g. a deed of release in respect of the debenture granted by AECC in favour of the Council; and
 - h. a licence to occupy the exhibition centre and associated buildings by the Council to AECC.
4. Agree to the amendment to the Articles of Association of AECC and authorise the Head of Legal and Democratic Services to sign the appropriate documentation.

3. FINANCIAL IMPLICATIONS

In undertaking the stepped approach described in the report and Appendix the financial implications arise in a number of ways:

Swap Guarantee - Prepayment of the liabilities arising from the guarantee of the swap agreement, this is funded from the previously earmarked sums in the General Fund Reserve under the heading of "De-risk the Council". This has the benefit of providing a long term saving to the Council as the annual cost of funding this guarantee is built into the 5 year business plan.

Outstanding Loans due to the Council - The total value of the outstanding long-term loans has already been fully provided for, being included as a bad-debt provision. This means that the Council Balance Sheet already reflects the non-collection of the loans and there is no financial implication of carrying out this transaction for the Council.

Shares Received - The value of ordinary shares that the Council will receive in AECC will have to be reflected in the Balance Sheet of the Council as at 31 March 2014, and these will be held at £nil value.

Leases Removed - The removal of the various lease arrangements will result in the property account receiving reduced income, however this is offset by the financial commitment to the swap guarantee being removed. A revised funding arrangement with AECC will have to be agreed on the basis of maintaining parity for both parties.

New Arrangements - The licence to occupy agreement will be provided to AECC at nominal cost, the nominal cost reflects the market value as an operational exhibition and conference centre. The AECC retain repair and maintenance obligations for the properties.

AECC Funding - The level of Council funding support to AECC will be determined and set by the Enterprise, Strategic Planning and Infrastructure Committee as presently done. There are a number of aspects of the current funding relationship that will change and these will be discussed with AECC and agreed prior to a new arrangement being put in place.

Costs of the Transfer - The additional costs of carrying out these transactions has been previously approved by Council (13 June 2012) at a value of up to £50,000 and based on invoices received to date and estimates obtained this maximum value is sufficient to conclude the matter, however until final accounts are submitted for all aspects of the transaction the final total value is not yet available.

4. OTHER IMPLICATIONS

As there is no change in the activities and services of either AECC or the Council, no TUPE transfer is anticipated and there are no other direct implications for any employees.

5. BACKGROUND/MAIN ISSUES

At its meeting of 15 December 2010 the Council resolved to instruct officers to report back on "...outlining the options and terms for reverting all existing leases relating to land currently leased to AECC, and transferring ownership of all currently owned buildings and assets, from AECC Ltd to the Council."

Furthermore the Council, at its meeting of 13 June 2012, resolved to agree to "set aside the full value of debt owed by the AECC Group to the Council to enable the most appropriate and tax efficient mechanism to be put in place...thereby remove the debt burden from AECC; and agree that the Head of Finance and Head of Legal and Democratic Services be given delegated power to enter into and carry out the necessary transactions in connection with removal of the debt burden and the transfer of asset..."

This report brings together the two elements to secure a tax efficient and effective means of transferring the property in the control of AECC to the Council and removes the debt burden on AECC.

Following a significant amount of work officers from across the Council have obtained all the necessary advice and assistance that is required to achieve the completion of the transactions prior to the year end. Appendix A outlines the various steps that are described in the advice and details the actions that are being taken to achieve these steps.

Tax advice was sought and obtained from PricewaterhouseCoopers LLP, and this outlined the steps that they suggest are the most

effective means of achieving the outcome that the Council and AECC were seeking.

Valuations of the site, property and buildings, and most importantly the value of the tenants interest has been undertaken by Ryden's on behalf of the Council.

Positive discussions between officers in Enterprise, Strategic Planning and Infrastructure and AECC directors have taken place to establish common terms for a licence to occupy that will prevail following the transfer of assets. This will form a new agreement between the Council and AECC to ensure the continued operation of the business of AECC.

Documentation has been drawn up by Brodies LLP, on behalf of the Council, and it has been agreed with AECC that this would be undertaken by one company so that the whole picture is presented together which will then be subject to independent review by AECC and its own advisers. In so doing it removes the need to decide whether the Council or AECC were responsible for undertaking each step and ensures there is consistency throughout the documentation. It also reduces the likelihood that gaps might result in something being missed.

Each party will have the opportunity to review and comment on the content and as part of the PwC tax advice contact they will review the final draft.

The Council Balance Sheet is already prepared to provide the means for undertaking the various transactions and the financial implications are described in Section 3 above.

It is recommended that the Committee note the actions and steps being taken to achieve the decisions of Council and approve the overall financial package required to deliver the final solution.

The Council has received a request from the Board of AECC seeking an amendment to the Articles of Association which require the Rotation of Directors. Under Article 23.3 of the current Articles, all the Directors rotate every three years.

The Executive Directors of the company are in terms of Service Contracts required to sit as Directors on the Board however they are also required to rotate every three years as Directors . These provisions are inconsistent. It is therefore recommended that the Articles of Association are amended to exempt the Executive Directors in the rotation so long as they are Executive Directors.

6. IMPACT

The conclusion of the work associated with this report achieves two key decisions of the Council and as such is important in providing clarity to both AECC and the Council about its future relationship. It also ensures that the Council has access to the land and buildings on the AECC site, which is critical to the proposals in relation to the decision made to approve a development partner for AECC and surrounding areas and to approve the Strategic Infrastructure Plan in October 2013.

7. MANAGEMENT OF RISK

The financial risks associated with these transactions have been previously mitigated through the earmarking of funds and a provision for bad debt being included in the Statement of Accounts for the Council. This has ensured that there will be no adverse impact on the Council's financial position for the current financial year 2013/14.

The professional risks that have arisen from these transactions have been mitigated by seeking professional tax advice from PricewaterhouseCoopers LLP (PwC). Review of the final documentation (prepared by Brodies LLP on behalf of the Council) to be signed will be carried out by legal and financial representatives of the Council and AECC as well as PwC.

8. BACKGROUND PAPERS

Draft Statement of Accounts – 2011/12 (CG/12/075) report.

9. REPORT AUTHOR DETAILS

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APPENDIX A

Key steps to achieve the decisions of Council in relation to Aberdeen Exhibition & Conference Centre Ltd and Mountwest 343 Ltd - Property and Financial Obligations

Step	Description of step	Summary of understanding of the position	Decisions
1	Preparatory	<p>There is an interest rate swap between Mountwest and RBS.</p> <p>If the leases are collapsed Mountwest's ability to meet the swap costs will be lost (as this amount is currently paid from the Council to Mountwest under one of the leases)</p> <p>Given the securities that RBS has in place their consent is likely to be required to the re-organisation.</p>	Request a final settlement to break the agreement. Use of previously earmarked sum to prepay, thereby releasing funding in the 2014/15 general fund budget on a recurring basis.
2	Transfer of property by Mountwest to the Council	<p>Mountwest's interest in the structure is comprised by its rights as tenant under the lease of the conference centre buildings, fixtures and stock. In this note this is referred to as the "Head Lease". The landlord under the Head Lease is AECCL.</p> <p>A renunciation of the Head Lease does not therefore represent a transfer of property to the Council, which is the requirement of this step.</p> <p>The Head Lease therefore must be assigned from Mountwest to the Council.</p>	<p>Assignment of lease</p> <p>Release by RBS of its floating charge from Mountwest.</p>
2(a)	n/a – collapse of intermediate lease	At one level below the Head Lease in the current structure there is a lease from Mountwest to the Council of the conference centre buildings, fixtures and stock. In this note this is referred to as the "Lease". The consequence of step 2 is that both the landlord and tenant	No documentation required, but to be narrated in the documentation effecting later steps.

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Step	Description of step	Summary of understanding of the position	Decisions
		<p>of the Lease will be the Council – causing it to collapse as a matter of law.</p> <p>At one level below the Lease there is a further lease (referred to in this note as the “Sub Lease”) of the conference centre buildings, fixtures and stock with the Council as landlord and AECCL as tenant. As a result of the collapse of the Lease, AECCL’s rights as tenant under the Sub Lease will be effective against the Council as tenant under the Head Lease.</p>	
3	Repayment of loan by Mountwest	The tax advice report narrates a net debt due from Mountwest to AECCL. The consideration received by Mountwest from the Council for step 2 is to be used to repay (in so far as possible) that debt.	As the loan is not likely to be fully repaid, a document formally writing-off the balance will be required.
4	Transfer of property (AECCL)	<p>After step 2, AECCL’s interest in the structure is comprised by (1) its rights as tenant under the ground lease from the Council (the “Ground Lease”) and (2) its rights as tenant under the Sub Lease.</p> <p>Both should be the subject of renunciation (as the renunciation of the Ground Lease would not automatically result in the collapse of the Sub-Lease)</p>	<p>Renunciation of Sub-Lease.</p> <p>Renunciation of Ground Lease.</p> <p>Release by RBS of its standard security over the ground lease from AECC.</p> <p>Release by ACC of the standard security granted to it by AECC over the ground lease.</p>
5	Pre-payment of loan and	The tax advice report narrates a debt due from AECCL to the Council of £26.2m. This is made up of a £7.5 million term loan, due to mature on 17 May 2017, and £18.7m of loan	Full value of £26.2m has previously been provided for on the Council Balance Sheet.

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Step	Description of step	Summary of understanding of the position	Decisions
	loan notes by AECCL	<p>notes which are due to mature on 17 May 2021.</p> <p>The consideration received by AECCL from the Council for step 4 is to be used to repay (in so far as possible) that debt.</p> <p>The tax advice report notes as an option that any remaining debt is exchanged for equity – ordinary shares.</p>	<p>As the loan/loan notes are not likely to be fully repaid, AECC will issue ordinary shares in consideration of the balance of the debt being written off. Corporate documentation to issue shares (board minute, resolutions and companies house filings required).</p>
n/a	n/a - New arrangements	<p>Although not covered in the tax advice report, given the collapse of the existing structures described above, new arrangements will need to be put in place between the Council and AECCL.</p> <p>A new agreement will need to be drafted giving AECCL the right to occupy the conference centre.</p>	Licence to occupy.

Note: The numbering of the above steps shown in the table above cross reference to steps provided in the tax advice report.