

## Contingent Liabilities

In addition to amounts recognised on the Balance Sheet, the Council is aware of the following contingent liabilities at 31 December 2022:

### Guarantees

#### **Transition Extreme Sports Ltd**

The Council has agreed to provide a guarantee to the Bank of Scotland in respect of a maximum overdraft facility of £250,000, as approved at City Growth & Resources Committee on 21 September 2022. This guarantee will remain in force until 31 March 2024.

#### **Sport Aberdeen**

The Council agreed to provide a bank guarantee to Sport Aberdeen up to a maximum of £5 million as approved at the 7 June 2016 Finance, Policy and Resources Committee. There is currently a Revolving Credit Facility for £1.4 million in place.

#### **Aberdeen Heat & Power**

The Council has agreed to provide a bank guarantee to Aberdeen Heat and Power up to a maximum of £1 million as approved at City Growth and Resources Committee on 21 September 2022. This guarantee will be in place from 1 November 2022 to 31 March 2024.

The Council has agreed to provide a guarantee for the purchase gas as approved at City Growth and Resources Committee on 21 September 2022. This guarantee will be in place from 1 November 2022 until 31 March 2023.

#### **External Organisations - Guarantor in relation to North East Scotland Pension Fund (NESPF)**

As the administering authority, the Council may admit a body to the Pension Fund as an 'admitted body' provided (i) the organisation can confirm they have sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest; and (ii) the Scheme employer is prepared to act as guarantor in the event the admitted body should cease to exist. If this situation was to occur and staff made redundant the staff over 50 years old would become entitled to immediate payment of their pension benefits. The Council has agreed several such guarantees to organisations that include Aberdeen Sports Village, Sport Aberdeen, Aberdeen Performing Arts, Aberdeen International Youth Festival, Aberdeen Heat and Power, Bon Accord Support Services and Bon Accord Care Ltd. The potential values guaranteed are subject to a range of actuarial assumptions.

#### **SEEMIS Group LLP**

The Council has agreed to fund any additional pension liability payments arising from its membership of the SEEMIS organisation (the provider of our schools' Management Information System). To date there has been no call on the guarantee.

#### **Integration Joint Board (IJB)**

The IJB is responsible for the strategic planning of the functions delegated to it by Aberdeen City Council and NHS Grampian. The Aberdeen City IJB Integration Scheme provides the framework in which the IJB operates including information on

funding and what should happen if the IJB is projecting to overspend its budget at the year-end. Whilst steps will be taken to address this (through a Recovery Plan), ultimately the parties to the arrangement may be potentially liable should the IJB overspend.

## **Contractual**

### **Waste Disposal**

The Council has a long-term contract with an external contractor for the disposal of all relevant waste arising in the City and the operation and maintenance of waste transfer stations, recycling facilities and landfill sites. The contract commenced in September 2000 and is due to run for 25 years.

The fire at Altens East Recycling and Resource Facility on 8 July 2022 has resulted in business continuity plans being implemented and changes made to the processing of some waste streams. There have therefore been a wide range of the implications arising from the events. The financial impact of known implications has been assessed and incorporated into the full year forecast for 2022/23. There will remain contractual matters to be addressed that will take time and the Council continues to work closely with the Contractor and representatives to determine the full extent of those.

The Council is lead partner in a three-authority project with Aberdeenshire and Moray Councils to procure an energy from waste facility which will deal with all residual waste from the three authorities. The contract commenced on 8 August 2019 with the facility expected to come online in 2022/23 and will run for 20 years.

### **Litigation in connection with the above**

There are currently several adjudications regarding performance, delivery and delay of the energy from waste project and sums due under the contract as a result. Parties are too far apart at present to put an exact figure on any liability or quantum.

### **Landfill Allowance Scheme (LAS)**

The Scottish Government had previously introduced a scheme under which Local Authorities were to be penalised for exceeding landfill tonnage targets. The Landfill Allowance Scheme in Scotland is currently suspended, and it is expected that the Waste (Scotland) Regulations 2012 will take over the requirement for the control of landfilling biodegradable municipal waste. However, until such a repeal is formalised there remains a potential liability on the Council.

### **Section 75 agreements**

Section 75 agreements (developer obligations) are frequently sought by the Council in relation to the award of planning permission. The possibility of liabilities arises in cases where the developer is not adhering to the agreed payment schedule and the Council elects to proceed with a project where that developer obligation funding is due. In these cases, unless a resolution can be found with the developer, the Council may be exposed to additional costs due to higher levels of borrowing than originally anticipated to “cashflow” a legally committed project. Costs could apply to the short, medium, or long-term depending on the circumstances.

The Council's Risk Board agreed that the Developer Obligations working group would escalate to Corporate Management Team any developers who fall behind on payments, and where necessary this will be reported to City Growth & Resources Committee. This is a risk which may crystalize in the current housing market conditions due to high supply costs and reduced supply of labour.

The inherent risk with all developer obligation funded projects is whether the build rate of the development is triggering financial contributions at the rate required to fund the Council projects involved. Where the Council project advances more quickly than the development, the Council may have to step in to "cashflow" the necessary funding requirement. Where a project has not been legally committed, a failure to receive the supporting developer obligation funding may require a discussion to determine whether the project should be paused, or even stopped completely. More detailed monitoring is therefore required by the Planning service to forecast expected build rates on developments and map out the timelines of expected trigger points for release of funding.

### **Impact of Covid on Working Practices, Social Distancing, and the Capital Programmes**

The emergence of Covid resulted in new working practice guidelines being issued by the Scottish Government, to set new standards to allow consultants, contractors, sub-contractors and their suppliers to work safely during the pandemic. These unforeseen changes resulted in the construction industry incurring additional costs for compliance with the risk of delays to projects. These measures also restricted numbers of staff on site which slowed down progress on works. These impacts have manifested in projects which were on site at the time of the initial lockdown, and discussions between the Council and the relevant contractors are on-going to determine liability for additional costs.

The Council are also aware that the construction industry is experiencing shortage of products, raw materials, staffing and logistical support which is impacting on current and future costs across the UK. Ordering lead times are extending across the sector with the risk of increased delay impacts to projects. There is evidence of a contraction in the construction industry particularly in terms of small to medium sized suppliers. The war in Ukraine and resulting economic sanctions placed on Russia and Belarus has further exacerbated supply chain issues for some commodities e.g. bituminous materials, steel etc. which were sourced from eastern Europe.

Taken altogether, this has manifested as the highest level of cost inflation experienced for around 30 years. This is creating new risks around capital projects. A review of project timeline delivery and financial viability was reported to the City Growth and Resources committee and full Council in August and will continue to be updated through updates to this committee.

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Finance and Resources Committee on 7<sup>th</sup> December 2022, agreed to progress the reinstatement of the Altens East Recycling and Resource Facility.

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There are currently a number of adjudications about issues to do with performance, delivery and delay of the energy from waste project and sums due under the contract as a result. Parties are too far apart at present to put an exact figure on any liability or quantum.

### **Scottish Child Abuse Inquiry**

Redress Scotland was set up following an act passed by the Scottish Parliament in 2021. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. Although Redress Scotland works with guidance and funding from the Scottish Government, it is not part of any Government department. Survivors, as an alternative to civil litigation, may choose to apply for redress. Local Authorities, as a Local Government sector, pay financial contributions towards the redress scheme and this has now been agreed as part of the Local Government Settlement and will be applied for the next 10 years.

Civil Litigation claims are still being received by the Council, both as lead authority for the former Grampian Regional Council and Aberdeen District Council as well as claims solely against Aberdeen City Council. Any uninsured claims or associated costs in respect of Aberdeen District Council or Aberdeen City Council will require to be met by Aberdeen City Council. The costs of these are unquantifiable at this time but will give rise to a future financial liability.

### **COVID-19 Impact**

Almost all restrictions that were in place for the Covid-19 pandemic have now been lifted, the virus continues to circulate, with new variants emerging, The Council has prepared it's 2022/23 and 2023/24 budget to include known Covid-19 related implications, however, there remains the possibility that further costs may arise that were not previously identified.