
Cabinet Member Meeting - Cabinet Member for Jobs and Regeneration 14th December 2017

Name of Cabinet Member:

Cabinet Member for Jobs and Regeneration – Councillor J O’Boyle

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

None

Title:

Project CAP – update report

Is this a key decision?

No

Executive Summary:

On the 10th October 2017, Council approved a commercial investment to acquire 100% of the shares in Coombe Abbey Park Limited (CAPL), the operating company of Coombe Abbey Hotel. This was on the basis that CAPL is a going concern business, which will deliver an ongoing financial benefit to the City Council.

The City Council already has an historical commercial interest in Coombe Abbey Hotel, as a landlord for the property, which is let on a long lease. This generates a significant annual rental for the Council. In addition, the Council also provided a 15-year commercial loan to CAPL in 2013, which the business has continued to make payments for both the principal amount borrowed and the interest.

CAPL operates as a going concern and has successfully grown the business over the last few years.

Following approval of the purchase by Council on 10th October officers and the current owner, Mr Gordon Bear, have continued negotiations on a fair price for the Council acquiring 100% of the shares in the business. These negotiations are within the delegations given by Full Council, and are on the basis of the City Council having continued exclusivity of purchase.

This paper provides an update on progress with the purchased negotiations and in line with the delegation approved by Council on 10 October, 2017, Councillor K Caan, Cabinet Member for Public Health and Sport has been invited to attend the meeting.

Recommendations:

The Cabinet Member for Jobs and Regeneration is recommended to:

- (1) Note the progress made to date in negotiating a final purchase price for Coombe Abbey Hotel Ltd.
- (2) Note that the purchase price is lower than the level delegated to officers in the Council report of 10th October 2017.
- (3) Note that interviews for an Operations Director for Coombe Abbey Hotel have now taken place and that a successful candidate is likely to be in post by March 2018.

List of Appendices included:

None.

Other useful background papers:

None.

Enquiries and requests to review the background papers should be directed to Andrew Walster, andrew.walster@coventry.gov.uk.

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Project CAP – update report

1. Context (or background)

- 1.1 Local Authorities are increasingly looking for strategies to drive commercial income through the acquisition of property and other investments. A report produced by Association for Public Service Excellence (APSE) and Chartered Institute of Public Finance Accountants (CIPFA) found that in 2016, 49 local authorities spent a total of £1.3billion on investment property assets, investing between £10m to £100m (Bricks-Mortar-Money, July 2017). CIPFA has issued a consultation on the Prudential Code to consider how the arrangements in place can be strengthened to ensure that commercial investments and associated risks are managed in an open and transparent way as part of a capital strategy that covers both capital and investment expenditure (Prudential Code Consultation, August 2017).
- 1.2 The Council already has a commercial interest in Coombe Abbey Hotel, through the freehold ownership of the land and buildings, which are let on a long lease to Coombe Abbey Park Limited (CAPL), the company that operates the hotel. This generates a significant annual rental to the Council. Coombe Abbey Country Park is entirely separate from CAPL and is owned and operated by the Council.
- 1.3 Coombe Abbey Country Park and Hotel are important cultural, leisure and tourist assets for the city. The Council's existing interests in CAPL results from work over the last 20 years to bring the building back into use and operate it as a unique hotel.
- 1.4 The Council refinanced the debt within CAPL in 2013, by way of a 15-year commercial loan on which the Council generates a margin on the interest rate charged to the business.
- 1.5 The hotel has continued to increase turnover and profit year on year, with a 64% increase in profits in 2016 compared to the previous year. The increase in revenues is partly due to increasing capacity for larger functions with the marquee on site, the introduction of afternoon teas and charging for car parking.
- 1.6 Since Council on the 10th October 17, officers have:
 - 1.6.1 Continued to work with existing hotel management team to recruit an Operational Director to run the hotel on behalf of the City Council. This professional search has produced a number of suitable candidates that are in the process of being interviewed.
 - 1.6.2 Continued to negotiate on the fair price for the purchase of CAPL. To date this has resulted in a further reduction to the price indicated in the private report considered by Council on 10th October 17.
 - 1.6.3 Worked to complete the suite of documents required for the purchase and transfer of CAPL from Gordon Bear to Coventry City Council.

2. Options considered and the recommended proposal

- 2.1 Officers have continued to negotiate on the proposals agreed by full council, namely that:
 - (1) Approve the use of its powers under the Section 12 of Local Government Act 2003 and Section 1 of the Localism Act 2011 to acquire the shares in the company as a commercial investment for the agreed value, subject to any adjustments detailed in the report.

- (2) Approve the addition of up to the agreed value (or other figure as agreed under delegated authority), to the capital programme.
- (3) Delegate authority to the Deputy Chief Executive Place, Director of Finance and Corporate Services and Legal Services Manager, in consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Public Health and Sport to agree detailed terms of the transaction with Coombe Abbey Park Ltd.
- (4) Delegate authority to the Deputy Chief Executive Place, Director of Finance and Corporate Services and Legal Services Manager, in consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Public Health and Sport to enter into the relevant legal agreements and associated documents necessary to complete the transaction.
- (5) Approve the implementation of the governance structure and associated terms of reference for the Shareholder Panel and Board of Directors, as detailed in section 2.15 of the report
- (6) Approve the appointment of the Leader, the Cabinet Member for Jobs and Regeneration and the Cabinet Member for Public Health and Sport onto the Shareholders Panel to represent the Council as sole shareholder of the Company.

2.2 Should a purchase of CAPL not be viable on the above terms then officers will present further options to Cabinet

3. Results of consultation undertaken

3.1 None

4. Timetable for implementing this decision

Both parties have agreed to conclude final negotiations as soon as possible, with an aim to complete the sale in a timely manner.

Comments from Director of Finance and Corporate Services

5.1 Financial implications

5.1.1 It is important to consider the proposed Council's investment in the company in the context of the Council's Treasury Management Strategy and Policy approved by Council as part of the Budget Setting Report in February 2017. The investment falls outside the scope of the financial counterparty limits set out in the Strategy but instead is covered by section 8 of the Strategy which refers to investments made for operational and policy reasons. Such investments should be assessed and reported on, on a case by case basis to include a full assessment of the risk, including credit risk, and how this will be managed. The view of the Director of Finance and Corporate Services is that the investment is consistent with Treasury Management Strategy and Policy.

5.1.2 The acquisition of shares is capital expenditure which has been incorporated into the capital programme. All future dividends would be due to the Council as sole shareholder. The most appropriate financing option has been determined by the Director of Finance and Corporate Services.

5.1.3 As with any commercial investment, there is no guarantee that the financial projections will be delivered, however based on previous performance the Company has been successful in generating year on year growth. The Council has undertaken independent financial and legal due diligence as part of the decision to acquire the shares. There are external factors that are outside of the Council's control which could impact on the financial performance of CAPL. The governance arrangements in place should be sufficient to monitor performance and to provide ongoing challenge to CAPL's management team on performance and the operation of the business. The appointment to the Operations Director post is one of the key success factors.

5.2 Legal implications

5.2.1 Under Section 12 of the Local Government Act 2003 the Council has a specific power to invest. The power states "a local authority may invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs". This provides the Council with a power to invest in Coombe Abbey Park Limited, for any purpose relevant to its functions (this function would have to be identified) or if the Council can show it is for the prudent management of its financial affairs. Under section 1 of the Localism Act 2011, the Council also has a power "to do anything that individuals generally may do" (the "General Power of Competence"). "Individual" means an individual with full capacity. The General Power of Competence gives the Council:

- i. power to do a thing anywhere in the United Kingdom or elsewhere,
- ii. power to do it for a commercial purpose or otherwise for a charge, or without charge, and
- iii. power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

5.2.2 Where the Council uses the General Power of Competence to do something for a commercial purpose, section 4 of the Localism Act 2011 requires that the Council must do so through a company (which has a wider definition than for the purposes of section 95 Local Government Act 2003).

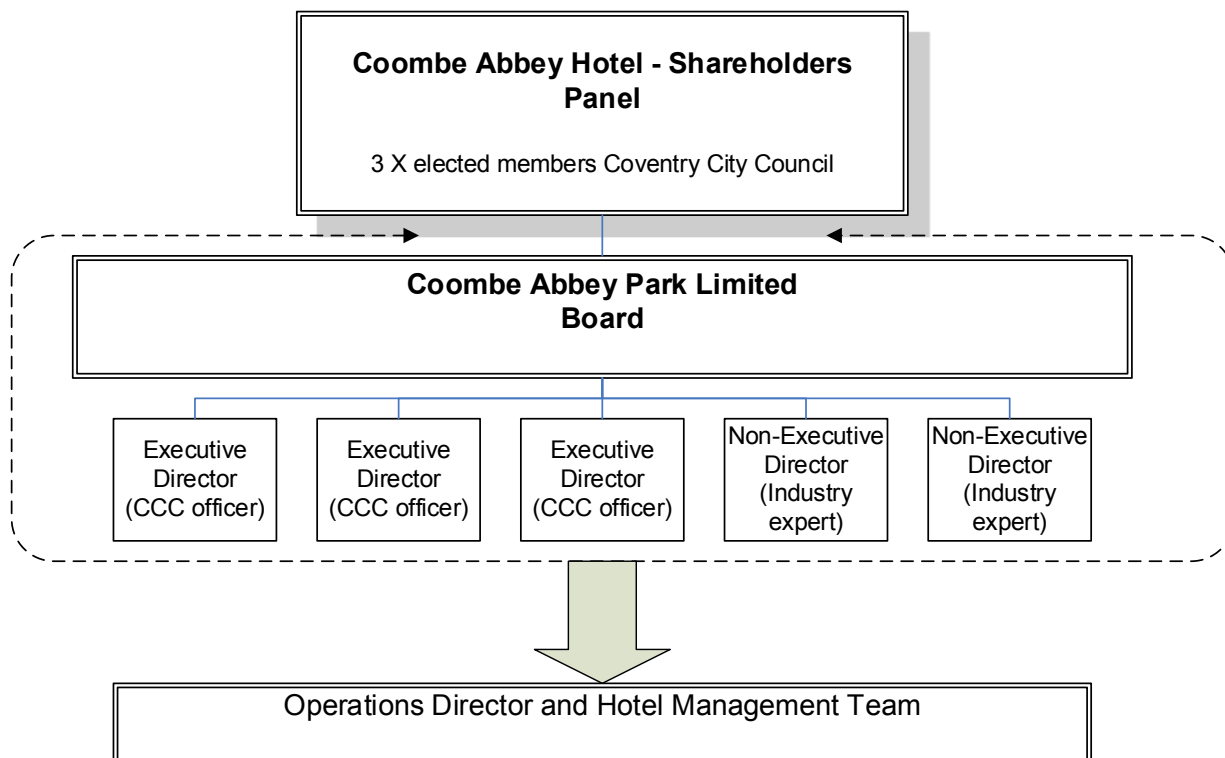
5.2.3 The requirement under section 4 of the Localism Act 2011 is very similar to the requirements of section 95 of the Local Government Act 2003 (the "trading power"). The Council will be compliant with the requirements of both the General Power of Competence and the trading power as any commercial purpose activity or trading will be done through Coombe Abbey Park Limited. This report serves as a business case for the proposed investment in the company and the proposed trading through that company following the share purchase.

5.2.4 The General Power of Competence is limited by any restrictions on any pre-existing powers of the Council. The General Power of Competence can be used in conjunction with existing powers, for example the section 95 trading power.

5.2.5 If the Council is considering providing any services directly to Coombe Abbey Park Limited, for example a contract to provide back office support such as payroll, it can use the "incidental power" under section 111 of the Local Government Act 1972, which enables it to "to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions" (its function in this case being the General Power of Competence).

5.3 Governance and Articles

- 5.3.1 The company's Articles have been redrafted to reflect that the Council as the sole shareholder. As soon as the Transaction is completed the Shareholders Panel will need to approve the articles.
- 5.3.2 Officers have continued to work on the establishment of the approved governance structure (figure 1 below).
- 5.3.3 Figure 1: Structure chart for the approved governance arrangements



5.4 Procurement and State Aid

- 5.4.1 The Council is not purchasing any services, goods or works as part of the transaction, and so the Public Contracts Regulations 2015 and the Council's contract procedure rules will not apply.
- 5.4.2 The Council is complying with EU State aid law as the transaction is being undertaken upon arms' length terms, meaning that no benefit is conferred on the vendor and there is no distortion to competition. It is important that Coombe Abbey Park Limited is to be treated as commercially at arm's length.

6 Other implications

No changes to the current staffing model are currently being proposed other than a senior management appointment to the Operations Director post. The Operations Director is a key appointment to ensure the effective operation of the business as a commercial investment at arm's length from the Council. The intention is that Mr Bear and his management team would continue in post and the business would continue to operate as usual until the Operations Director is in place.

6.2 How will this contribute to achievement of the Council's Plan?

This commercial investment should deliver a return that will support the Council to continue to provide services in line with the Council's core aims. As the Council would have control over the business and the surrounding parkland this should help to support Coventry being an attractive and enjoyable place to be.

6.3 How is risk being managed?

As this is an arm's length commercial investment, it is key that the governance structure in place allows the business to operate as a commercial entity. The management team in place will need to have appropriate skills and experience to be able to manage the day to day operations as well as any strategic decision approved by the Board of Directors and Shareholders Panel. The appointment of the Operations Director will be a key appointment. The existing management team will continue in post until the appointment is made. It is proposed that Mr Bear will also continue as Non-Executive Directors on the Board for a period of 18 months to ensure there is effective handover and oversight of the Management team and operations.

This investment decision has been based on investing capital to receive an ongoing revenue benefit. Whilst there is no guarantee that the financial projections will be delivered, based on previous performance the Company has been successful in generating year on year growth. There are some factors that are outside the control of the business and the Council, such as an economic downturn that could impact of the financial and operational performance. These will be managed through the proposed Governance structure should they arise in the future.

There is the potential for future growth in the Company through additional investment. A business case would be developed for such an investment decision where the revenue to be generated would need to be sufficient to cover the costs of implementation and operation and provide a suitable return.

6.4 What is the impact on the organisation?

No impact on the Council's resources other than officer time to support the implementation of the decision. Going forward this investment could lead to savings and synergies with the operation of Coombe Abbey Park, but this will be considered as part of a separate programme of work.

6.5 Equalities / EIA

No equality impact assessment has been carried out as the recommendations do not constitute a change in any Council policy or service.

6.6 Implications for (or impact on) the environment

No impact on the environment.

6.7 Implications for partner organisations?

No impact for partner organisations.

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