
A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it refers to the identity, financial and business affairs of an organisation

Cabinet
Council

2nd Oct 2018
16th Oct 2018

Name of Cabinet Member:

Cabinet Member for Strategic Finance – Cllr John Mutton

Directors Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

None

Title:

Coombe Abbey Park Ltd – Capital Financing and Country Park investment

Is this a key decision?

Yes – as the total facility is in excess of £1m.

Executive Summary:

In December 2017 the City Council purchased 100% of the shares in Coombe Abbey Park Ltd (CAPL), the operator of Coombe Abbey Hotel.

Following the purchase the City Council has explored greater joined up working between CAPL and the City Council. The three proposals from this work are:

1. How CAPL and the management of Coombe Abbey Country Park, which surrounds the hotel can be better partnered.
2. How CAPL raises funds for capital projects in the Hotel. Including the financing of the Hotel's on-going capital programme.

This report seeks approval to proceed with an investment into Coombe Abbey Country Park and CAPL on a commercial arms length basis.

Recommendations:

Cabinet is requested to:

- 1) Delegate authority to the Deputy Chief Executive (Place) to enter into a lease with Coombe Abbey Park Ltd to facilitate the building of a high wires assault course for Coventry

- 2) Delegate authority to the Deputy Chief Executive (Place) to negotiate and agree the terms of a lease with Coombe Abbey Park Ltd to facilitate the building of a high wires assault course for Coventry.
- 3) Delegate authority to the Deputy Chief Executive (Place) to enter into a lease and licence with Coombe Abbey Park Ltd on the existing catering space in Top Pool Lodge to establish a second café for Coombe Country Park and undertake refurbishment works up to the value of £20k to the property to bring up to lettable standard.
- 4) Deputy Chief Executive (Place) to negotiate and agree terms of the lease and licence with Coombe Abbey Park Ltd on the existing catering space in Top Pool Lodge to establish a second café for Coombe Country Park.
- 5) Recommend to Council that it:
 - a) Approves in principle the grant of a capital loan facility up to the sum of £1.95m for Coombe Abbey Park Ltd
 - b) Delegate authority to Deputy Chief Executive (Place) and the Director of Finance and Corporate Services (Section 151 Officer) or nominated representative, following consultation with the Cabinet Member for Strategic Finance and Resources and the City Solicitor, to undertake all necessary due diligence and to finalise the terms and details of the loan arrangement and to thereafter manage the loan facility. The authority under this recommendation shall include the power to negotiate and agree variations to the terms of the loan facility.
 - c) Approves the addition of £1.95m to the Councils approved capital programme for the purposes of a capital loan facility to Coombe Abbey Park Ltd, financed from capital receipts

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- 1) Approve in principle the grant of a capital loan facility up to the sum of £1.95m for Coombe Abbey Park Ltd
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- 3) Approve the addition of £1.95m to the Councils approved capital programme for the purposes of a capital loan facility to Coombe Abbey Park Ltd, financed from capital receipts

List of Appendices included:

None

Other useful background papers:

None

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?

Yes

Report title: Coombe Abbey Park Ltd – Capital Financing and Country Park investment

1. Context (or background)

- 1.1 Following City Council's purchase of Coombe Abbey Park Ltd (CAPL) the operator of Coombe Abbey Hotel (CAH) your officers have been reviewing a variety of different projects to increase partnering between CAPL and the wider City Council.
- 1.2 This report considers three proposals, and seeks approval to progress.
- 1.3 **Project 1 – Provision of a Capital Loan Facility to CAPL:**
- 1.4 Historical CAPL capital purchases have been funded from a mixture of revenue and finance leasing. For example, when the hotel replaced its main boiler plant in 2016 the company capitally leased these over a period of five years, avoiding the need to finance a large purchase from their revenue stream. Whilst the revenue stream in CAPL could withstand such a purchase it would have reduced the cash in the business that was available to distribute to shareholders at the year end.
- 1.5 Since the City Council purchased CAPL in December 2017, the budgeted capital programme has continued to be funded from revenue generated from the business. However, a number of these purchases would historically have been capitally leased to in order to maintain higher cash level in the business to enable a sustainable distribution to the shareholders.
- 1.6 Now that CAPL is 100% in the ownership of the City Council, there is an opportunity for the City Council to provide a capital loan facility to CAPL on a commercial basis rather than CAPL obtaining these facilities on the open market.
- 1.7 The City Council refinanced CAPL on 29th November 2013 with a loan which is repayable over 15 years ending in November 2028. CAPL continues to service this debt from its existing revenue streams under the City Council's ownership, and the securities from this loan remain in place for a further 10 years.
- 1.8 It is proposed that a maximum facility of £1.95.m is made available to CAPL over the next 10 years, this period is in line with the City Council's existing loan facilities to CAPL. The new £1.95 million facility will ensure that appropriate security is obtained in order to protect the Council.
- 1.9 Upon first use, a one off arrangement fee of £15k would be payable from CAPL to the City Council. Monies advanced to CAPL would be subject to interest rate based on commercial rates, and all drawdowns will repayable by the Term of the Loan (10 years).
- 1.10 **Project 2 –Enter into a lease to enable a high wire assault course to be built at CAPL:**
- 1.11 Coombe Country Park, whilst owned and operated by the City Council sits within the planning authority of Rugby Borough Council.
- 1.12 Within the Coventry boundary, the updating and establishment of play areas and parks is primarily funded from S106 contributions and grant monies obtained by the City Council and/or friends groups.

- 1.13 Whilst hugely popular with Coventry residents, no formal friends group exists for Coombe Country Park. Also S106 money raised in Coventry cannot be spent in Rugby Borough Council's area. Therefore, the funding of new facilities in Coombe Country Park has to come from a limited parks budget or through more innovative schemes. As a City Council we welcome opportunity for park development that returns a revenue to the city.
- 1.14 An opportunity has arisen for CAPL to build a high wire assault course and tree top experience in Coombe Country Park.
- 1.15 CAPL have been in dialogue with a supplier of tree top high wire assault courses. A provisional deal has now been reached where CAPL will enter into an agreement with the supplier to deliver a high wire facility in Coombe Abbey Country Park.
- 1.16 CAPL will pay a rent to the Council on the park land required for the development of the high wires assault course, such rent will comply with obligations of S123 LGA 1972 to achieve best consideration.

Project 3 – Enter into a lease with CAPL will on the existing catering space in Top Pool Lodge to establish a second café for Coombe Country Park and undertake de minimis works to the property before doing so.

- 1.17 The high wires course which is proposed above will result in an increase in numbers of people attending the Park, so an opportunity has arisen for CAPL to establish a second café for Coombe Country Park in order to cater for the additional demand.
- 1.18 CAPL will pay a rent to the Council for the lease and licence to establish a second café, such rent will comply with obligations of S123 LGA 1972 to achieve best consideration.
- 1.19 Landlord works are required in order to bring the building up to a lettable standard and the cost of this is estimated at approximately £20k, payable by the Council from existing Parks budgets. The Tenant will then be responsible and incur the costs for fit out as part of the tenant obligations.

2. Options considered and recommended proposal

- 2.1 Two options have been considered in reaching the recommendations above for each project.
- 2.2 **Project 1 – Provision of a Capital Loan facility to CAPL:**
- 2.3 **Option 1 (Not recommended)** – is to not provide a capital loan facility to CAPL. The City Council would then not benefit from the additional revenue stream.
- 2.4 **Option 2 (recommended)** – to provide a capital loan facility to CAPL. This will provide an additional revenue stream for the Council due to the interest repayments and the arrangement fee.
- 2.5 **Project 2 & 3 – Provision of a lease to CAPL for the high wire assault course and catering space:**
- 2.6 **Option 1 (Not recommended)** – is to not enter into lease agreements with CAPL to establish a high wires assault course and catering lease in Coombe Abbey Park. This option would see the potential loss of leisure and catering facilities for Coventry and surrounding area and the financial benefits that would accrue for CAPL, plus a loss of rental income to the Council from CAPL for the land leases.

- 2.7 **Option 2 (recommended)** – to enter into lease and financing agreements with CAPL to establish a high wires assault course and catering lease in Coombe Abbey Park. This option will see the development of potential leisure facility for Coventry and surrounding and provide a rental income to the City Council.

3. **Results of consultation undertaken**

Initial pre-application planning consultation has been undertaken by the hire wire assault course supplier with local residents, Rugby Borough Council, and Brinklow Parish Council on the establishment of a high wire course at Coombe Country Park.

No consultation has taken place on the establishment of capital loan facility for CAPL.

4. **Timetable for implementing this decision**

Planning determination is due in early October 2018. On positive determination, it is anticipated that construction works could commence in November 2018 with estimated completion during January 2019.

The opening of the Café at Top Pool would coincide with the opening of the high wires assault course.

The CAPL capital loan facility would be available from the 1st November 2018.

5. **Financial implications**

Proposal for a Capital Loan Facility for CAPL of £1.95m

The report proposes making available to CAPL, a capital loan facility to enable them to finance their capital expenditure over a period up to the life of the asset, rather than them seeking finance from the open money market or financing capital spend from revenue, and adversely impacting on the level and/or sustainability of dividends payable to the Council as shareholder.

The City Council refinanced CAPL on 29th November 2013 which is repayable over 15 years ending in November 2028. CAPL continues to service this debt from its existing revenue streams under the City Council's ownership, and the securities from this loan remain in place for a further 10 years.

It is being proposed that the facility would have a ceiling of £1.95m and be made available on commercial terms to CAPL over the next 10 years in line with the City Council's existing loan facilities to CAPL.

After a one off arrangement fee of £15k will be payable to the City Council, monies would be advanced to CAPL and all drawdowns would be repayable within the life of the asset financed, and no later than the Term of the Loan facility (10 years). The interest rate for the overarching facility will be on a commercial basis subject to further due diligence ensuring compliance with State Aid.

The facility provides financial planning certainty to CAPL rather than taking out individual loans against each capital purchase of assets. In addition this provides a financial benefit and revenue return to the Council when compared to current returns achievable on the money market.

Arrangements will be put in place to confirm the appropriateness of each proposed draw down from the facility including the robustness of any business case based investment. Should the Council not be satisfied (acting reasonably), it will have the right to refuse advances to CAPL from the capital loan facility.

Should the proposals proceed, then the income from the lease for the land and café lease would also be a direct benefit for the City Council

As the loan facility is proposed for capital financing purposes, the approval of such a facility will require the additional of £1.95m to the capital programme. As annual repayment of advances would be treated as capital receipts, it is proposed that the initial funding is also from capital receipts

Funding for the £20k improvements to the Top Pool lodge will be identified from existing Parks revenue resources

6. Legal implications

6.1 Powers

6.1.1. 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.

State Aid

6.1.2. Article 107 (1) of the Treaty on the Functioning of the European Union ("**Treaty**") states "*...any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"

6.1.3. The Treaty does not define in any more detail what constitutes state aid. However, the term has been interpreted to include the provision of grants, loans on favourable terms, the transfer of assets at less than the market rate, and tax advantages. Not all state aid is unlawful, and it is possible to justify some types of financial assistance under pre - approved mechanisms.

6.1.4. It is possible that a third party (and/or European Commission) who has not received state aid could bring legal proceedings in the UK courts for damages. Such a claim could, for example, be brought by a competitor who feels it has suffered loss because it has not been given aid.

6.1.5. A recipient can be ordered to repay all aid received over a ten-year period if the European Commission finds it has been provided unlawfully. It is no defence that repayment may force the recipient into insolvency.

6.1.6. Market Economy Investor Principle ("MEIP") can provide an appropriate mechanism to potentially justify aid to any third party following the Council's loan. A Loan does

not automatically constitute state aid if the Council carries out prior due diligence that demonstrates that investments are likely to generate sufficiently high returns and that a private prudent investor would have made the same investment. i.e the Council can invest in the proposal in return for an appropriate commercial return which would satisfy the expectations of a private prudent investor.

6.1.7. The risk of state aid is not dependent upon whether the financial return is actually ever achieved by the Council, as whether state aid exists or not is assessed at the time of the funding advanced, but there must be a realistic prospect of the financial return being achieved by the Council.

6.1.8. The Council is complying with EU State aid law as the transaction is being undertaken upon arms' length terms and will comply with the MEIP principle, 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.

Procurement

6.1.9. 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.

Best Consideration

6.1.10. The Council has the general power under section 123(1) of the Local Government Act 1972 to dispose of land and property in any manner it wishes. The Secretary of State's consent is not required provided the disposal is for the best consideration that can reasonably be obtained. The leases entered into will discharge this obligation.

7. Other implications

7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The provision of a high wires assault course at Coombe Country Park will increase the leisure offer to both Coventry residents and tourists visiting the City. As well as providing a further opportunity for resident to take part in fun physical exercise.

The provision of a capital loan facility for CAPL will provide an additional revenue stream to the City Council.

7.2 How is risk being managed?

The risk of providing the capital loan scheme for CAPL will be managed through the City Council's treasury management process. Appropriate security will be obtained as part of the legal arrangements put in place for the facility.

7.3 What is the impact on the organisation?

None

7.4 Equalities / EIA

The report recommendations do not affect the Council's policy, provision of any service or its statutory functions. It is not required to undertake an Equality Impact Assessment.

7.5 Implications for (or impact on) the environment

None

7.6 Implications for partner organisations?

None

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