

Agenda Item No:

Report author: Chris Coulson

Tel: 2474459

**Report of :** The Director of City Development

**Report to:** Deputy Chief Executive

**Date: :** 22nd May 2015

**Subject::** Proposed Authority to Spend for the Proposed Purchase of a Fifty Percent Interest in the Merrion House Limited Liability Partnership

**Capital Scheme Number:** 16256/MER/PFP

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	City & Hunslet	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:	10.4 (3)	
Appendix number:	1	

## Summary of main issues

1. The Council's Executive Board at its meeting in July 2012 approved the main Changing the Workplace (CtW) business case. The business case was based on the Council's plans to introduce new ways of working to over 3,500 staff in the city centre. A corresponding reduction in office accommodation by circa 35% was predicted, with the number of office buildings occupied by Council staff in the city centre reducing from 17 to 4 buildings. The 2012 business case indicated that there were potentially overall financial savings of around £15m in undertaking the proposed programme of works. A refurbished Merrion House and new build office extension will form the Council's main city centre workplace.
2. Executive Board also approved the provisionally agreed Heads of Terms with Town Centre Securities (TCS) or their wholly owned subsidiary to enable the Council to acquire a fifty percent (50%) ownership of the New Merrion House development (incorporating the new build extension) and, gave authority to spend £72.601m on the overall CtW Phase 1 programme, subject to the approval of the Director of Resources of individual business cases for delivering the phased programme benefits.

- 3 This report seeks the approval of the Deputy Chief Executive for the Authority to Spend for the Council to acquire a 50% interest in the Merrion House Limited Liability Partnership (LLP), the company that will own Merrion House and, the adjacent site upon which the proposed new build extension is to be built at the date the first payment is made.

## **Recommendation**

4. The Deputy Chief Executive is requested to approve the Authority to Spend as detailed in the confidential appendix to this report for the City Council to acquire fifty percent (50%) ownership of the Merrion House LLP.
- 

## **1 Purpose of this report**

- 1.1 The purpose of the report is to seek the Deputy Chief Executive's approval to the proposed expenditure detailed in the confidential appendix to the report to acquire fifty percent (50%) ownership of the Merrion House LLP (the LLP).

## **2 Background information**

- 2.1 The City Council's Executive Board at its meeting in July 2012 approved the provisionally agreed Heads of Terms with Town Centre Securities Plc (TCS) or their wholly owned subsidiary to enter into an Agreement for Lease and Lease for the Council's occupancy of a refurbished Merrion House and new build extension.
- 2.2 The Agreement for Lease and all supporting documentation between the Council and the LLP (a new company established by the TCS Group which will be the Council's landlord under the agreement concluded) was completed on 17 October 2013.
- 2.3 Executive Board at its meeting in July 2012 also approved the Heads of Terms provisionally agreed with TCS, whereby the City Council will acquire a 50% share in the ownership of the LLP which will own Merrion House and the adjacent sunken courtyard and, subsequently the completed New Merrion House development. The terms approved require the Council to make an initial payment upfront, representing 50% of the current value of the property and, at the time such payment is made, the rent payable by the Council to the LLP will be reduced by 50%. During the construction period, the Council will make further phased payments to the LLP, until the Council's ownership represents 50% of the value of the refurbished Merrion House and new build extension.

## **3 Main issues**

### **3.1 Design Proposals and Full Scheme Description.**

- 3.1.1 The Agreement concluded between the City Council and TCS allows the Council to acquire a 50% interest in the LLP on the date that the Council vacates Merrion House and hands the property back to TCS. At the date of report preparation, it is envisaged that the Agreement for Lease completed with the LLP will be unconditional by late May/early June 2015. Thereafter, during the period of the refurbishment works, the Council will make phased payments to the LLP until the

Council's ownership represents 50% of the value of the new development. Details of the up-front payment and subsequent phased payments to the LLP are detailed in Appendix 1 of the report the details of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).

- 3.1.2 Following the up-front payment to the LLP, the City Council shall have two designated representatives at meetings of the LLP. The Council's designated representatives to the LLP are the Deputy Chief Executive and the Director of City Development. The Deputy Chief Executive should note that once the Council has acquired an interest in the LLP, no business can be conducted unless a Council representative is present. The Chair of the LLP will rotate on a quarterly basis between a representative from the Council and TCS. The Chair of the LLP shall not have a casting vote.

## **3.2 Programme**

- 3.2.1 The Deputy Chief Executive should note that at the date of report preparation, work under the main contract is currently scheduled to start on site in late October 2015, however, a programme of enabling/early highway works could commence in June/July 2015. Assuming works progress on site as scheduled, it is envisaged that the Council will be able to commence the balance of its fit out works in late summer 2017, to allow re-occupancy of the building by Council staff to commence on a phased basis shortly thereafter.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Executive Members for Transport and the Economy and Neighbourhoods, Planning and Personnel have been consulted and are supportive of the recommendation contained in the report.
- 4.1.2 The Director of City Development has been consulted and is supportive of the recommendation contained in the report.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

### **4.3 Council Policies and City Priorities**

- 4.3.1 This is part of the current Enterprising and Efficient agenda and underpins delivery of the wider Council/City outcomes.
- 4.3.2 CtW Phase 1 significantly links with the Asset Rationalisation agenda.
- 4.3.3 The proposal to refurbish Merrion House will also underpin the regeneration of this area of the city centre, complementing the public realm improvements undertaken as part of the Arena development and the proposals being progressed by TCS to improve the wider Merrion Centre.

#### **4.4 Resources and value for money**

- 4.4.1 The resource implications of the Council acquiring a 50% interest in the LLP are detailed in Appendix 1 of the report which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3).
- 4.4.2 The proposal contained in this report delivers best value for money in both financial and non-financial terms by providing the most cost effective solution to the Council's city centre office requirements and liabilities and, creates a platform to deliver further efficiencies across facilities management, business support and other areas of the Council's business.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Appendix 1 of the report is Exempt/Confidential under Access to Information Procedure Rules 10.4(3). The public interest in maintaining the exemption in relation to the confidential appendix outweighs the public interest in disclosing the information by reason of the fact that it contains information and financial details which, if disclosed, would adversely affect the business of the Council and would also adversely affect the business affairs of TCS.
- 4.5.2 Counsel's advice has been taken in respect of the risk of a challenge under the Public Contracts Regulations 2006 and, in relation to the Council's powers to acquire a share in and to participate in the proposed LLP. A summary of Counsel's advice and the advice of the Council's City Solicitor as presented to members of the Executive Board at its meeting in July 2012 is as follows.
- 4.5.3 Under the Agreement for Lease and Lease, there is a contract for pecuniary interest, and the main purpose of the contractual arrangements is to ensure that the Council can best meet its accommodation requirements, and therefore, there is a 'public works contract' for the purpose of the Regulations.
- 4.5.4 In relation to whether the Council can use the negotiated procedure without prior publication of a contract notice, Counsel has confirmed that it is 'reasonably arguable' that the Council can rely on an exemption in the Regulations which applies where 'for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator'. The co-ownership LLP proposal will not affect this position. The fact that the Council has or may come to have a share in the entity which owns the freehold (or a long lease) of Merrion House, will not make any difference to the fact that the Council can only acquire the enhanced/enlarged accommodation by an agreement with the reversioner to the Underlease. In this respect, it is to be noted that TCS has confirmed they will not grant the Council the right to carry out the redevelopment itself, and accordingly their landlord's rights make it absolutely essential for the Council to contract with them and for them to procure the redevelopment works.
- 4.5.5 Under Section 1 of the Localism Act 2011, local authorities have a new general power of competence, and this means the Council has power to do anything that individuals generally may do, and the Council may do it in any way whatever, including for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. The new general power does not enable a local authority to do anything which the authority is unable to do by virtue of a pre-commencement limitation, which is a prohibition, restriction, or other limitation expressly imposed by some other statutory provision contained in the Localism Act

itself, or in earlier legislation. Likewise, if the general power is overlapped by an earlier power which is subject to restrictions, those restrictions also apply to the exercise of the general power.

- 4.5.5 The new general power does not enable a local authority to do anything which the authority is unable to do by virtue of a post-commencement limitation, which is a prohibition, restriction, or other limitation expressly imposed by later legislation, and which applies to the general power.
- 4.5.6 The Localism Act places certain limits on exercising the new general power for a commercial purpose. It is considered that the new general power will need to be exercised in accordance with public law principles.
- 4.5.7 Both the acquisition of a share in the LLP and the Council's on-going participation in the LLP will be covered by the new general power. There is no pre-commencement limitation or post-commencement limitation which would limit the exercise of the general power in this case. Likewise, there is no overlapping power which is subject to restrictions in this case. It follows that the Council has the power to borrow in order to fund the acquisition of a share in the LLP under section 1 of the Local Government Act 2003, as this is 'purpose relevant to' its functions under section 1 of the Localism Act and/or for the prudent management of its financial affairs.
- 4.5.8 The Council's purpose for acquiring a share in the LLP and for participating in the LLP was presented to Executive Board in July 2012. Whilst it is possible that a 'profit' or surplus may be created by a disposal of the Council's share in the LLP at a future date, the creation of such a profit or surplus is not the Council's purpose. Therefore the Council does not have a 'commercial purpose' in entering into these arrangements and is not required to exercise these powers through a company under section 4 of the Localism Act. As with any power, the general power must be exercised reasonably, and in accordance with the Council's fiduciary duty to its Council taxpayers.
- 4.5.9 In terms of a procurement challenge, the co-ownership proposal whereby the Council acquires a 50% interest in the LLP at Practical Completion of the works is unlikely to carry a risk that the LLP will be regarded as a body governed by public law which is obliged to let contracts in accordance with the Regulations, providing that the Building Contract for the redevelopment are let by TCS before the creation of the LLP and the vesting of Merrion House in it. However, should the proposal change to the Council acquiring an interest prior to the Building Contracts being let, then the risk that the LLP will be regarded as a body governed by public law which ought to let contracts and, any contracts the council may enter into with it, in accordance with the Regulations has been mitigated, as the LLP has procured the building contractor for the proposed works via an OJEU competitive procurement process.
- 4.5.10 The Deputy Chief Executive should note that the risks outlined above have been mitigated by the combination of an issue of a Voluntary Transparency Notice and also by an agreement with TCS that the LLP will comply with the Regulations in terms of appointing a contractor to undertake the refurbishment and new build works, as it is intended that the Council will acquire an interest in the LLP before the actual building contract for the proposed works is let.

## **4.6 Risk Management**

- 4.6.1 A risk register has been prepared for the project which will continually be reviewed during the lifetime of the project and, the key risks will be reviewed at meetings of the Business Improvement Property Sub Board.

## **5 Conclusion**

- 5.1 The CtW Programme is a key part of the Council's drive to improve services and deliver savings through the 'How to Work' agenda. The proposed refurbishment of Merrion House and the new build extension and the Council's acquisition of a 50% interest in the LLP which will own the completed development will contribute significantly to the overall financial cost benefit to the Council in the order of £15.3m over the 25 years of the lease term of the completed development, against the Council undertaking the 'do nothing' option as advised to Executive Board in July 2012.

## **6 Recommendation**

- 6.1 The Deputy Chief Executive is requested to:-
- (i) Approve the Authority to Spend as detailed in the confidential appendix to this report for the City Council to acquire fifty percent (50%) ownership of the Merrion House Limited Liability Partnership.

## **7 Background documents<sup>1</sup>**

- 7.1 None

---

<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.