



LATE REPORTS, URGENT BUSINESS and SUPPLEMENTARY INFORMATION

Cabinet

Tuesday, 3 July 2012

The following report was received too late to be included on the main agenda for this meeting and was marked 'to follow'. It is now enclosed, as follows:

Agenda Item Number	Page	Title	Reason for Late Report
13	1 - 9	STOREY CREATIVE INDUSTRIES CENTRE	Urgent Item

CABINET

Storey Creative Industries Centre

Report of Chief Executive

PURPOSE OF REPORT			
<p>To provide a publicly available update on the Storey Creative Industries Centre (SCIC) Ltd's current financial position and to determine the way forward regarding the Council's involvement in the Centre. An exempt version of this report that includes commercially sensitive information has also been produced to support Cabinet's decision-making.</p>			
Key Decision	X	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	July 2012		
This report is public.			

OFFICER RECOMMENDATIONS

- (1) That Cabinet notes that SCIC Ltd is in default of the loan agreement with the City Council and further notes the actions taken in view of that default.
- (2) That Cabinet considers the statement put forward by the SCIC Board.
- (3) That Cabinet considers the two options regarding the way forward for the Storey building and determines its preference.
- (4) That the Chief Executive takes any actions necessary to progress the preferred way forward, within the financial framework as set out, and reports back on actions taken and the details of proposed future arrangements for consideration by Cabinet.

1 INTRODUCTION

- 1.1 Back in December 2011 Cabinet approved a request for financial assistance from SCIC, by way of a loan totalling £90K to be paid back over a three year period.
- 1.2 As context, in September 2008 the City Council approved the provision of revenue support to the company totalling £40,600 in 2008/09, £69,700 in 2009/10 and £28,300 in 2010/11. This was in recognition that it would be hard for the company to break-even over that period but its business plan indicated that it would move into surplus by its fourth year of operation.
- 1.3 It is clear that this has not been the case, hence the company's more recent request for a loan. In granting that request, as well as considering SCIC's reported

trading position and prospects, Cabinet took account of various other factors including:

- potential VAT liabilities arising for the Council;
- policy aims regarding creative industries and the future of the building, including impact on tenants.

- 1.4 There was no straight forward solution and in approving the loan, Cabinet agreed a number of other actions to help manage its exposure.
- 1.5 Unfortunately the situation has recently worsened and the Council now needs to take further action, options for which are set out later. This report has been prepared based on information available up to 28 June. If anything material occurs after then, this will be reported in.

2 **SCIC: CURRENT FINANCIAL POSITION AND ACTIONS TAKEN SO FAR**

- 2.1 The loan of £90K was advanced on 03 February 2012. The loan agreement is attached at **Appendix A** and it includes various terms and conditions regarding the SCIC's financial affairs.
- 2.2 The following points summarise events since that time:
- a. City Council staff have monitored SCIC on meeting the loan conditions. This has not been straightforward.
 - b. Further to the Committee meeting held on 24 April, at which it became clear that the loan conditions had not been met, the Council's Head of Financial Services submitted an item of urgent business to the Board meeting on 25 April.
 - c. The company responded on 04 May.
 - d. Cabinet Members were updated and a briefing was held on 14 May. Subsequent to this further meetings took place between Officers and SCIC Board Members to review the company's response and explore options on the way forward.
 - e. The company's draft management accounts for last year and the current year have been received, with further information pending.. Various measures are being undertaken to gain more information as well as provide service support to the company in the interim. Much of this work is to demonstrate due diligence.
 - f. A report went to the company's Finance Committee held on 21 June. A joint statement has been produced for all tenants, emphasising the need to pay their current rent and service charges.
 - g. The Company has submitted its own statement regarding the way forward.
 - h. The Council has now exercised its option to tax the building (for VAT purposes). This avoids the cost pressures reported back in December, should the Council manage the operation in future.

- i. Legal aspects associated with the company and the building's future are also being appraised.

2.3 Many actions have been taken on the basis that the Council may wish to continue to use the Storey building as a creative industries centre. It is accepted that there is risk in this approach but the alternative would have had direct implications and risks in itself. The most important task now is to gain a clear direction on the way forward.

3 OPTIONS FOR THE WAY FORWARD

3.1 The way forward therefore depends on whether the Council wishes to provide a creative industries centre or whether it wishes to pursue an alternative future for the building.

3.2 In terms of the Council's Corporate Plan, there is nothing specific regarding the continuation of a creative industries centre although having a successful operation could contribute to:

- maximising the district's cultural offer
- increasing participation in arts, culture and entertainment events.

3.3 The Council has committed to working with the Duchy to consider options for the long term use of Lancaster Castle. The Storey building occupies a prominent position and in future there may be other potential avenues to be explored regarding its use.

3.4 The Council still has service level agreements in place with Litfest and the Storey Gallery but these place no obligations on the Council in connection with the Storey building itself.

3.5 Options for consideration are therefore as follows:

3.6 Option1

Withdraw support for the Storey being used as a creative industries centre, and request a report back on all future options for the building.

Advantages	Disadvantages	Risks
<p>Avoids the need to set up management arrangements and other work involved, as well as the risks attached in taking on the running of the facility.</p> <p>Allows consideration and development of alternative uses for the building in future. Such options and any opportunities may be influenced by the future</p>	<p>Loss of creative industries centre and any spin off benefits for the local economy or community.</p> <p>Major disruptions for existing tenants, including VIC potentially.</p> <p>Likely short to medium term operational implications and difficulties subject to reaction of current tenancy base,</p>	<p>At a strategic level, there is a risk that an acceptable future alternative use (or disposal) of the building could not be identified or secured and this would exacerbate the various substantial financial, reputational and operational risks that exist whichever option is chosen.</p>

<p>plans for Lancaster Castle.</p>	<p>until such time the council is able to gain vacant possession.</p> <p>No clear alternative use of building at present. It would be empty (or virtually so) for a period at least.</p> <p>Involves formal legal action, which could be protracted and would tie up staff resources, as would development of alternatives for the building. This would have adverse impact on other workloads and priorities.</p>	
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3.7 **Option 2**

Continue to support the Storey being used as a creative industries centre but under the Council’s direct management and control, authorising the Chief Executive to take actions as necessary, prior to reporting back to Cabinet.

Advantages	Disadvantages	Risks
<p>Would allow creative industries centre to continue, with spin off economic and community benefits.</p> <p>Allows tenants to remain (subject to satisfactory lease terms being in force).</p> <p>Secures a medium term use for the building but still provides opportunity for review, in due course.</p>	<p>Major work and risks involved in setting up management arrangements and in taking on the running of the facility – this should not be underestimated and it would have an adverse impact on other tasks and council priorities.</p>	<p>Greater exposure in terms of managing the property, HR and financial risks attached to taking on the running of the facility.</p> <p>Stakeholder relationships may break down, particularly with the Company and with staff / tenants; this aspect may have greater adverse reputational impact on the Council.</p> <p>Still the risk that the operation proves financially unviable.</p>

4 DETAILS OF CONSULTATION

- 4.1 Meetings with the Board have been held, as referred to above.
- 4.2 The main issue is whether Cabinet wishes to put in place arrangements whereby it, or its representatives, can hold the Board to account and/or consult further on the Board’s statement regarding the future.
- 4.3 Given that the SCIC matter is on Budget and Performance’s Work Programme and will be on Audit Committee’s agenda, Cabinet is requested to indicate also whether it would support a combined approach being taken, if this could be agreed.

5 OFFICER PREFERRED OPTION (AND COMMENTS)

5.1 On the basis that the Council still wishes to provide a base for creative industries and it accepts the risks attached, then Option 2 is the preferred option.

6 CONCLUSION

6.1 The current situation exposes the Council to financial and other risks, and requiring significant staff time to help manage the current position. The way forward depends on whether Cabinet considers the creative industries centre to be worth continuing, or whether it wishes to end the operation and determine another future for the building, accepting the risks attached to either course of action.

RELATIONSHIP TO POLICY FRAMEWORK

The main linkages to the Corporate Plan are set out in the body of the report.

**CONCLUSION OF IMPACT ASSESSMENT
(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

There is no major impact on these matters, irrespective of which option Cabinet chooses.

LEGAL IMPLICATIONS

The Council (as Landlord of the building) apart from its legal obligations under provisions of the lease has no other relationship with the Company other than as a creditor in respect of the loan agreement mentioned in the body of the report.

If either option is chosen it would require further consideration of the associated legal procedures.

In general terms there is no legal requirement to intervene other than to protect its interest as Landlord.

FINANCIAL IMPLICATIONS

As outlined in the report, as far as is possible at this stage.

OTHER RESOURCE IMPLICATIONS

Human Resources:

Human resource matters are exempt.

Information Services/ Property/ Open Spaces:

As outlined in the report, as far as is possible at this stage.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has drafted this report on behalf of the Chief Executive and her comments are therefore incorporated.

DEPUTY MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has no comments to add at this stage, but it is essential that all legal matters are fully considered in determining any subsequent actions to be taken

under the proposed delegated arrangements, in support of Cabinet's preferred option.

BACKGROUND PAPERS

Background papers are exempt from publication, by virtue of paragraph 3 of Schedule 12a of the Local Government Act 1972.

Contact Officer: Nadine Muschamp

Telephone: 01524 582117

E-mail: nmuschamp@lancaster.gov.uk

THIS AGREEMENT is made the 2nd day of February 2012

BETWEEN

LANCASTER CITY COUNCIL ("the Council") of Town Hall, Dalton Square, Lancaster LA1 1PJ
and

STOREY CREATIVE INDUSTRIES CENTRE ("the Borrower") whose registered office is Meeting
House Lane, Lancaster, Lancashire, LA1 1TH

WHEREAS:-

- 1) The Borrower has requested the Council to lend to it the sum of Ninety Thousand Pounds (£90,000.00) ("the Principal Sum") in order for the Borrower to meet existing liabilities as agreed between the Council and the Borrower. The Council has agreed to pay the Principal Sum in one instalment.
- 2) The Borrower shall repay the Principal Sum together with interest in the manner prescribed in this Agreement.

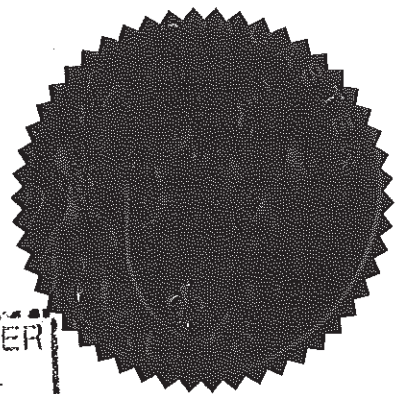
NOW IT IS AGREED as follows:-

1. In consideration of the amount of the Principal Sum loaned to the Borrower by the Council (the receipt of which the Borrower acknowledges) the Borrower covenants with the Council to repay to the Council such amounts with interest as provided for in Appendix 1 to this Agreement.
2. The Council's obligation to loan the Principal Sum to the Borrower is conditional on the Council receiving satisfactory evidence of specific liabilities (for example invoices from creditors).
3. The Council requires evidence that the specific liabilities to be covered from the Principal Sum have been settled with the specified creditors (for example receipts from creditors and/or the Borrower's bank statements showing payments).
4. Any evidence as required by clause 3 should be presented to the Council's Head of Financial Services, or her nominated representative, within one month of the loan being released to the Borrower.
5. The Borrower acknowledges the current outstanding debt to the Council of £38,036.79 at Appendix 2 to this agreement. £12,900 of this debt will form part of the Principal Sum and will accrue interest and be subject to the repayment plan at Appendix 1.
6. The Principal Sum will be repayable over a maximum of three years from the date of the first repayment made under this Agreement.
7. In addition, the Borrower will also repay the balance of outstanding debt owed to the Council totalling £25,136.79, (i.e. £38,036.79 less £12,900) over the period in clause 6 above in accordance with the repayment plan in Appendix 1.
8. Interest is to be charged at 10% per annum on both the Principal Sum and outstanding debt with repayment on an annuity basis.
9. The Borrower will duly repay to the Council the monthly sums (covering both the Principal Sum and the outstanding debt owed to the Council together with all interest) as outlined in Appendix 1 to this Agreement.
10. Repayments by the Borrower as outlined in Appendix 1 are to commence on the 16th of April 2012 and equal instalments will be payable on the 15th of each month thereafter (or the next business day if the 15th falls on a non-business day).

- 11. Repayments will be taken by direct debit in accordance with the mandate at Appendix 3 to this Agreement, with cleared funds to be in the Council's bank account on the dates specified in clause 10.
- 12. The Borrower will co-operate fully with the monitoring and financial management arrangements in Appendix 4 to this agreement.
- 13. Any failure to meet the above terms and conditions, (including for the avoidance of doubt clauses 3 and 4 above) will be classed as a default. Immediately following a default the Principal Sum and the amount referred to in clause 7 above will become payable in full, including any interest already accrued. The amount in default will be subject to a penalty rate of interest until full payment is made. This will be charged at 15% per annum plus the prevailing Bank of England base rate.
- 14. If the Borrower at any time during the period of this Agreement pays to the Council the whole of the Principal Sum and the outstanding debt owed to the Council together with interest thereon as herein provided up to and including the date of payment the Council will at the request of the Borrower duly discharge this Agreement.
- 15. The Borrower acknowledges that this Agreement and related financial transactions will be available for public inspection and scrutiny in accordance with the Council's accounting and public reporting requirements.
- 16. This Agreement shall not be capable of assignment by either party without the consent of the other party.
- 17. No person who is not a party to this Agreement shall have any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 18. Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the (reasonable) control of the parties or either of them renders the performance of this Agreement impossible.
- 19. This Agreement shall be governed by the law of England and Wales.

EXECUTED AS A DEED by affixing
 THE COMMON SEAL of the
 LANCASTER CITY COUNCIL (the Council)
 in the presence of

Signature *[Handwritten Signature]*
 Position Deputy Chief Executive



SEAL REGISTER
 No: 22827

EXECUTED AS A DEED by ~~affixing~~ *[Handwritten Signature]*
~~THE COMMON SEAL of the~~
 STOREY CREATIVE INDUSTRIES CENTRE LTD (the Borrower)
 acting by Jacqueline Greaves
 in the presence of

Signature of Director *[Handwritten Signature]*
 Signature of Witness *[Handwritten Signature]*
 Position *[Handwritten Signature]*
 Name of Witness TOM CLARK
 Address of Witness WOODSIDE PARK WOODHURST NR LANCASTER
 Occupation of Witness CHIEF EXECUTIVE / ACCOUNTANT

Lancaster City Council

Storey Loan repayment schedule

Year	Month	Opening principal balance	Total interest	Total split as:		Total principal amounts	Total split as:		Total monthly payment	Payment to be collected by direct debit on (or next business day)
				Interest (Principal Sum)	Interest (Outstanding Debt)		Repayment (Principal Sum)	Repayment (Outstanding debt)		
2012	April	116,426.57	970.22	758.40	211.82	2,786.54	2,178.18	608.36	£3,756.76	15/04/2012
2012	May	113,640.04	947.00	740.25	206.75	2,809.76	2,196.33	613.43	£3,756.76	15/05/2012
2012	June	110,830.28	923.59	721.95	201.64	2,833.17	2,214.63	618.54	£3,756.76	15/06/2012
2012	July	107,997.11	899.98	703.49	196.48	2,856.78	2,233.09	623.70	£3,756.76	15/07/2012
2012	August	105,140.32	876.17	684.88	191.29	2,880.59	2,251.70	628.89	£3,756.76	15/08/2012
2012	September	102,259.74	852.16	666.12	186.05	2,904.59	2,270.46	634.13	£3,756.76	15/09/2012
2012	October	99,355.14	827.96	647.20	180.76	2,928.80	2,289.38	639.42	£3,756.76	15/10/2012
2012	November	96,426.34	803.55	628.12	175.43	2,953.21	2,308.46	644.75	£3,756.76	15/11/2012
2012	December	93,473.14	778.94	608.88	170.06	2,977.82	2,327.70	650.12	£3,756.76	15/12/2012
2012	January	90,495.32	754.13	589.49	164.64	3,002.63	2,347.09	655.54	£3,756.76	15/01/2013
2012	February	87,492.69	729.11	569.93	159.18	3,027.65	2,366.65	661.00	£3,756.76	15/02/2013
2013	March	84,465.04	703.88	550.20	153.67	3,052.88	2,386.37	666.51	£3,756.76	15/03/2013
2013	April	81,412.16	678.43	530.32	148.12	3,078.32	2,406.26	672.06	£3,756.76	15/04/2013
2013	May	78,333.83	652.78	510.27	142.52	3,103.98	2,426.31	677.66	£3,756.76	15/05/2013
2013	June	75,229.86	626.92	490.05	136.87	3,129.84	2,446.53	683.31	£3,756.76	15/06/2013
2013	July	72,100.02	600.83	469.66	131.17	3,155.92	2,466.92	689.00	£3,756.76	15/07/2013
2013	August	68,944.09	574.53	449.10	125.43	3,182.22	2,487.48	694.75	£3,756.76	15/08/2013
2013	September	65,761.87	548.02	428.37	119.64	3,208.74	2,508.21	700.54	£3,756.76	15/09/2013
2013	October	62,553.13	521.28	407.47	113.81	3,235.48	2,529.11	706.37	£3,756.76	15/10/2013
2013	November	59,317.64	494.31	386.39	107.92	3,262.44	2,550.18	712.26	£3,756.76	15/11/2013
2013	December	56,055.20	467.13	365.14	101.98	3,289.63	2,571.44	718.20	£3,756.76	15/12/2013
2013	January	52,765.57	439.71	343.71	96.00	3,317.04	2,592.86	724.18	£3,756.76	15/01/2014
2013	February	49,448.52	412.07	322.11	89.96	3,344.69	2,614.47	730.22	£3,756.76	15/02/2014
2014	March	46,103.84	384.20	300.32	83.88	3,372.56	2,636.26	736.30	£3,756.76	15/03/2014
2014	April	42,731.28	356.09	278.35	77.74	3,400.66	2,658.23	742.44	£3,756.76	15/04/2014
2014	May	39,330.61	327.76	256.20	71.56	3,429.00	2,680.38	748.62	£3,756.76	15/05/2014
2014	June	35,901.61	299.18	233.86	65.32	3,457.58	2,702.72	754.86	£3,756.76	15/06/2014
2014	July	32,444.03	270.37	211.34	59.03	3,486.39	2,725.24	761.15	£3,756.76	15/07/2014
2014	August	28,957.64	241.31	188.63	52.68	3,515.44	2,747.95	767.50	£3,756.76	15/08/2014
2014	September	25,442.20	212.02	165.73	46.29	3,544.74	2,770.85	773.89	£3,756.76	15/09/2014
2014	October	21,897.46	182.48	142.64	39.84	3,574.28	2,793.94	780.34	£3,756.76	15/10/2014
2014	November	18,323.18	152.69	119.36	33.34	3,604.06	2,817.22	786.84	£3,756.76	15/11/2014
2014	December	14,719.11	122.66	95.88	26.78	3,634.10	2,840.70	793.40	£3,756.76	15/12/2014
2014	January	11,085.01	92.38	72.21	20.17	3,664.38	2,864.37	800.01	£3,756.76	15/01/2015
2014	February	7,420.63	61.84	48.34	13.50	3,694.92	2,888.24	806.68	£3,756.76	15/02/2015
2015	March	3,725.71	31.05	24.27	6.78	3,725.71	2,912.31	813.40	£3,756.76	15/03/2015
2015	April	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-£0.00	15/04/2015
Totals			£18,816.72	£14,708.63	£4,108.09	£116,426.57	£91,008.20	£25,418.38	£135,243.29	