

ANGUS COUNCIL

12 MAY 2016

**CGLMC LTD – HERITABLE PROPRIETOR’S CONSENT TO PROPOSED DEVELOPMENT AT
CARNOUSTIE GOLF LINKS**

REPORT BY SHEONA C HUNTER, HEAD OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

This Report details an application for heritable proprietor’s consent from CGLMC Ltd in connection with the proposed development at Carnoustie Golf Links and asks the Council to consider the application taking into account the Council’s role and obligations under the Minute of Agreement and the benefits and risks involved.

1. RECOMMENDATIONS

It is recommended that the Council:

- (i) note the Council’s role and obligations under the Minute of Agreement and the benefits and risks involved as set out in the report and accompanying Appendix 1;
- (ii) consider and if minded approve the request for consent of the Council, as owner of Carnoustie Golf Links received from Carnoustie Golf Links Management Committee Limited (CGLMC Ltd) to the development of the Carnoustie Golf Links by extending the existing golf centre and facilities which comprise the Carnoustie Golf Links;
- (iii) subject to (ii) above consider and if minded approve, the request for consent of the Council in accordance with clause FIFTEENTH of the Minute of Agreement entered into between Angus Council and CGLMC Ltd dated 30 April and 28 May 2015 from CGLMC Ltd to borrow up to £2,950,000 for the specific and strictly limited purpose of funding the above development; and
- (iv) note that the Council’s asset (namely the golf links) will be enhanced by the development and that none of the proposed borrowing by CGLMC Ltd. will be secured on any of the Council’s land holdings.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/COPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- We have a sustainable economy with good employment opportunities;
- Angus is a good place to live in, work in and visit;
- Our communities are developed in a sustainable manner; and
- Our natural and built environment is protected and enjoyed.

3. BACKGROUND

Members will recall that Carnoustie Golf Links belongs to Angus Council but the management of the links is carried out by CGLMC Ltd in terms of a Minute of Agreement (MoA) entered into between Angus Council and CGLMC Ltd dated 30 April and 28 May 2015. CGLMC Ltd is a company limited by guarantee which has been granted charitable status. Angus Council has part ownership in the Company (along with the local golf clubs) and is entitled to appoint three people to the CGLMC Ltd Board. The Council’s financial liability arising from its involvement in the Company is limited to a maximum of £1.

The Carnoustie Championship Course has been developed and maintained to one of the highest levels of golf courses in the world and is currently an Open Championship venue. In terms of the MoA, CGLMC Ltd is not permitted to carry out any development to the Links without the consent of the Council as owner of the land. The paper attached as **Appendix 1** consists of a report by the General Manager of CGLMC Ltd into the proposals for developing the facilities available at the Links and forms the basis of seeking the consent of Angus Council as owners of the Links to the proposed development. In addition to the Landlord's consent for development of the facilities Clause 15 of the MoA requires CGLMC Ltd. to obtain the Council's written consent where it wishes to borrow monies in excess of £200,000. This report seeks a Council decision on both of these matters.

Also submitted in support of the development is a business justification case for Carnoustie Golf Centre prepared for CGLMC Ltd. Copies of this document have been provided in the Members' Lounge as the document is too large to be contained within a committee report.

3. PROPOSALS

Clause 4 of the MoA requires CGLMC Ltd to obtain the Council's written consent for any alterations to the facilities (referred to in the MoA as "the undertaking"). Clause 4 also states that applications for such consent will not be unreasonably withheld or a decision delayed by the Council. The requirements in Clause 15 for CGLMC to get Council consent to borrow for sums above £200,000 was carried into the current MoA from the previous governance documents which were written at a time before CGLMC Ltd was formed and when the Council had a direct financial risk exposure. Clause 15 does nevertheless give the Council visibility on any significant borrowing plans by CGLMC Ltd.

The Council's role and obligations under the MoA are to consider the request for landlords consent (to alter the facilities) and borrowing consent (to help pay for those alterations). The borrowing consent is a natural consequence of the proposed development of the facilities so if members are minded to grant landlord's consent the borrowing consent should be confirmed along with that. The key issue then is whether to grant landlord's consent for the proposed development.

The MoA is silent on what factors the Council may wish to take into account when considering an application for landlords consent. Bearing in mind such consent should not be unreasonably withheld and that the Council has delegated the responsibility for the management and development of the golf courses to CGLMC Ltd it is suggested that the Council could consider the application taking into account its impact (positive or negative) on:-

- the social and economic well-being of Carnoustie and Angus including the critical aspect of retention of Carnoustie as an Open Championship venue;
- the asset value and standard of the facilities available for golf in Carnoustie and Angus;
- the finances and viability of CGLMC Ltd*

* - although the Council has a minimal financial liability if CGLMC Ltd were to fail such a failure would require the Council to make arrangements to secure the facilities and their ongoing operation and maintenance. This in turn would mean additional time and possibly financial resources having to be devoted to secure an alternative arrangement for future management of the courses.

Appendix 1 to the report and the CGLMC Ltd Business Justification Case in the members lounge set out the detail of the proposed development project, its expected benefits, how it will be funded, etc.

Council officers have reviewed the Business Justification Case, have sought clarification on aspects of it, and note that it has been prepared by professionals from a number of disciplines and is comprehensive in its assessment of the project. The Business Case is heavily reliant on a number of assumptions and therefore carries risk that those assumptions won't be borne out in practice. Nevertheless officers believe that CGLMC Ltd has made significant efforts to identify options, assess and consult on these and to work out what the proposed project will mean for golfers, visitors, the Company, its finances and the wider town.

It is ultimately up to Members to consider the pros and cons of the proposed development but Officers believe the project is capable of delivering a positive social and economic impact; will support efforts to retain Carnoustie as an Open Championship venue; seems likely to enhance the facilities available for golfers and visitors; and subject to the risks involved with assumptions about costs and incomes arising is unlikely to put the financial viability of CGLMC Ltd at risk. The lending support offered by the Royal Bank of Scotland for the project indicates confidence on the Bank's part that those borrowings will be repaid and the project risks are acceptable to them.

If members were minded to withhold landlord's consent this would have to be justified and explained with clear reasons for doing so given to CGLMC Ltd.

4. BORROWING CONSENT

In addition to consent to alter the existing golf centre and facilities, consent is sought by CGLMC Ltd to borrow up to £2,950,000 in order to fund the development. In order to fund the previously detailed development to the existing golf centre additional funding agreement has been reached with the Royal Bank of Scotland to provide funding repayable over a maximum period of nine years and with no penalty for early repayment. CGLMC Ltd have drawn up financial projections and anticipate that the bank borrowing could be repaid over a three and a half year period.

5. FINANCIAL IMPLICATIONS

The construction of the extension to the existing golf centre will enhance the asset which belongs to Angus Council as part of the Carnoustie Links area. However, members will recall that in order to achieve charitable status, Angus Council required to agree that should the existing Company no longer occupy the subjects that another company with charitable purposes would take over the running of the golf links. By developing the Links site, CGLMC Ltd are enhancing an asset which belongs to Angus Council.

In order to fund the development and construction of the extension CGLMC Ltd require to borrow up to £2,950,000. Agreement has been reached with the Royal Bank of Scotland with repayment being spread over a maximum period of nine years. As the loan would be in the name of CGLMC Ltd, a company limited by guarantee, the Council would have no legal liability to repay any sums borrowed by CGLMC Ltd. In addition, the consent sought by CGLMC Ltd does not provide any consent to secure the loan over any council property, including the Carnoustie links.

The financial information in the Business Justification Case has been reviewed and queries raised where appropriate in order to assess the potential impact of the project on the long term viability of the Company and what the project will mean for the Council's assets.

The success of CGLMC Ltd and the impact of this project on the Company's finances centre around visitor income, this being the most significant part of turnover. The project will reduce the Company's bank balance in the short term but that balance is projected to remain above £500,000 throughout the build period and immediately beyond.

The food and beverage element of the project is perhaps the least certain in terms of the assumptions made and risks involved and may have limited or no financial benefit for the Company if looked at in isolation. Nevertheless so long as the Company control the build costs on the new golf centre and control their running costs thereafter and so long as the visitors keep coming in current numbers and are willing to pay a rising green fee the project will not adversely affect the Company's financial viability. Indeed if the investment helps retain the Open and sustain or improve visitor numbers then it could be argued to be essential to maintaining the Company's long term financial viability.

6. RISKS

The following risks and mitigating actions are relevant to the Council's consideration of the recommendations in this report:

RISK	MITIGATING ACTION
The project has a detrimental impact on the economic and social well-being of Carnoustie	Views will differ on this aspect but the Business Case suggests the overall impact of the development will be positive for the town. Members may have noted the support for the project from the Carnoustie Hotel and the broad support from a number of other local consultees.
The project has a detrimental impact on the financial viability of CGLMC Ltd thus increasing the likelihood of Angus Council having to step to make alternative arrangements for the management of the courses.	CGMLC Ltd is in a healthy financial position currently so starts from a strong position. This project does involve significant financial risk because of the scale of investment and assumptions about the impact on income but the assumptions and financial projections have been prepared by professionals and do not on the whole look unreasonable as a package. The development project does carry risk but as best as can be determined the risk of this project to the Company's long term viability is low. It is important to stress that doing nothing to enhance the facilities at Carnoustie is also a significant risk as this may affect retention as an Open venue and income from visitors in the medium to long term.
Withholding landlord consent could result in legal challenge to the Council's decision	Given the significant investment of time and money by CGLMC Ltd. to get to this stage there may be an increased risk of legal dispute if the Council doesn't grant landlord consent. This risk could only be mitigated by the Council having clear and defensible reasons for withholding such consent should it decide to do so.
Withholding landlord consent could result in Carnoustie ceasing to be on the Open Championship circuit	This risk is difficult to gauge but it seems reasonable to assume that this risk increases if Carnoustie does not continue to invest in its facilities given the fierce competition among Open venues.

7. CONCLUSION

It is recommended that the Council consider the development proposed by CGLMC Ltd for Carnoustie Golf Links and approve both land owners consent for the development of the golf centre and also the borrowing consent which is sought in order to complete the project.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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List of Appendices: Appendix 1: Report by General Manager of CGLMC Ltd