

**SPECIAL MEETING OF ANGUS COUNCIL – 24 AUGUST 2023**

**CARNOUSTIE GOLF HOTEL**

**ASSIGNATION OF HOTEL LEASE**

**REPORT BY THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES AND THE DIRECTOR OF FINANCE**

**ABSTRACT**

This report seeks authority for Angus Council to grant consent to the proposed transfer (known as an assignment) of the tenant's interest in the Carnoustie Golf Hotel Lease, and the transfer/novation of ancillary agreements, to Carnoustie Golf Links Properties Limited.

**1. RECOMMENDATIONS**

1.1 It is recommended that the Council:-

- a) note the background as set out in this report, the current position as set out in Section 4 of this report and the detail of the request for the Council to grant consent to the assignment of the Carnoustie Golf Hotel Lease and novation/transfer of Ancillary Agreements as set out in Section 5 of this report;
- b) agrees that
  - (i) the tenant's interest in the Carnoustie Golf Hotel Lease, currently held by Mineflow Investments Ltd, be transferred to Carnoustie Golf Links Properties Limited, noting that the Council, as landlord, would be granting consent to the assignment of the Lease by Mineflow Investments Ltd to Carnoustie Golf Links Properties Limited; and
  - (ii) that Mineflow Investments Ltd's interest in the Ancillary Agreements (as defined in section 5 of this report) also be transferred to Carnoustie Golf Links Properties Limited, noting that the Council would be granting consent to the novation of the Ancillary Agreements by Mineflow Investments Ltd to Carnoustie Golf Links Properties Limited;
- c) authorises the Director of Legal and Democratic Services, or her nominated representative, following consultation with the Director of Finance, to:
  - (i) consider, negotiate, settle, adjust, agree, approve, execute, deliver and perform or implement any acts or obligations or do anything in terms of documentation, agreements, undertakings, certificates, forms, notices, filings and instruments as may be necessary or desirable on behalf of Angus Council to implement recommendation (b); and
  - (ii) instruct and authorise the Council's externally appointed solicitors to do any of the foregoing set out in the immediately preceding paragraph c)(i) (including, without limitation, effecting the same in terms of formal letters and/or missive letters) on behalf of Angus Council;
- d) note the update on progress with Carnoustie Golf Links Management Committee Limited /their Investor's proposals for future golf provision in Carnoustie as set out in Section 6 of this report, noting also that these proposals will, as previously agreed by Council, be the subject of public consultation; and

- e) note the importance of not disclosing confidential information contained in exempt Appendices 1 to 3 (inclusive) of this report and the significant potential financial and reputational risks to the Council in doing this, as well as to any proposed future arrangements being agreed for Carnoustie Golf Provision Future Arrangements.

## **2. ALIGNMENT TO THE COUNCIL PLAN**

- 2.1 This report contributes as a whole to the Council Plan.

## **3. BACKGROUND**

- 3.1 The background regarding Carnoustie Golf Provision Future Arrangements is set out in Appendix 1 to Reports 194/23 (Public) and 195/23 (Exempt) which were considered at a meeting of Council on 22 June 2023.
- 3.2 Reports 194/23 (Public) and 195/23 (Exempt) provided an update on progress following on from a Special Meeting of Council on 23 December 2022. Report 194/23 (Public) noted that further information had been received from CGLMC and their Investor regarding their proposals and that information had been assessed. Further detail and analysis of that information was set out in Report 195/23 (Exempt).
- 3.3 Report 194/23 (Public) noted that Officers, in conjunction with the Council's external advisors would continue to engage with Carnoustie Golf Links Management Committee Limited, (CGLMC), their Investor and their respective advisors. It was also highlighted that it had been, and would continue to be, made clear by Officers/the Council's external advisors to CGLMC/their Investor and their respective advisors that, prior to proceeding to any public consultation and thereafter agreeing legal documentation relating to proposals for the future of golf provision at Carnoustie Golf Links, there will need to be evidence of clear benefits for Angus Council and its citizens.

## **4. CURRENT POSITION**

- 4.1 Following the meeting of Council on 22 June 2023, Officers/the Council's external advisors have continued to engage with, and seek further information from, CGLMC/their Investor and their respective advisors regarding their proposals for Carnoustie Golf Provision Future Arrangements. One of the initial steps in seeking to deliver those proposals is for CGLMC/their Investor to acquire the existing Carnoustie Hotel.
- 4.2. To recap, the Council owns the land upon which the Carnoustie Hotel is built. A ground lease has been granted by the Council for this land originally for a period of 125 years and now has just over 100 years remaining (the "**Hotel Ground Lease**"). Mineflow Investments Ltd ("Mineflow") is the current tenant under the Hotel Ground Lease. The Council receives a ground lease payment for this land and, until 2033, will also receive a profit share based on the turnover of the hotel. The hotel is currently operated and managed by Bespoke Hotels (ISIS) Limited.
- 4.3 The Council owns the land and golf courses at Carnoustie Golf Links but for the last several decades has outsourced the management and maintenance of the courses and all associated activity such as management of local golfer access to CGLMC. This is regulated by a Management Agreement which runs until 2033, (the "**Management Agreement**").
- 4.4 **It is important to highlight that the Hotel Ground Lease is entirely separate and distinct from the Management Agreement. In general terms, the Management Agreement relates to the golf courses/business and the Hotel Ground Lease relates to Carnoustie Golf Hotel. This report seeks decisions only in relation to the Hotel Ground Lease.**
- 4.5 CGLMC Limited set up a subsidiary company –Carnoustie Golf Links Properties Limited, (CGLPL) - which entered into an option (the "**Option**") with Mineflow in April 2022 to acquire the Hotel Ground Lease and the hotel business as a going concern; the date for the exercise of this option expires on **31 August 2023**. The Council is not a party to the Option;
- 4.6 MJ Investments Holdco Limited ("**Investco**") have acquired the share capital in CGLPL and repaid CGLMC's investment in the redevelopment project including the Option; in simple terms, this means that Investco now holds the Option.

- 4.7 The Council, as landlord, has now received a formal request from Mineflow to consent to the transfer/assignment of the Hotel Ground Lease and ancillary agreements to CGLPL (more detail on the ancillary agreements is contained in sections 5.4 and 5.5 below). It should be noted that, if such consent is granted, the Hotel will continue to be operated by Bespoke Hotels. The Bespoke company which will provide the hotel management is BH Central Services Limited.
- 4.8 Given that the deadline for exercise of the Option expires on **31 August 2023** this Special Meeting has been convened, seeking authority for the Council to grant consent to the assignment/transfer proposals.

## 5. HOTEL LEASE - ASSIGNATION PROPOSALS

- 5.1 The Council's discretion on deciding whether to grant consent to the assignment of the Hotel Lease is strictly governed and regulated by the clauses contained in the Hotel Ground Lease and not by other external factors, such as wider proposals which may emerge as part of CGLMC's/their Investor's broader aspirations for Carnoustie Golf Provision Future Arrangements. This is a standalone request which needs to be considered by the Council in terms of the Hotel Ground Lease. Further comment regarding CGLMC's/their Investor's wider proposals is contained in section 6 below.
- 5.2 A request for landlord consent to an assignment of a tenant's interest in a lease is a routine part of commercial leasing. For example, the Hotel Ground Lease was previously assigned in 2006 to Mineflow. Under the terms of the Hotel Ground Lease, the Council (as Landlord) is obliged not to unreasonably withhold or delay its consent to an assignment in the case of a respectable and responsible assignee of sound financial standing. Therefore, the Council needs to consider the position of CGLPL as an assignee and, in particular, whether CGLPL is *a respectable and responsible assignee of sound financial standing*.
- 5.3 The Council's specialist external advisers (Grant Thornton LLP and Harper MacLeod LLP), have carried out due diligence and an assessment of CGLPL. They have confirmed that CGLPL has provided the appropriate level of information to support a request for consent to assign the lease and has willingly engaged to provide responses to further reasonable queries / clarifications from the Council and its advisors and their findings and assessment are summarised in Appendix 1 (exempt). On the basis of their findings and assessment, CGLPL meets the legal test (per the terms of the Hotel Lease) of being "respectable and responsible" and "of sound financial standing" and it is recommended that the Council, in its capacity as Landlord under the Hotel Ground Lease, grants consent to the assignment by Mineflow of its interest under the Hotel Ground Lease to CGLPL.
- 5.4 As noted at section 4.7 the Council has also been asked to grant consent to the novation (i.e. transfer) of Mineflow's interest in existing ancillary agreements. The ancillary agreements are as follows:
- 5.4.1 Access Agreement– which relates to the availability of tee times etc for, e.g. hotel guests; and
- 5.4.2 Revenue Payment Agreement – which relates to merchandising and trade mark rights.
- 5.5 The Access Agreement and Revenue Payment Agreement are, in this report, together referred to as the "Ancillary Agreements". The Ancillary Agreements are viewed as part of the overall package in terms of CGLPL 's Hotel Ground Lease acquisition. Further information regarding the Ancillary Agreements is contained in Appendix 2 (Exempt). If the Council grants consent to the assignment of the Hotel Ground Lease, then the Council are implicitly granting consent to the assignment of the Ancillary Agreements; it is logical for the Ancillary Agreements to be assigned so that they stay with the tenant under the Hotel Ground Lease or, in other words, it would not make sense to grant consent to the transfer of the Hotel Ground Lease and then seek to withhold consent to the transfer to the same company of either or both of the Ancillary Agreements.
- 5.6 It is therefore recommended that the Council grants consent to the transfer/novation of Mineflow's interest in the Ancillary Agreements to CGLPL as part of consenting to the transfer/assignment by Mineflow of its interest under the Hotel Ground Lease to CGLPL pursuant to section 5.3 above.

- 5.7 Appendix 4 (Public) to this report contains a diagram showing both current interests in the Hotel Ground Lease and Ancillary Agreements and future interests in such if the Council were to consent to the assignation of the Hotel Ground Lease and the novation of both the Ancillary Agreements.

## **6. CGLMC AND INVESTOR PROPOSALS FOR FUTURE GOLF PROVISION**

- 6.1 Reports 194/23 (Public) and 195/23 (Exempt) noted that CGLMC and their Investor had submitted further information on their proposals for future golf provision. The acquisition of the Hotel Ground Lease by CGLPL and transfer of the Ancillary Agreements form *part* of – and is an initial phase of CGLMC's/the Investor's overall proposals for the Carnoustie Golf Provision Future Arrangements. CGLMC/the Investor are continuing to develop the remainder of their proposals and are engaging with Officers and the Council's external advisors.
- 6.2 As noted at section 5.1 of this report, the request for the Council to grant consent to the assignation of the Hotel Ground Lease, and the transfer of the Ancillary Agreements, by Mineflow to CGLPL is a standalone request to which the Council is obliged to consider, and make a decision on, in accordance with the terms of the Hotel Ground Lease and the existing Ancillary Agreements. Legally, the Council is therefore required to consider this request in isolation.. In basic terms, should elected members approve the grant of consent to the assignation/transfer request as recommended, and the assignation/transfer is thereafter completed, the effect of this will be that CGLPL will become the Hotel Ground Lease tenant (with Mineflow exiting from these arrangements).
- 6.3 For the avoidance of any doubt, the terms of the *golf course* Management Agreement (mentioned in section 4.3) and the parties to that arrangement will remain unchanged. Any changes to those arrangements (i.e the golf business) which may be proposed in future by CGLMC/their Investor will be subject to public consultation. Elected members will be asked to approve any such consultation before it begins and will require to have the results of that consultation available to inform their final decision on matters. CGLMC/their Investor are continuing to develop their wider proposals in this regard.

## **7. RISKS**

The risks are set out in Appendix 3 (Exempt).

## **8. FINANCIAL IMPLICATIONS**

- 8.1 There are no additional financial implications for the Council arising from the recommendations in this report. The assignation of the Hotel Ground Lease and novation of the Ancillary Agreements are a routine part of commercial leasing and the ground rent and profit share payments to the Council will continue to operate as they do now in terms of the existing agreements. While there is some risk that CGLPL could fail, this risk is considered to be no greater than with the current tenant and there is a possibility that any future investment by the new owners will boost turnover and therefore the share of any profits payable to the Council under the Hotel Ground Lease.
- 8.2 In terms of the bigger picture the Council has previously stated its strategic intent is (working with partners) to secure the return of the Open Championship to Carnoustie on a regular basis. The acquisition of the Hotel Ground Lease by CGLMC's Investor, albeit in a legal sense completely separate from the Management Agreement for Carnoustie Links, nonetheless represents an important step towards the potential delivery of the Council's strategic intent and all of the economic benefits for Carnoustie and Angus which flow from that.

## **9. LEGAL IMPLICATIONS**

- 9.1 As stated at 5.2 above, the Council needs to consider the position of CGLPL as an assignee and in particular, whether, CGLPL is a respectable and responsible assignee of sound financial standing. There may be implications for the Council if it unreasonably withholds its consent to the transfer/assignation of the Hotel Ground Lease.
- 9.2 There are no additional legal implications for the Council arising from the recommendations in the report since (a) the Council remains as the Landlord under the Hotel Ground Lease and as a party to the Ancillary Agreements; and (b) the terms of the Hotel Ground Lease and Ancillary

Agreements remain the same (but for Mineflow's interest in the Hotel Ground Lease and Ancillary Agreements being transferred to CGLPL).

## **10. EQUALITY IMPACT ASSESSMENT**

- 10.1 An equality impact assessment is not required as there is no differential impact on persons with protected characteristics in terms of the recommendations in this report.

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### **Appendices**

- Appendix 1 (Exempt) - Assessment of CGLPP Limited
- Appendix 2(Exempt) - Ancillary Agreements – further information.
- Appendix 3 (Exempt) – Risks
- Appendix 4 (Public) – Diagram