

**STROUD DISTRICT COUNCIL**  
**STRATEGY AND RESOURCES**

**AGENDA  
ITEM NO**

**17 JANUARY 2019**

**11**

<b>Report Title</b>	<b>SUBSCRIPTION ROOMS, STROUD</b>
<b>Purpose of Report</b>	To seek approval of the final terms for the transfer of the freehold interest of the Subscription Rooms and forecourt to Stroud Town Council and the transfer of the business and staff to the Stroud Subscription Rooms Trust.
<b>Decision(s)</b>	<p><b>The Committee RESOLVES to:</b></p> <ol style="list-style-type: none"> <li><b>1. approve the final terms for the transfer of the freehold interest of the Subscription Rooms and forecourt to Stroud Town Council and the transfer of the business (including the staff) to the Stroud Subscription Rooms Trust by 31<sup>st</sup> March 2019, as outlined in this report and</b></li> <li><b>2. Delegate authority to the Director of Customer Services in consultation with the Head of Finance to finalise the pension arrangements for staff transferring to the Stroud Subscription Rooms Trust.</b></li> </ol>
<b>Consultation and Feedback</b>	The Subscription Rooms' staff have been consulted and notified of their proposed transfer to the Stroud Subscription Room Trust.
<b>Financial Implications and Risk Assessment</b>	<p>The financial implication arising from this report is the ongoing guarantee to the Trust to protect the LGPS membership of TUPEing staff. The final amount will be confirmed by an actuarial valuation but is estimated to be approximately £4k p.a.</p> <p>This cost is included in the Council's MTFP where the Sub Rooms Saving is shown as £226k p.a. rather than the originally estimated £230k.</p> <p>The remainder of the report updates on progress and has no direct financial implications.</p> <p>Andrew Cummings, Head of Finance and (s151 Officer) Tel: 01453 754115 Email <a href="mailto:andrew.cummings@stroud.gov.uk">andrew.cummings@stroud.gov.uk</a></p>

<b>Legal Implications</b>	<p>Notwithstanding the changes in the way the proposed transfer is to be structured the legal considerations in respect of Section 123 of the LGA 1972 and State Aid etc remain the same as previously considered; there being a significant element of subsidy in terms of the consideration, the grant to be provided and the works to the roof (all of which are referred to in the report). The covenants in the proposed transfer (which have been designed to secure the preservation of the facility in the longer term) will be mirrored in the lease of the property to the Trust and are also reflected in its governing constitution. It is considered that the transaction meets the criteria of the General Disposal Consent 2003 and Article 53 of EU Regulation 651/2014 which provides a block exemption for aid provided to support Arts and Culture etc. Almost all legal transactions carry risks for the parties concerned. In this case the documents contain some warranties on the part of SDC largely relating to TUPE costs and Pension deficits (which are referred to in the report). Those warranties are limited in terms of extent and risk and would be considered reasonable and normal for a transaction of this nature.</p> <p>Alan Carr, Solicitor Tel 01453754357 Email <a href="mailto:alan.carr@stroud.gov.uk">alan.carr@stroud.gov.uk</a></p>
<b>Report Authors</b>	<p>Jill Fallows, Property Manager Tel: 01453 754433 Email: <a href="mailto:jill.fallows@stroud.gov.uk">jill.fallows@stroud.gov.uk</a></p> <p>Alison Fisk, Head of Property Services Tel: 01453 754430 Email: <a href="mailto:alison.fisk@stroud.gov.uk">alison.fisk@stroud.gov.uk</a></p>
<b>Options</b>	<ol style="list-style-type: none"> <li>1. Approve the resolution in the decision box</li> <li>2. Do not approve the resolution and make a decision on the future of the building at the next meeting of the committee i.e.: <ol style="list-style-type: none"> <li>a. Run the Subscription Rooms with limited opening to reduce costs.</li> <li>b. Close the building</li> <li>c. Remarket the building on an unrestricted basis</li> </ol> </li> </ol>
<b>Performance Management Follow Up</b>	Complete the transfer of the building, service and staff by 31 <sup>st</sup> March 2019
<b>Background Papers/ Appendices</b>	Appendix A –Heads of Terms

## **1. Background**

- 1.1 At its meeting on the 4<sup>th</sup> October 2018, this Committee resolved that negotiations continue for the transfer of the freehold interest in the Subscription Rooms and forecourt and the business operated there from, with a view to completion no later than 31<sup>st</sup> March 2019. Final terms were to be reported back to Committee for approval prior to exchange of contracts.

## **2. Progress**

- 2.1 Negotiations have continued and considerable progress has been made by officers, Stroud Town Council (STC) and the Stroud Subscription Rooms Trust.
- 2.2 The Stroud Subscription Rooms Trust (SSRT).has now received its registration from the Charities Commission.
- 2.3 All the necessary legal agreements between the three parties have been drafted, agreed and approved by the Town Council and in principle by the Trust. SSRT is expected to approve the contracts at its Board meeting on the 9<sup>th</sup> January (i.e. after publication of this report). Subject to this and the approval of the final terms by this Committee, contracts can be exchanged and completed by 31<sup>st</sup> March 2019.
- 2.4 A new booking system is being purchased by the Town Council for the Trust and this is due to be up and running in January 2019. Up until mid-March SDC will continue to take bookings on the council's booking system for events up to the end of July 2019. From January to March SSRT will start to transfer these bookings on to their own booking system and also take new bookings, mainly for August 2019 onwards.
- 2.5 A quotation within the cap of £125,000 has been received for the roof works and the contractor has been appointed, albeit later than originally anticipated. Whilst the works should be completed before the 31<sup>st</sup> March 2019, provision has been made in the contracts, to allow for any overrun, with a final deadline for completion of the works by the end of July 2019.
- 2.6 A transition working group has been set up to deal with all the operational and practical handover issues with representatives from both SDC and SSRT working together. The Town Council's Finance, Community and Policy Committee approved a report in November recommending approval of reserves to support the ongoing work, handover and equipment purchases which clearly shows the Town Council's continuing commitment to the transfer and represents an increase in its contribution from £50k to £83K.

## **3. Final terms**

- 3.1 The structure of the transaction and some of the final terms agreed have changed from those agreed by this Committee in July 2018, however, officers are confident that the revised terms reflect the most sensible and straightforward way to secure and document this transfer. Legal and financial advice received during the ongoing negotiations has shaped the structure of the final deal. The Heads of Terms are set out in Appendix A.

- 3.2 The main changes to the original terms agreed are the transfer of the business, staff and fixtures and fittings and other moveable assets to the Trust direct, rather than the Town Council (which would then have transferred them on to the Trust in a back to back agreement). The grant is also being paid direct to the Trust. It is proposed that this council will make the additional 'top-up' contributions required towards the Local Government Pension scheme for current staff who are already in the scheme.
- 3.3 It has become clear that this structure has advantages for all 3 parties and obviates the need for the Town Council to act as an intermediary. There were onerous VAT implications if the business had been transferred to the Town Council and then on to the Trust, as well as legacy issues in terms of employment liabilities for the Town Council which were unpalatable.
- 3.4 Under the new proposal, the Trust becomes directly accountable to this council for the grant monies and there are also fewer complications in terms of TUPE (Transfer of Undertakings (Protection of Employment) Regulations). The contractual arrangements proposed are considered to be in the best interests of staff who will transfer direct to SSRT. Many of these staff are long-serving employees of this council and all have continued to keep the Subscription Rooms running during a period of great uncertainty for a number of years now. Their hard work and commitment during this period is commendable.
- 3.5 In summary, the changes to the final terms agreed are as follows:
- a) **Property:** the freehold interest of the Subscription Rooms (including the forecourt) will be transferred to Stroud Town Council for £1. The Town Council and Trust have an agreement for lease ready to complete simultaneously with the freehold transfer to enable the Trust to occupy and operate the building.
  - b) **Business:** the business will now be transferred direct to the Trust along with fixtures, fittings and other movable assets (which have an estimated value of £20k) and which are fundamental to the operation of the business.
  - c) **Grant:** The £230,000 grant towards the operating costs will be paid direct to the Trust on completion of the transfer. Whilst the original proposal was to pay the grant money to the Town Council, it was always intended to be passed on to the Trust to support the business plan for the operational running of the Subscription Rooms. Now that the business is being transferred direct to the Trust it is more appropriate that the grant is also paid to it. There are provisions in the contract to ensure that the grant is being spent in an appropriate way.
  - d) **Staff/Pensions:** All qualifying staff under TUPE will now transfer straight to the Trust. The contract for the transfer of the business to the Trust includes a provision that the Local Government Pension Scheme (LGPS) membership of the TUPEing staff is to be protected.

The Trust has made it clear that, whilst it will offer a private pension scheme, it is unable to afford the additional LGPS contributions for those protected staff. It is therefore proposed that SDC will pay the difference in the pension contribution rates between the LGPS and the Trust's private scheme. Whilst this is an additional cost to SDC, it is for a small number of staff and is a relatively low cost, currently estimated to be around £4k p.a. This form of provision is common in public sector TUPE arrangements and should not be considered an unusual contractual provision.

#### **4. Options**

- 4.1 If members decide not to approve the final terms and conditions, a decision on the future use of the building will have to be made by this committee at a later date. Options will include running the Subscription Rooms with limited opening to reduce costs, closing the building and remarketing the building on an unrestricted basis.
- 4.2 Whilst there is a lot of work for the Trust to do, it has the support of the Town Council and both are committed to the deadline. Because all the legal documentation has been drafted and is expected to be approved by the 9<sup>th</sup> January, officers are confident that completion will take place by 31<sup>st</sup> March 2019. However, if completion is delayed or does not take place a report would be brought back to this Committee with an update in April 2019.

#### **5. Conclusion**

- 5.1 The final terms fulfil the criteria agreed by this committee in December 2017 i.e. they:
- (i) retain the freehold interest in public ownership
  - (ii) ensure the level of council costs is significantly reduced; and
  - (iii) promote and enhance the availability of the building to the public as a venue for public arts, community use and education.
- 5.2 All the necessary legal agreements have been drafted and agreed by the Town Council and, in principle, by the Stroud Subscription Rooms Trust. Both parties are expected to be ready to proceed to exchange and completion, subject to approval of the final terms by this committee and approval of the Trust's application to the LGPS.
- 5.3 The County Council will consider the Trust's application to become an admitted body to the LGPS (with this council as its guarantor) in early February. It is considered prudent to delegate authority to officers to agree the final pension arrangements due to the difference in committee meeting dates and to deal with any unforeseen circumstances, however unlikely.
- 5.4 Committee is therefore recommended to approve the final terms agreed for the transfer of the Subscription Rooms with final details of the pension arrangements to be delegated to the Director of Customer Services in consultation with the Head of Finance.