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Letter to all members

Your contact: Alan Madin
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Our ref: AM/OCI 001
Date: 26th June 2009
cc Jeff Hughes

Dear Councillor,

Final Accounts 2008/09

Councillor Tindale has asked that I let all members have advanced notice of a further recommendation he will move at Council on the report on the Final Accounts.

This additional recommendation arises from the outcome of a meeting with Hendersons on Thursday 25 June to finalise negotiations on the Causeway properties.

Enclosed are:

- The proposed further recommendation
- A copy of Counsel's opinion and further information to which reference is made in the resolution

Yours sincerely

**Alan Madin
Director of Internal Services**

Further recommendation to be moved by the portfolio holder for Finance and Internal Support.

(C)

(1) Counsel's opinion and his advice on the steps to be taken to mitigate the risk of a VAT liability arising from the proposed property exchanges at the Causeway Bishop's Stortford (Appendix 1) be noted;

(2) in the light of the advice referred to in (C)(1) above, the agreement reached with Henderson and the supplementary information from the Council's property advisers Lambert Smith Hampton (Appendix 2) , the authority for the Director of Internal Services, in consultation with the portfolio holder for Resources and Internal Support , to complete the transactions for the Causeway properties proposal including following Counsel's advice with regard to the election to tax the properties being disposed of but without recourse to a special purpose vehicle, be confirmed; and

(3) £200k be earmarked in the general reserve against the residual risk until such time as Her Majesty's Revenues and Customs has agreed the VAT liability.

VAT liability

The report to Executive on 17 March referred to the assessment of tax liability being dependent on further advice.

Initial advice suggested that only some but not the whole of the potential VAT liability might be recoverable and so Counsel's opinion was sought from chambers with expertise in these areas of taxation. That opinion provides a much greater degree of comfort that provided the steps set out in that advice are taken there will be no unrecoverable VAT liability.

The opinion cannot remove all risk as ultimately it would be for the courts to determine liability should HMRC take a view that differs from that of Counsel.

Counsel's advice is attached for consideration.

To further mitigate any residual risk, agreement has been reached with Hendersons which sees them share any risk as follows

- In respect of the first £400k of any liability: shared 50:50 Hendersons and the Council.
- In respect of the next £65k of any liability: 100% met by Hendersons but recoverable by them against any overage payment that might subsequently become due to the Council.
- In respect of any further liability: to be met by the Council

Supplementary information

The proposals are substantially unchanged from what was agreed by Council on "5th March

In closing negotiations some changes have been agreed which on balance have a small positive financial outcome for the Council in managing the transition cost over the period to final release of the Causeway building. LSH view of the deal as finalised is attached.