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## **DISCHARGE AND GRANT OF NEW STANDARD SECURITY AT 15 ABBEY PLACE, JEDBURGH**

**Report by Service Director Regulatory Services**

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### **JEDBURGH COMMON GOOD SUB COMMITTEE**

**29 June 2016**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report proposes to advise the Jedburgh Common Good (JCG) of the implications of discharging the Jedburgh Community Trust (JCT) standard security relating to 15 Abbey Place, Jedburgh and the granting of a new standard security by the Jed Shed in relation to the loan for 15 Abbey Place. This report shall also advise on the possible consequences for the JCG if the Jed Shed ceases trading after transfer of the loan.**
- 1.2 At the JCG meeting on 16 September 2015, Community Councillor Wight raised the matter of whether the JCG could allow the transfer of a loan from JCT to the Jed Shed in relation to 15 Abbey Place, Jedburgh. Thereafter at the JCG meeting on 9 December 2015 Councillor Stewart asked for further information to be provided on the consequences for the JCG if they agreed to transfer the loan but the Jed Shed then ceased trading.
- 1.3 The purpose of this report is to detail the legal issues concerning the proposals in order that the Sub-Committee can determine how to proceed.

#### **2 RECOMMENDATIONS**

**It is recommended:**

- (a) That the Committee notes the process for discharging and granting standard securities as detailed in this report;**
- (b) That in the event of the submission of a formal application from the Jed Shed to the JCG for the transfer of the existing loan in favour of JCT, the Committee satisfies itself as to the financial standing of the applicant;**
- (c) That if the JCG then approves such application, the JCG should discharge the existing security over 15 Abbey Place, subject to receipt by JCG of a valid first ranking standard security from the Jed Shed in its favour.**

### **3 BACKGROUND**

- 3.1 The JCG provided a loan to the Jed Shed in 2014 to assist with the start-up costs of their project. The project has been very successful, with the group outgrowing their current premises.
- 3.2 The Jed Shed is looking to purchase the premises known as 15 Abbey Place, Jedburgh, being the former Band Hall premises. This property is currently owned by the JCT.
- 3.3 There is a standard security over 15 Abbey Place, which was granted in favour of the Scottish Borders Council (SBC) acting as trustees for the JCG by the JCT in 2003 in consideration for the payment by the JCG to the JCT of a loan of £15,000.

### **4 CURRENT PROPOSAL**

- 4.1 It was suggested by Mr Hugh Wight at the JCG meeting of 16 September 2015 that the loan in favour of JCT could be transferred to the Jed Shed.
- 4.2 The minute from the first aforementioned meeting suggests that it is the desire of both the Jed Shed and the JCT for the loan to be transferred from the JCT to the Jed Shed. The JCG therefore requires to decide whether it is agreeable to the transfer of the loan.
- 4.3 In order to secure the transferred loan, on the sale of the property, the existing standard security by JCT would be discharged by JCG and a replacement security granted by the Jed Shed.

### **5 HOW THE JED SHED IS CONSTITUTED**

- 5.1 The Jed Shed has recently established itself as a Scottish Charitable Incorporated Organisation (SCIO).
- 5.2 A SCIO is a corporate body which has its own legal entity, and the same rights, protections, privileges, responsibilities and liabilities that an individual would have under law. Therefore a SCIO has the ability to enter into contracts, employ staff, incur debts, own property, sue and be sued, just like a natural person. All transactions of a SCIO are undertaken in the name of the SCIO and not the charity trustees.

### **6 CEASING TRADING/DISSOLVING THE SCIO**

- 6.1 A concern was raised by Councillor Stewart as to what would occur if and when the Jed Shed were to cease trading. A SCIO can only cease to exist if it is removed from the Scottish Charity Register (the Register). Such removal can only be done if the SCIO is dissolving.

6.2 A SCIO can apply either for solvent dissolution or insolvent dissolution.

- (a) If a SCIO is solvent it must provide evidence to OSCR, before winding up is authorised, that it has settled all outstanding liabilities and has no remaining assets. Once OSCR is satisfied that the SCIO has wound up its affairs it shall be removed from the Register and therefore dissolved. This would include repayment to the JCG of the loan.
- (b) If a SCIO is insolvent it can still apply for dissolution and removal from the Register but it must also provide a resolution that the SCIO is to be sequestrated (declared bankrupt). The sequestration process would involve the Accountant in Bankruptcy (AiB) establishing the SCIO's assets and liabilities, and making payments to the creditors if there are sufficient funds to do so. In distributing the assets of the dissolved SCIO, the JCG would, as currently the only secured creditor to the sum of £15,000, rank above any unsecured creditor and any subsequent secured creditors. This means that, on sale of the property at 15 Abbey Place by the AiB, JCG would be repaid before all other parties.

## **7 IMPLICATIONS**

### **7.1 Financial**

The financial consequences of allowing a transfer of loan from JCT to the Jed Shed (in consideration of the granting of a first ranking security to JCG over the subjects at 15 Abbey Place) are as follows:-

- (a) If the Jed Shed wishes to sell on the subjects at any point, it will require to repay the loan to JCG first.
- (b) If the Jed Shed for any reason dissolves, the process of dissolution will result in a repayment of the loan to JCG, or a sale of the secured subjects (which will result in repayment to JCG of the loan sum, provided the sale realises this value).

### **7.2 Risk and Mitigations**

- (a) The risk of proceeding with the transfer of the loan and therefore the discharge of the current standard security and the granting of a new security by the Jed Shed are detailed above at paragraph 4.1.
- (b) If the proposal does not proceed but the sale of 15 Abbey Place does proceed, the JCT would be required to return the £15,000 loan to the JCG. Therefore there are no perceived risks to JCG of not proceeding with the proposal. However, there is a risk to the Jed Shed in that they may have insufficient funds to operate from their new premises.

### **7.3 Equalities**

It is anticipated that there are no adverse equality implications arising from the proposals contained in this report.

#### 7.4 **Acting Sustainably**

If the proposal does not proceed, it may result in the building being left unoccupied by the JCT.

#### 7.5 **Carbon Management**

There are no significant effects on carbon emissions arising from the proposals contained in this report.

#### 7.6 **Rural Proofing**

It is anticipated that there are no adverse effects on the rural area from the proposal contained in this report

#### 7.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals contained in this report.

### **8 CONSULTATION**

The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

#### **Approved by**

**Brian Frater**

**Service Director Regulatory Services**

**Signature .....**

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