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# Liskeard Town Council

## Cattle Market Makers Project

## VAT report

## February 2022

## 1. Introduction and aims of the report

1.1 Liskeard Town Council (LTC) originally instructed Buzzacott LLP in 2021 to advise on the VAT implications of the 'Cattle Market Makers' Project' – ("the Project") involving the provision of workspace, business support and assistance to small enterprises and to those in the community who are currently economically inactive. Under the arrangements LTC was working in partnership with Cornwall Council (CC) which was to deliver the capital purchase and installation of a modular workspace, which was to be rented to LTC on a peppercorn rent for a period of 10 years.

1.2 Since then, work on the site has commenced. However, following an unsuccessful procurement process CC were unable to appoint a contractor. It has been decided between the parties that the procurement will now go to open tender, with LTC instead of CC procuring the works, and LTC will be granted a ground lease from CC. It is not clear at what point the ground lease will be granted.

1.3 Construction costs have risen, and LTC expect the construction to cost approximately £600,000 + £120,000 VAT. The project management work already commissioned by CC is to be passed across to LTC by way of an access agreement. LTC will be supported in the tender process by Cornwall Development Company. Delivery of the business support and training parts of the project remain the same, but LTC do not believe that there will now be a need for a Collaboration Agreement. LTC requires advice on the extent of its ability to deduct the VAT incurred on the revised Project.

1.4 We understand CC still owns the site and has opted to tax and freehold ownership of the completed building will remain vested in CC. We also assume that the funds for the construction costs remain as they were – ie a combination of grant funding and a contribution from CC. We have not been provided with financial information on how the funding for the construction costs will be passed to LTC.

1.5 We have been provided with a draft Head of Terms for the proposed lease between CC and LTC which provides for VAT to be charged on the rent, but does not show a rental value, or a term, and figures for estimated running costs and revenues to be earned in the building.

1.6 The State Aid workings seen indicate that once complete the Hub will incur running costs of c£19,000 per year with VAT of c£2900 being incurred. The income in total will be c£9,000 with just other half of this from rental of workspaces and the rest from charges for workshop sessions.

1.7 The accuracy of VAT advice depends upon having obtained a full understanding of the facts. If our understanding and assumptions as set out below are incorrect, please inform us.

## 2. Summary of main findings

2.1 LTC should be able to deduct the VAT on the revised capital cost because under the new arrangements it is acting as main contractor, and as long as it charges on the VAT to CC as landowner. A construction contract ought to be drawn up between CC and LTC.

2.2 If LTC does not charge on the construction cost to CC it would appear to have no right to deduct the VAT as it is not the owner of the site.

2.3 The VAT charged by LTC to CC on construction of the workspace ought to be fully deductible for CC based on CC having opted to tax the site.

2.4 The precise details of the funding arrangements need to be considered from a VAT perspective.

2.5 The VAT on the revenue costs of the project which will be incurred by LTC is estimated to be c£19,000 over the ten-year period. As such it ought to be deductible either because it relates to non-business activity (provision of free advice) or because it relates to the exempt rent and training but will be "insignificant" under the rules outlined in paragraph 4.3 of our previous report.

2.6 However, LTC may wish to consider opting to tax to reduce the risk of the VAT on operating costs being attributed to exempt rent. This will protect LTC's VAT position but will increase costs for tenants of the workspaces.

## 3. Updated VAT costs

3.1 Capital costs of the project were outlined in the 'Cattle Market Makers Project Financial Brief' dated June 2021. This then showed the total VAT to be incurred on the entire project was then £106,914 including the capital cost VAT of c£93,575, and c£5,361 VAT for office fittings and equipment. We have not been given a revised version of this brief but have updated it with the new figures provided to us. See Appendix 1 attached as a spreadsheet.

3.2 The revised total capital VAT is now £126,546 including fit out (we have no revised figures for the fit out) and for revenue costs estimated from the other ongoing costs of maintaining the building and the costs of staff to run the project, it is £7115. All other assumptions remain as per our 2021 report. However for LTC the VAT risk is much higher as it will be incurring the VAT on the construction and because the costs of the project exceed £250,000, the VAT on the construction will be subject to the Capital Goods Scheme. In addition the rent from CC may not be peppercorn.

## 4. Deduction by LTC of VAT on construction costs – amended arrangements

4.1 Given that CC remains the owner of the site it appears to us that LTC's role under the new arrangements is as project manager/main contractor of the construction on CC's behalf. At present LTC has no legal interest in the site and thus is not entitled to deduct VAT on the construction costs, because the Hub is being built for CC on CC's land. As such the VAT on the construction is not LTC's input tax. LTC will be deemed to be incurring the construction costs on behalf of CC as main contractor and should enter into a contract with CC to that effect. The building contractor appointed after successful tender should be sub-contracted to LTC. Under this structure LTC would invoice CC plus VAT for the construction costs and would be entitled to deduct any VAT charged by the sub-contractor in full.

4.2 CC has opted to tax and therefore should be able to deduct the VAT charged by LTC.

4.3 If this invoicing structure is not adopted LTC will be at risk of not being able to deduct VAT on the capital costs.

4.4 Note that the subcontractor may require LTC to confirm that it is an "intermediary supplier" in relation to the construction services. This is part of the requirements relating to the reverse charge for construction services introduced in March 2021. We can advise further on this as required.

## 5. Arrangements for the funding of the capital works - VAT

5.1 The total funding for the entire project is presumably legally regarded as LTC's since it will hold the total pool and is acting as the tenant but the funding for the Capital works is somewhat circular, as some of that funding comes from CC. However, we have not been provided with information on how the funding flows will work under the new arrangement.

5.2 Under the revised arrangements LTC will incur the costs if the Capital works which it will on-supply to CC as owner of the building. LTC will need to invoice this plus VAT to CC during the course of the contract and account for the VAT to HMRC. If CC has already "paid" the net sum to LTC as part of the funding arrangements, then CC will be only liable to pay the VAT element, but precise arrangements depend on where the funding is currently held. Care will be needed to ensure VAT is accounted for at the correct time -for construction services this is the earlier of payment and issue of a VAT invoice.

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## 6. Deduction of revenue VAT on the project

The remaining VAT on revenue costs for the 10-year period which will include any rent payable to CC is estimated by LTC to be c£19,000 over the entire period with annual VAT being c £3000. (We are not sure if VAT on rent payable to CC is included in this).

6.1 The HOT contains a draft lease between CC as landlord and LTC as tenant. Neither the term of the lease to nor the level of rent LTC will pay is included in the HOT. But it is clear that LTC will incur VAT on any rent charged by CC. As such this VAT will be deductible by LTC only to the extent that LTC uses the Hub to make taxable supplies or for activities covered by s 33 VAT Act 1994. Any VAT on the rent attributable to exempt supplies made by LTC in the Hub will only be deductible if it is "insignificant". (see previous report)

6.2 The deduction of VAT on this rent and the Hub revenue costs will be driven by the income LTC earns from, and the activities which LTC undertakes in, the Hub building after completion and grant of the lease from CC. The income sources after completion appear to be

- rental of workspaces and
- charges to participants for workshops.

We understand a substantial proportion of activity in the building will still be delivered free to end users such as job seekers. The expected revenues from users of the hub appears to be c £9000 pa for the 10-year period. It is now clear from the new state aid workings that roughly half of this will be from the arts/craft workshop charges and the other half will be from the rent paid by the start-up businesses. We have also assumed that training and advice provided to support local unemployed people and job seekers will be provided free. If any of these assumptions are incorrect, then further investigation will be required into the liability of the income.

6.3 Based on the above assumptions, LTC will be using the building for three purposes:

- To provide business accommodation in return for a rent. This is a business activity which will be exempt from VAT unless LTC opts to tax the building. Unless LTC opts, VAT on this element of revenue costs will be deductible only if it is regarded as "insignificant";
- to provide paid for (business) workshops in arts and crafts to members of the public. This is a business activity. Charges will be exempt if they constitute "education" (i.e. of a type normally taught in schools or colleges) but likely to be liable to VAT if they are mainly short recreational sessions; and

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- to provide support training and advice to businesses and individuals. On the basis this will be free to the end users we believe this would be seen as a non-business activity and VAT incurred by LTC on the cost of this activity ought to be deductible under s33.

6.4 On this basis even if all the revenue VAT cost was deemed to be incurred in relation to the exempt rental of the properties it would appear likely to fall into the insignificant category using the criteria in 4.3 of our previous report. However, LTC may wish to take a cautious approach and opt to tax on the Hub prior to opening so that its rental income is taxable. This would then mean that the only exempt supplies would be of any courses which are deemed to be exempt from VAT and given the level of revenue expenditure this ought to secure that the VAT can be treated as "insignificant" However we can give no absolute assurance on this because we are not party to LTC's overall VAT position.

6.5 It should be noted that opting to tax will make the rental more expensive for small non-VAT registered businesses unless LTC is prepared to keep rental levels low.

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