

VAT CONSULTATION SERVICE

REPORT BY THE DIRECTOR FOR DIGITAL AND RESOURCES

1.0 SUMMARY

- 1.1 This report is intended to seek the Cabinet Member's approval to engage Consultants to investigate possible VAT refunds within Cultural and Building Control Services.

2.0 BACKGROUND

- 2.1 VAT is a complex area of taxation often involving interpretation of guidance and legislation. At various times, HM Revenue and Customs have changed the treatment of VAT based on the outcome of successful legal appeals against their interpretation of the relevant legislation. This has sometimes resulted in an opportunity arising for the Council to reclaim past VAT paid and change the VAT treatment of income for the future.
- 2.2 The Councils have been approached by Mazars who claim to have justification for pursuing claims in relation to Cultural and Building Control services; in addition the proposal may change the tax treatment of certain activities permanently which would bring an on-going benefit to the Councils. This is based on their specialist legal and taxation knowledge and is covered by Intellectual Property copyright. For this reason the full details of any potential claim is not included within the report. However, any such claim will need to be subject of extensive legal argument before it could succeed and so is speculative in nature.
- 2.3 Any initial claim made will be backdated as far as possible and thereafter monthly claims will be lodged with HMRC.

3.0 PROPOSAL

- 3.1 There are limited alternative options available for this service, given the Intellectual Property rights which the consultants hold. The service is being offered on a 'no win no fee' basis. The Council will pay a commission of 15% of any VAT recovered.
- 3.2 Given the potential benefit involved it is recommended engage the consultants on this speculative basis.

4.0 LEGAL

- 4.1 Paragraph 8.1 of the Contract Standing Orders states if the proposed procurement will not follow the procedures outlined within the Contract Standing Order then:

In all other cases, a written report shall be presented by the Director to the respective Cabinet or Cabinet Member stating the nature of the proposal, an estimate of the anticipated direct and indirect costs thereof and the implications of the proposal upon the Capital Programme and Revenue Budget of the Council and recommendations as to the way in which the proposal should be carried out (including recommendations as to the mode of tendering or as to whether it is a Specialist Contract).

- 4.2 Paragraph 8.2.3 of the Contract Standing Orders states that:

The approval of the relevant Cabinet Member, Joint Strategic Committee or Council shall be required to the seeking or acceptance of a Tender where the Tender, or the estimated cost of it, together with all relevant fees and costs, exceeds the provision made in the Council's Capital Programme or Revenue Budget, as the case may be, by £10,000 or 10% whichever is the lesser.

- 4.3 Whilst it is difficult to establish at this time the overall value of any potential VAT to be reclaimed, members should be aware that the fee could exceed £50,000. A contract with a consultant which would potentially generate a fee of this size to the consultant would normally require a tendering process before a contractor could be appointed. However, the Council is satisfied that the contractor holds certain intellectual property rights in this area and therefore there would be no reasonable alternative contractor.

- 4.4 In addition, whilst the potential fee is not within the current budgets of the Councils, the cost of the contract will be exceeded by the amount of VAT reclaimed.

5.0 FINANCIAL IMPLICATIONS

- 5.1 Any fees due would be offset against refunds received and so there would be unfunded cost to the Council. If successful, the Councils would benefit from 85% of the VAT reclaimed.

6.0 RECOMMENDATION

- 6.1 The Executive Member for Resources is asked that under these circumstances standing orders are waived and Mazars are appointed to carry out VAT consultancy work;**

**Local Government Act 1972
Background Papers:**

None

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SCHEDULE OF OTHER MATTERS

1.0 COUNCIL PRIORITY

1.1 If successfully, the resources reclaimed can be used to support the priorities identified in 'Surf's up'.

2.0 SPECIFIC ACTION PLANS

2.1 Matters considered and no issues identified.

3.0 SUSTAINABILITY ISSUES

3.1 Matters considered and no issues identified.

4.0 EQUALITY ISSUES

4.1 Matters considered and no issues identified.

5.0 COMMUNITY SAFETY ISSUES (SECTION 17)

5.1 Matters considered and no issues identified.

6.0 HUMAN RIGHTS ISSUES

6.1 Matters considered and no issues identified.

7.0 REPUTATION

7.1 Matters considered and no issues identified.

8.0 CONSULTATIONS

8.1 Matters considered and no issues identified.

9.0 RISK ASSESSMENT

9.1 Matters considered and no issues identified.

10.0 HEALTH & SAFETY ISSUES

10.1 Matters considered and no issues identified.

11.0 PROCUREMENT STRATEGY

11.1 Matters considered and no issues identified.

12.0 PARTNERSHIP WORKING

12.1 Matters considered and no issues identified.