REPORT TO EXTRAORDINARY COUNCIL

Date of Meeting: 28 May 2024

Report of: Director Finance

Title: Exeter Science Park Limited – Conversion of debt to equity

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 To seek Members' approval of a range of proposals to enable Exeter Science Park Limited (ESPL) to deliver on its objective of providing high quality jobs to support the local region.

2. Recommendations:

2.1 It is recommended that Council agree to:

1) Reaffirm its support to Exeter Science Park as a driver for delivering high quality jobs to the local economy;
2) Authorise the section 151 officer to agree a conversion of the Council's outstanding loan to equity, in conjunction and on condition that each of the other owners agree to do the same. The conversion to include an obligation placed on the Company to buy back the shares, as and when land sales provide sufficient funds to do so;
3) The appointment of a Councillor to either act as Shareholder Representative with the section 151 Officer as an advisor, or a Councillor to support the section 151 Officer in the role of Shareholder Representative;
4) Authorise the section 151 Officer to support the implementation of the recommendations as set out in the recent review undertaken by Deloitte:

    a) To develop a clear marketing and business development strategy;
    b) To deliver a sustainable operating and funding model via cost reduction and a restructuring of the debt;
    c) To improve the Governance by reviewing the Further Agreement and Reserved Matters; and
    d) To secure an updated Local Development Order and start the process to bring in either a private sector investor or private sector developer to support delivery of the remainder of the science park.

5) Delegate authority to the Shareholder Representative to vote on matters arising at Shareholder meetings, where there is no financial implication for the Council. Matters reserved for Full Council will be:

a) Decisions which have an impact on the financial position of the Council;
b) Amendments to the Further Agreement and/or Reserved Matters;
c) Approval of a Business Plan for the Science Park; and
d) A decision to change the strategic direction of the Science Park.

3. Reasons for the recommendation:

3.1 To put ESPL in a position where it can attract investment to continue to develop the Science Park in line with the objectives set by the owners.

3.2 To provide clarity to Council and the Company of the decision-making process that the Council will follow.

3.3 To enable the Company to have a clear direction for future development of the Science Park.

4. What are the resource implications including non financial resources

4.1 There is no requirement for additional cash in the recommendations or any further resources required to implement the recommendations. If approved the Council will convert its unsecured loan, which was due for repayment in January 2025 with equity shares in the Company. Each of the four owners has a debt with the Company and all are proposing to adopt the same agreement. In reality this will require a move on the Balance Sheet from Debtors (an asset) to Long Term investment (an asset), so the Council's Balance Sheet will remain at the same value.

4.2 The costs associated with the other recommendations, including securing a new Local Development Order and Private Developer / investment will fall on the Company and the owners have ensured that sufficient funds have been left in the Company to deliver these critical pieces of work.

5. Section 151 Officer comments:

5.1 ESPL has been successful over the last few years in attracting grant funding from the Local Enterprise Partnership (LEP) to deliver a number of new buildings at the Science Park. This has allowed the Company to get to scale (i.e., have enough income to fund its costs) albeit at a very high occupancy level. The four owners are public bodies, which do not have the funds to inject further investment into the Science Park, particularly at the scale required to fully develop out the Park. Therefore, a different approach is required to deliver on the objective of providing high quality jobs, whilst not relying on public funds to deliver. The winding up of the LEP without a clear alternative means that the potential for public funding is not clear and the owners do not want to see the Company take on further debt.

5.2 The proposals around Governance will enable Councillors to be clear on their role in delivering their objective. Being clear on when decisions are taken at Council will ensure that the process is managed smoothly. It is intended that at least an annual report will be issued to Council on progress.

6. What are the legal aspects?

6.1 The land on which the Science Park lies was purchased by the Regional Development Agency (a Central Government Organisation responsible for supporting economic development in the regions) and granted to Devon County Council (DCC). The agreement includes a range of obligations limiting the use of the land for the purposes of a Science Park only and preventing the owners from profiting from the Science Park.

6.2 The Company operates under a Shareholder Agreement and Further Agreement last updated in 2013.

6.3 The Company operates in line with the Companies Act 2006 and has a number of independent Directors, including the Chair and four Directors nominated by the owners (one each).

6.4 Exeter City Council provided a loan £1 million to ESPL in January 2015. The principal amount plus interest is due to be paid back to the Council on the tenth anniversary of the loan in January 2025. The total amount of debt owed by ESPL to the Council is £1,238,966 (principal amount plus interest). There is no security for the loan. The Council is an unsecured creditor. ESPL is unable to repay the loan when it falls due in January 2025. The Council could seek to take enforcement action against ESPL to recover the loan. However, this would be likely to undermine the viability of the company and deter potential investors. By converting the loan to equity in the form of shares in the Company, the Council arguably improves the security for the money it is owed given that the assets of the Company presently exceed its liabilities. However, this process will result in the Council holding a smaller share of the Company and the amount owed to the Council will no longer attract interest. If the Company subsequently became insolvent and was wound up, the Council would be entitled to a share of the assets of the Company. Whether this would be sufficient to repay the Council all or part of the money it is owed in the future is necessarily a matter of speculation and will be dependent upon the Company's liabilities in the future.

6.5 The proposals set out in this report aim to put ESPL into a stronger financial position. Provided the proposals are successful, then the additional shares held by the Council will be repaid in order to reimburse the amount owed. There is no indication as to when payment will be made.

7. Monitoring Officer's comments:

7.1 Members will note that the purpose of the recommendations in this report are put forward with the intention of enabling Exeter Science Park Limited to continue as a going concern in order to deliver on its primary objective of providing high quality jobs to support the regional economy. This requires Members to take a long-term view on the aims and ambitions of the owners of Exeter Science Park Limited. The proposals to repay the sums owed to the Council are necessarily speculative at this point and the financial viability of the Company is likely to be dependent on it attracting further investment.

7.2 Members will need to strike a balance between the importance to the regional economy in maintaining Exeter Science Park Limited as a going concern and the Council's fiduciary duty to recover and preserve its funds.

Simon Copper – Deputy Monitoring Officer.

8. Report details:

8.1 History

Delivering a Science Park in the City has long been an ambition of the City Council. The problem being that there was not sufficient land within the boundary to deliver the scale required. In 2008, the RDA purchased land to the east of junction 29 and gifted it to DCC to allow the delivery of a Science Park.

Working with Partners (ECC, East Devon District Council, the University of Exeter and initially the Met Office) plans were developed to start the delivery of a Science Park in this location. It was determined that the best vehicle for delivery was through a Company (ESPL) and four of the Partners agreed to set up and own the Company (the Met Office withdrew around this time). Under the agreement with the RDA (which transferred to what is now Homes England), they were allowed observer status and the owners have to report back to them on progress.

Each of the owners invested in the Company (ECC's initial investment was £675,360 and the shareholder percentages were as follows:

Owner	Percentage
DCC	49.99%
University Of Exeter	21.43%
ECC	21.43%
EDDC	7.15%

The challenge was that there were insufficient funds to deliver any building and the entire strategy was developed to deliver land sales to build out the Science Park. This strategy proved challenging to deliver for three reasons. Firstly, there is a reason that Science Parks are owned by the Public Sector and that is because in their infancy they do not make money and it tends to take longer than the private sector would like to deliver a profitable model. Therefore, there was no appetite for Developers to purchase land. Secondly, Companies in the Science sector, particularly new and startup Companies want a ready built building to lease. Thirdly, as the land was owned by DCC, all sales would provide capital receipts which could only be used to fund capital projects and not to fund the running costs of the Company.

Additionally, the Science Park needed a Centre, which offered start up office and lab space, business support, a reception, café, and meeting rooms to underpin the whole Park. These buildings are the least profitable as they have a significant amount of space which does not make money.

A different strategy was required, but without funding, the owners were unable to deliver any building. The introduction of the LEP provided an opportunity to deliver funding to develop the Science Park Centre and they provided a loan of £4.5 million from the Growing Places Fund, for which they required a guarantee from the owners. The £4.5 million was insufficient to deliver the Centre and the intention was to use the shareholder funds to complete the building. That left the problem of there being no income in the Company to cover running costs, so the four owners agreed an approach whereby DCC and the University of Exeter would guarantee the LEP loan and ECC and EDDC would provide a loan of £1 million each to enable the Centre to be delivered and free up the Shareholder Funds to cover the costs of running the Company.

A further equity investment was made by the owners in the middle of the decade which increased the Councils shareholding by £199,940 taking the total to £875,300. This was not uniform across the owners and resulted in the current shareholdings:

Owner	Original Percentage	Updated Percentage
DCC	49.99%	46.02%
University Of Exeter	21.43%	15.35%
ECC	21.43%	19.88%
EDDC	7.15%	18.75%

Over the next few years, the LEP provided further grants (not loans) to allow the Company to build three further buildings, which have supported the Company getting to a position where its income covers its costs (albeit at a high occupancy level). It did not provide sufficient income however to address the loans outstanding to the LEP, ECC and EDDC. Alongside this, land was sold to Zeal Hotels in order to deliver a hotel in front of the Science Park Centre.

Covid has had an impact of occupancy levels as Companies change their working methods and occupancy has reduced to under the level required to break even. This is principally down to the Environment Agency not renewing their lease for the Covid testing Lab in one of the buildings. Occupancy is set out in section below.

The LEP loan was due in October 2023, although a number of extensions have been agreed. Before the LEP was wound down, it called the loan and whilst the Company will contribute up to £750,000, DCC and the University will have to cover the rest under the terms of the guarantee and then convert this to a loan.

Therefore, the Company is in a position of having debts owed to each of its owners with little prospect of repayment by the due dates.

8.2 Proposed conversion of debt to equity

In order to provide a clear direction for the Company and the Science Park’s future, the owners have considered how best to address the debts owed to them by ESPL. The owners are clear, and in agreement, that they all expect to recover the funds from the

Company as and when there are sufficient funds available but acknowledge that this will require a clear commitment to the Company to enable this to happen.

In order to facilitate this a review of ESPL has been commissioned, paid for by ESPL and delivered by Deloitte. They have made a number of recommendations, which are discussed in further detail below. Most importantly is ensuring that the Company is sufficiently strong financially to attract further investment or a development partner. Therefore, it is proposed that all four owners convert their loans to equity, but crucially with an obligation on the Company to buy back the shares (and destroy them) as and when there are sufficient funds available to do so. Additionally, in order to maintain their shareholding percentage DCC are proposing to supply a piece of land they acquired in a land swap deal with Eagle One (with a value of £1.5 million).

This is an equitable solution but will impact on the shareholder percentages as the amount of debt held by the University and DCC is higher than the amount owed to ECC and EDDC.

It is proposed therefore that ECC converts its debt totalling £1,238,966 (principal plus interest) to equity along with the other three owners. The shareholdings post transfer will approximately be:

Owner	Updated Percentage	Proposed Percentage
DCC	46.02%	45%
University Of Exeter	15.35%	24%
ECC	19.88%	15%
EDDC	18.75%	15%

8.3 Shareholder Representative

The Section 151 Officer has acted as the Shareholder Representative for the Council since 2018. The Shareholder Representative is responsible for looking after the Council's interests as an Owner. It is not responsible for the running of the Company. At ECC it has always been an Officer of the Council and there is no formal Councillor appointed. The other owners have appointed as following:

- East Devon – Portfolio Holder with officer as advisor;
- DCC - Officer with Portfolio Holder as support; and
- Uni - Finance Director

Therefore, it is common for there to be a democratically elected member involved in the decision-making process, even when there are no significant implications for the Council as owner.

The Council also appoints a nominated Director, who is acting in the interests of the Company rather than the Council. Again, the Council has appointed an Officer to undertake this role, currently the Service lead – Net Zero & Business. This is the same as DCC and the University who have also appointed Officers. EDDC are the exception, having a Councillor as their serving Director. It is important to note that the Officer may have to vote for things that may be in the interests of the Company but not necessarily in the interests of the Council.

8.4 Current Performance of ESPL

The Science Parks latest published accounts demonstrate the solid performance of the Company. In the year ended 31 March 2023, Turnover was £1.440m although there was a small loss for the year of £2,500. The Balance Sheet is positive With Net Assets of £5.9m, which will be significantly strengthened if the proposal for the debt-to-equity conversion is approved. Members should be comforted that the Fixed Assets of the Company are higher than the total equity investment of the four owners. The latest Accounts are attached at Appendix 1.

In terms of lettable space, there is 68,207sq ft at the Science park and occupancy levels have reduced over the past 4 years from 96% down to 70% currently. This underpins the recommendation to strengthen the marketing and business development elements of the Science Park. ESPL requires occupancy in excess of 80% to break even presently and therefore this needs to be a priority.

8.5 Review of the Company

In order to provide a clear direction for the Company and to ensure all four owners were aligned in the objectives, a review of the Science Park was commissioned and Deloitte were appointed. Whilst the report is confidential, it is attached as a Part 2 Appendix for Members and the key recommendations are set out in the body of this Part 1 report for approval.

As a first step, the owners have agreed to adopt the UK Science Park Association's interpretation of Gateway Policies (which govern the types of Business allowed on the Park) to allow support businesses (such as Accountants and Lawyers to take up to 10% of the space and support the Science Companies in the delivery of their business.

Fundamentally, as the owners have their own financial limitations, the scope for the further development of the park will be dependent on attracting private sector support. This is most likely to be in the form of a development partner with an option to buy land to develop as new business are attracted. They would then buy the land, develop, and let the buildings, with the Company receiving funds from the sale of the land. These funds would then be used to buy back the share acquired in the debt-to-equity conversion. This will provide the most cost-effective opportunity to develop out the Park to its full capacity.

The first step is to adopt a new Local Development Order to support the Planning process at the Park and funds have been set aside to allow this to commence.

The other recommendations focus on business sustainability, improving Governance and developing the Marketing and Business Development for the Science Park as set out in the Recommendations. The Deloitte report is attached as Appendix 2 (Part 2).

8.6 Conclusion

The Science Park has come a long way since its inception and has delivered around 750 jobs, approximately £52.5 million GVA per annum and four significant buildings. The University also have a Building on the Science Park and the Met Office have two.

The proposals in this report will allow the Science Park to have a real opportunity to develop out the rest of the Park without financially impacting the owners to deliver the planned 3,500 jobs.

9. How does the decision contribute to the Council's Corporate Plan?

The decision supports our prosperous local economy priority by delivering high quality jobs in the region.

10. What risks are there and how can they be reduced?

10.1 The greatest risk is failure of the Company, but the recommendations set out in the report attempt to minimise this risk. The proposal to convert an unsecured loan to equity, which is backed by a strong asset base actually leaves the Council in a better position so long as the Company is viable.

10.2 Whilst the approach proposed will provide a pathway to recovery of our funds, there is a risk that a Private Developer will be unsuccessful in attracting businesses, meaning that there are no land sales. In reality if this occurred, the owners would simply revert to owning the land and be in no better or worse situation.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation, and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies, and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage, and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because the report provides recommendations for the Council as an owner of the Business.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13. There are two alternatives. The owners could maintain and extend the repayment date for the existing loan facilities. This would maintain the current position but make the Company unattractive for new investment. Alternatively, the owners could seek to recover their funds by either selling the Company, or individual buildings. These options may well recover the funds but would reduce the opportunity to secure a long term fully developed Science Park.

Director Finance, Dave Hodgson

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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