

## **Report to the Cabinet**

**Report reference:** C-077-2015/16

**Date of meeting:** 3 March 2016



**Epping Forest  
District Council**

**Portfolio:** Finance

**Subject:** Epping Forest Shopping Park – Option to Tax

**Responsible Officer:** John Bell (01992 564387).

**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

**(1) To “Opt to Tax” the Epping Forest Shopping Park.**

### **Executive Summary:**

The Council currently enjoys the protection of Section 33 of the VAT Act 1994 whereby it can reclaim all of the Value Added Tax (VAT) paid on expenditure relating to its exempt supplies as long as the VAT on costs relating to exempt supplies is less than 5% of the total VAT incurred by the Council in any given financial year.

It is intended that once built, the Council will lease out the commercial units in the Shopping Park. In principle, this will be an exempt supply for VAT purposes. This will mean that the VAT on directly attributable costs will need to be included in the Council’s partial exemption calculation.

With the construction of the shopping park, the Council will have large amounts of VAT on costs relating to an exempt supply which will push it over the current 5% partial exemption de-minimis limit.

An option to tax will convert the exempt supply to a taxable supply. This will mean that the Council must charge VAT on the income it receives from the leases over the commercial units and as such, the VAT on costs relating to the Shopping Park will not need to be included in the Council’s partial exemption calculation.

If an option to tax is not put in place by the end of the financial year the Council may not be able to recover approximately £7million of VAT.

### **Reasons for Proposed Decision:**

To enable the Director of Resources to “Opt to Tax” the Shopping Park site after gaining relevant advice from VAT advisors thus ensuring the Council can reclaim all of the VAT incurred on the development.

### **Other Options for Action:**

Do not “Opt to Tax” and do not reclaim any VAT on exempt supplies (both in relation to the Shopping Park and other exempt supplies by the Council in any given financial year). The

potential cost would exceed £7million.

**Report:**

1. As many of the services provided by the Council are statutory functions and funded by local taxation and Government grants they are generally non-business in nature and as such VAT is normally not recoverable. Section 33 of the VAT Act 1994 allows Councils to recover VAT on their non-business activities as well as their exempt supplies up to a de-minimis limit of 5%, the position of the Council currently stands at around 4% per annum.
2. Construction costs on commercial properties are generally subject to VAT at the standard rate and incidental costs such as architects; surveyors and consultants fees will also be Standard Rated at 20%, by opting to tax this land the Council can reclaim this VAT with no impact on its partial exemption position.
3. As charges for "Interest in Land", such as leases, are exempt from VAT the Council would be unable to recover any of the VAT incurred on any of its costs of developing the site. By opting to tax the land we can then charge VAT on leases without it affecting our partial exemption limits. The draft Heads of Terms currently being negotiated with the various retailers have been prepared on the basis that VAT will be charged to the tenants.
4. The Council is committed to the construction of the Epping Forest Shopping Park after purchasing the share of the land from Polofind Ltd. This has incurred a large amount of VAT as Polofind Ltd had "Opted to Tax" their share of the land. If the Council does not carry out the same exercise, for this year only we would have to repay all of the VAT on costs relating to exempt supplies that has currently been recovered in this financial year, which has been estimated at £7million.

**Resource Implications:**

If the Council decides not to take up the option to tax then for this year only we would have to repay all VAT on costs relating to exempt supplies that has been reclaimed to date, £7million, and be unable to recover any other VAT incurred for the remainder of this financial year, that relates to exempt supplies.

**Legal and Governance Implications:**

Section 33 VAT Act 1994.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

PWC Accountants, the Councils VAT advisors.

**Background Papers:**

None.

**Risk Management:**

By opting to tax the shopping park the Council will minimise the risk of suffering a financial loss due to irrecoverable VAT.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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There are no equality implications arising from the recommendations in this report.