

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cllr Mark Elliott, Cabinet Member for Resources	
MEETING/ DECISION DATE:	On or after 16 th August 2025	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3631
TITLE:	Amendments to Development Facility Loan Agreement for Aequus Construction Ltd and Aequus Developments Ltd	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Equalities Impact Assessment		

1 THE ISSUE

- 1.1 Following a review, some amendments are required to the Council's Development Facility Loan Agreement for the Council's wholly owned housing company.

2 RECOMMENDATION

The Cabinet Member is asked to;

- 2.1 Approve the change to the market rate of interest used in the Development Facility Loan Agreement, taking into account the UK subsidy control framework.
- 2.2 Approve the update to the total loan commitment amount reflected in the loan agreement to align to the recently approved Aequus Strategic Business Plan 2024-30 and the associated provision for loans included in the Council's 5 Year Capital Programme in line with the February 2025 Council Budget Report.
- 2.3 Agree the updating of the delegation of future decisions on the loan agreements and the granting of specific loans to Aequus to the S151 Officer in consultation with the Cabinet Member for Resources.

3 THE REPORT

- 3.1 The Council has a specific loan agreement to provide funding to its 100% owned housing company Aequus for development activities. The agreement is called the “Development Facility Agreement”, with loan funding repaid through sales of the developed housing units. Examples of developments that have used this facility include Riverside at Keynsham, Sladebrook Road (St Joseph’s Court) and 117 Newbridge Hill.
- 3.2 All loans made under this facility have been fully repaid so there is currently no balance outstanding against this loan facility.
- 3.3 The original loan facility was set up in 2017 shortly after Aequus was formed. The interest rate included in the agreement was based on the EU framework for assessing a market rate for State Aid purposes. This used a UK specific reference rate to which a margin was added based on an assessment of the rating category of the company and the assets linked to the loan (collateralisation).
- 3.4 This framework has since been replaced by the UK Subsidy Control Act 2022 after Brexit and, following a review of the loan agreement alongside this Act, it is proposed to update the market interest rate as well as including a fixed rate option in addition to the current floating rate.
- 3.5 For floating rate loans, it is proposed to use the Bank of England Bank Rate at the time of the loan as the base rate with a risk margin to be added of 2.2%. The margin is based on the assessment of creditworthiness of the company as “Satisfactory” and using the middle mark up rate for that category from the UK Subsidy Controls matrix as set out in the table below.

Determining the mark up rate for loans – UK Subsidy Control Act 2022

<i>Level of creditworthiness</i>	<i>Loss in the event of default</i>	<i>Mark up rate per annum</i>
Strong	None	1%
Good	None	1%
Satisfactory	Not more than 30%	1%
Satisfactory	More than 30% and not more than 60%	2.2%
Satisfactory	More than 60% (or not known)	3.4%

- 3.6 This reflects that under the loan arrangements for each development the Council has security over the assets being developed and the expectations are that any loss in the event of default would be less than 60%.
- 3.7 The S151 Officer has reviewed this assessment and has agreed to this margin being used for development loans to Aequus.
- 3.8 For fixed rate loans, it is proposed to use the relevant Public Works Loan Board (PWLB) maturity loan rate based on the period between the first loan drawdown and the planned final loan repayment, as set out in each development proposals

business case. The 2.2% margin would also be added to fixed rate loans. The PWLB rate is proposed as the base rate as it provides an appropriate proxy for the rate at which the Council can access borrowing for a fixed term period.

3.9 For illustration, the overall rate including the margin using rates as at 1st July 2025 for each type of loan would be:

a) Floating rate loan = 4.25% + 2.2% = 6.47%

b) Fixed rate loan (based on 4 years) = 4.57% + 2.2% = 6.77%

3.10 The Development Facility Agreement currently includes a “total commitment” limit on loan funding of £33.2m. The Council’s currently approved & provisional capital budgets for Property Company Investment is £82.8m, this follows approval of the capital programme at the 2025/26 Council’s budget setting meeting and the approval of the Aequus Strategic Business Plan (2024-2030), so the agreement needs to be updated to align with these figures. Actual loan utilisation will still be subject to the normal governance and decision making arrangements and this figure represents funding availability subject to those decision making arrangements.

Aequus - Loan Budgets as per Capital Programme - Budget Report 2025, updated to reflect 24/25 outturn and carry forward of unused loans from 24/25

Year	Approved - per Feb 25 Budget Report (£m)	Approved - carried forward from 24/25 (£m)	Total Approved (£m)	Provisionally Approved - per Feb 25 Budget Report (£m)	Total Loan Availability - 25/26 - 29/30 (£m)
2025/26	3.350	0.466	3.816	0.000	3.816
2026/27	5.611	0.000	5.611	7.389	13.000
2027/28	0.000	0.000	0.000	36.000	36.000
2028/29	0.000	0.000	0.000	23.000	23.000
2029/30	0.000	0.000	0.000	7.000	7.000
Total	8.961	0.466	9.427	73.389	82.816

3.11 The proposed changes to the loan facility will be made by way of a legal amendment agreement to the existing facility.

3.12 As part of the decision taken at the Cabinet meeting in December 2015 to establish the Housing Company, delegation was granted to the Chief Executive and Strategic Director of Resources for the approval of Council investment in the Company within approved budgetary provisions including but not limited to the:

- terms of Council investment
- business cases for future development proposals to be undertaken by the Company.

- terms of any guarantee to be provided to support the provisions of the investment
- terms of any loan or equity agreement between the Council and the Company
- such others matters as are regarded as necessary to enable the provision of the investment, progress of the developments and their subsequent sale, lettings and on-going management.

3.13 Following changes in the role of the Strategic Director of Resources and the designation of the S151 Chief Financial Officer, it is proposed that these delegations are updated to the Section 151 Chief Financial Officer, in consultation with the Cabinet Member for Resources.

4 STATUTORY CONSIDERATIONS

4.1 The UK Subsidy Control Act 2022 has been used in the assessment of the proposed market interest rate for development loans.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 The interest on loans to Aequus contributes towards delivery against the Council's Medium Term Financial plan target of £1M of revenue returns from the Company each year.

5.2 The updating of the loan commitment will bring the loan agreement into line with the loan provision included in the Council's capital programme which has already been agreed as part of the February 2025 Council Budget Report.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance. The key risks are outlined in the detail of section 3 of the report and relate to the use of the UK Subsidy Control Act and the need to re-set the loan arrangements.

7 EQUALITIES

7.1 This report deals with specific technical issues relating to the need for updating the loan facility agreement and therefore does not have any known adverse impact upon individuals with protected characteristics. An Equalities Impact Assessment is included in Appendix 1.

8 CLIMATE CHANGE

8.1 The Company aims set out by the Council Shareholder include the requirement to support the Council to meet its climate emergency objectives and best practice for property development. The Business Plan addresses how the company will do this in detail, including the use of the AECB Building Standard to achieve an energy performance certification rating of "A" for all new build Aequus housing developments.

9 OTHER OPTIONS CONSIDERED

9.1 None. The Council needed to re-set the loan arrangement as a result of the new regulatory regime post Brexit as detailed in the report.

10 CONSULTATION

10.1 Consultation has taken place with the S151 Officer, Monitoring Officer and the Cabinet Member for Resources.

Contact person	Gary Adams, Head of Financial Management Jeff Wring, Director of Financial Services, Assurance and Pensions
Background papers	None
Please contact the report author if you need to access this report in an alternative format	