

## **WESTTHORN TRANSACTION**

### **Background**

On 1 April 2009, Glasgow City Council ("GCC") and Celtic plc ("Celtic") concluded a contract ("the Missives") in respect of a number of land transactions relative to sites near Celtic Park. One of these land transactions comprised the sale of the Westthorn site ("Westthorn") by GCC to Celtic.

By way of background in Scotland a typical land transaction consists of two stages, a first or "missives" stage, in which the parties to the land transaction agree the terms of the missives (the sale contract which specifies the terms and conditions on which the rights in land will be transferred) and a second, or "conveyance", or implementation stage in which the contract is actually implemented and the rights in land are formally transferred by the grant and subsequent registration of formal deeds of transfer.

The terms and conditions governing the sale of the Westthorn site are contained in the Missives specified at section 1 of the undernote below. These terms and conditions were, in turn, replicated in, and implemented by, the Implementing Documents specified at section 2 of the undernote below.

In practical terms, therefore, the terms and conditions governing the sale of Westthorn are contained in the Implementing Documents and reference should be made to such documents in the first instance. The Missives are referred to in this note as background and for the sake of completeness.

### **Summary of Terms and Conditions**

The Westthorn transaction comprised three elements:

1. **Sale of land-** the sale of Westthorn by GCC to Celtic;
2. **Servitude-** the grant by Celtic to GCC of a servitude over part of Westthorn and neighbouring land owned by Celtic; and
3. **Overage-** an overage agreement between GCC and Celtic.

The principal terms and conditions were as follows:

1. **Subjects-** the "Westthorn Subjects" are as defined in Clause 1.79 of the Missives as undernoted and outlined in red on Plan No.5 annexed and signed as relative to the said Missives.
2. **Price-** £739, 500 (based on open market value as at 9 November 2005 plus RPI increase to 31 March 2008) exclusive of VAT.
3. **Date of Entry-** 6 April 2009.
4. **Servitude-** Celtic granted GCC as owners of the Allotments to the south of Westthorn (one) a servitude of access (and also for service media) over the existing access to the Allotments through Westthorn and (two) a servitude of access (and also

for service media) over land within Celtic's existing ownership there for future residential development of the Allotments all subject to the terms and conditions of the Deed of Servitude.

**5. Overage-** Celtic and GCC entered into a Minute of Agreement in respect of the payment by Celtic to GCC of 50% of the uplift in value in respect of certain disposals within 5 years of the Date of Entry. This protected GCC if Celtic realised any increase in land values through a subsequent sale or other disposal of Westthorn as a result of obtaining a planning consent for a more valuable land use. Celtic's obligations in terms of the Minute of Agreement were secured by a postponed Standard Security granted by Celtic to GCC over Westthorn. A standard security is a Scottish legal mechanism which secures performance of contractual obligations.

Celtic granted a Standard Security in favour of The Co-operative Bank PLC over Westthorn. This Standard Security is ranked prior to the Standard Security granted by Celtic in favour of GCC in terms of the Ranking Agreement amongst GCC, Celtic and The Co-operative Bank PLC. The postponed ranking of GCC's Standard Security did not affect the obligations of Celtic in terms of the Minute of Agreement: Celtic remained liable to pay GCC the uplift in value in the circumstances specified in the Minute of Agreement.

For the avoidance of doubt, no loan was ever given by GCC to Celtic in respect of the Westthorn transaction or at any other time.

#### **Undernote referred to:**

#### **Section 1- Missives**

The Missives comprise the following documents:

1. **Offer by GCC to Burness-** dated 31 March 2009.
2. **Qualified Acceptance by Burness to GCC-** dated 31 March 2009.
3. **Acceptance by GCC to Burness-** dated 1 April 2009.

The terms and conditions relative to the Westthorn land transaction are contained in the following parts of the Missives:

1.1 **Sale of Westthorn-** Clause 3.2 of the Offer as read with Clause 1.76 and Part 1 of the Schedule to the Offer (General Conditions of Sale). Other relevant parts of the Missives in this respect were: Part 20 of the Schedule to the Offer.

1.2 **Grant of Deed of Servitude-** Clause 8 of the Offer as read with Part 6 of the Schedule to the Offer (Westthorn Servitude Conditions). Other relevant parts of the Missives in this respect were: Part 7 of the Schedule to the Offer.

1.3 **Overage-** Clause 10.1 (i) (ii) (d) as read with Clause 1.70 of the Offer and Part 5 of the Schedule to the Offer (Clawback Conditions). Other relevant parts of the Missives in this respect are: Parts 12, 13, 20, 23 and 25.

## **Section 2- Implementing Documents**

The terms and conditions referred to at 1.1, 1.2 and 1.3 above were implemented by the following documents:

### **1. Sale of Westthorn**

1.1 Disposition by GCC in favour of Celtic (Westthorn).

### **2. Grant of Deed of Servitude**

2.1 Deed of Servitude by Celtic in favour of GCC (over part of Westthorn and neighbouring land owned by Celtic).

### **3. Overage**

3.1 Minute of Agreement between GCC and Celtic relative to overage.

3.2 Standard Security by Celtic in favour of GCC.

3.3 Ranking Agreement amongst The Co-operative Bank PLC, Celtic and GCC relative to the Standard Security referred to at 3.4 below..

3.4 Standard Security by Celtic in favour of The Co-operative Bank PLC (Westthorn).

## **Section 3- Timeline of Westthorn Transaction**

### **Definitions:**

“GCC”- Glasgow City Council

“CFC”- Celtic

“CFC Sol”- Celtic’s solicitors

“GCC Legal”- GCC Legal Services

“GCC DRS”- GCC Development and Regeneration Services

“WRG”- Westthorn Recreation Ground

“SP”- Strathy Park

### **1. YEARS- 2000-2004**

#### **Milestones**

**8/3/2000- GCC DRS (Property) Sub-Committee** - approved lease of WRG to Celtic on the terms and conditions negotiated by the Director of DRS the principal terms of which were as follows:

1. **Subjects of lease-** Westthorn Recreation Ground as shown on the plan attached to the committee report.

2. **Period of lease-** 5 years.

3. **Rent-** £26,000 per annum.

4. **End of lease-** at the end of the lease GCC and CFC to either:

4.1 jointly market the WRG site and CFC's adjacent Barrowfield training ground with the proceeds of any successful sale being shared on a pro-rata basis of land input; or

4.2 CFC to purchase the WRG site at its unrestricted value on the open market as assessed by the DV or another independent party as agreed by the parties. WRG to be valued on the basis that has appropriate access direct from London Rd of sufficient capacity to service the WRG site and to satisfy all statutory requirements including those for a quality residential development.

5. **Overage-** In the event that CFC should dispose of the WRG site in whole or in part or as part of a larger holding, GCC right to obtain 50% of any uplift in value.

**25/4/2000- GCC Land Services (Convenor's) Sub-committee-** declared WRG surplus to requirements of GCC Land Services and authorised Director of DRS to lease WRG in terms of foregoing committee approval accordingly.

**20/6/2000- Missives of lease and purchase between GCC and CFC ("2000 Missives")-** concluded between GCC and CFC in implement of the foregoing committee authorities and comprising the following:

1. letter of offer by Semple Fraser solicitors on behalf of CFC addressed to GCC dated 20/6/2000.

2. letter of acceptance of foregoing offer by GCC Legal on behalf of GCC to Semple Fraser solicitors on behalf of CFC also dated 20/6/2000.

**Lease by GCC to CFC of WRG ("2000 Lease")-** in part implement of the 2000 Missives and dated 27/12/2000 and 5/7/2001 and registered in the Books of Council and Session on 10/6/2002. The principal terms of the 2000 Lease were as follows:

1. **parties-** GCC and CFC.

2. **subjects-** subjects comprising 5.38 hectares or thereby shown outlined in red on the plan annexed to the 2000 Lease.

3. **rent-** £26,000 per annum exclusive of VAT.

4. **period of lease-** 5 years: from 10/11/2000 to 9/11/2005.

5. **tenant's building obligations-** to construct within two years of 10/11/2000 a building on the subjects in connection with player training facilities and associated uses.

6. **repairing/insurance obligations-** CFC as tenants obliged to repair and insure the subjects.

7. **user-** CFC as tenants obliged to use the subjects in connection with player training facilities and associated uses.

Email and other correspondence: summary

The relevant email correspondence relates to the negotiation and documentation of the terms of the foregoing 2000 Missives and 2000 Lease.

**YEAR- 2005**

**Milestones**

**7/6/2005- DRS (Property) Sub-committee-** this noted the current position regarding negotiations over the potential disposal of sites around Celtic Park to CFC and authorised GCC DRS to enter into final negotiations with CFC regarding, *inter alia*, the disposal of WRG to CFC and noted that a further report detailing the outcome of the negotiations would be brought back to the committee in due course.

**30/6/2005- GCC Legal to CFC- service by GCC Legal to CFC of Notice to Quit-** a valid and timeous notice to quit was served by GCC in advance of the date of expiry of the 2000 Lease on 9/11/2005. Following 9/11/2005, GCC permitted CFC to continue to occupy WRG and CFC continued to pay rent to GCC at the rate specified in the 2000 Lease (£26,000) per annum until the date CFC acquired title to WRG in terms of the above Missives on 6/4/2009. As noted below, in terms of the 19/1/2007- GCC Executive Committee authority, CFC were to pay a rent of £30,000 per annum from 9/11/2005 until the date CFC acquired WRG. The difference between the rent payable under the 2000 Lease and that payable in terms of the 19/1/2007- GCC Executive Committee authority amounted to £4,541.08 and was paid by CFC to GCC on their purchase of WRG in terms of the above noted Missives on 6/4/2009.

Email and other correspondence: summary

Through exchange of emails, letters and meetings GCC and CFC undertook detailed negotiations with the objective of achieving agreement on various issues relative to CFC's acquisition of WRG (in the context of the wider negotiations between the parties in respect of various land transactions in the vicinity of Celtic Park) including the price payable by CFC in respect of WRG, and the methodology for determining same, the abnormal costs to be deducted from the price and GCC's overage requirements.

**YEAR- 2006**

**Milestones**

**None**

Email/other correspondence/meetings: summary

Through exchange of emails, letters and meetings GCC and CFC, and their respective legal advisers continued to negotiate the heads of terms of the acquisition by GCC of the WRG site in the context of the wider negotiations between the parties in respect of various land transactions in the vicinity of Celtic Park. Negotiations centred on the amount of the price payable by CFC for WRG and the methodology for determining same.

## YEAR- 2007

### **Milestones**

**19/1/2007- GCC Executive Committee-** agreed to the process to be followed to dispose of WRG to CFC and acquisition of the SP site as follows:

1. GCC and CFC to appoint a mutually acceptable arbiter to determine the market value of WRG with a view to the process being completed by Spring 2007.
2. CFC to have option to purchase WRG at price determined by arbiter upgraded annually in line with RPI until 21/11/2009.
3. CFC to pay annual rent of £30,000 for WRG for period covered by the option to purchase.
4. CFC to pay GCC 50% of the uplift in value of WRG if WRG sold on within 5 years of the date on which acquired by CFC.
5. GCC to pay £250,000 or the value determined by the arbiter, whichever is the greater, for SP. CFC to have no rights of overage following acquisition by GCC.

**30/11/2007- GCC Executive Committee-** agreed to the disposal of WRG on the following terms:

1. price- £675,000, this being the price agreed between GCC and CFC as representing market value of the site taking into account the number of units capable of being built on the site and the level of abnormal works associated with the site.
2. overage- if site sold by CFC within 5 years of the date of their acquisition thereof GCC to be entitled to payment of 50% of any uplift in value.
3. CFC to pay GCC £10,000 as a contribution to GCC's expenses.
4. the date of CFC's acquisition of the WRG site to be mutually agreed between the parties.

### Email/other correspondence/meetings: summary

GCC and CFC continued to negotiate the heads of terms of the acquisition by CFC of WRG in the context of the wider negotiations between the parties in respect of various land transactions in the vicinity of Celtic Park. Negotiations centred on the amount of the price payable by CFC for the WRG site and how this should be determined, including the extent to which comparative evidence of valuation should be taken into account in determining value, the appropriate date of valuation of the WRG site and overage.

By October 2007, GCC and CFC made significant progress in agreeing heads of terms for the sale of WRG including, principally, the following:

1. **Price-** GCC and CFC agreed that the £675,000 was the market value of WRG. This was based on a density of 160 housing units, as agreed with GCC's Planning Department as the number of housing units capable of obtaining planning permission

for a residential development having regard to the location and extent of the site and a gross rate per housing unit of £26, 187 per unit based on comparable valuation evidence available at the time.

The actual price paid by CFC was increased by £64,500 to take account of an increase in the UK inflation rate (RPI) in the period from the date of valuation of the WRG site to 31 March 2008. Accordingly the price paid by CFC on the date of settlement of the sale of WRG was £739,500.

**2. Abnormals-** the abnormal costs were agreed between GCC and CFC as being £3, 515,000. This figure was based on a report produced by URS, a leading provider of engineering, construction and technical services for public agencies and private sector companies around the world. The costs were then verified and agreed by GCC's own Geo-technical team.

Abnormal costs are defined as the costs necessary to put a site into a developable state over and above the standard costs of developing a site. They fall into two categories: natural and man-made. Man-made abnormals are usually the result of industrial activity such as chemical works and mining.

It is normal professional surveying practice to consider abnormals in any valuation. The valuer prepares a gross valuation of the site in the open market. Deductions are then taken from the gross valuation to arrive at the actual valuation. Abnormals are a recognised head of deduction.

## **YEARS 2008-2009**

### **Milestones**

**1/4/2009-** conclusion of Missives relative to inter alia transactions relative to WRG as described above.

**6/4/2009-** settlement of inter alia transactions relative to WRG as described above.

Email/other correspondence/meetings: summary

Throughout the period from the end of 2007 to 1/4/2009, GCC and CFC and their respective legal advisers worked with a view to agreeing the terms of the legal documentation necessary to give effect to the heads of terms for the sale of WRG by GCC to CFC contained in the 19/1/2007- GCC Executive Committee and the 30/11/2007- GCC Executive Committee.

**END OF NOTE**