



Policy and Resources Committee

23 October 2018

Title	Saracens Loan Agreement
Report of	Chairman of the Policy and Resources Committee
Wards	Mill Hill
Status	Public with a separate exempt report
Urgent	Yes – for the reasons set out in paragraph 4.5
Key	Yes
Enclosures	None
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Summary

The report seeks authorisation to make a loan of £22.9 million plus fees (estimated at less than 1% of the loan value) to Saracens at a commercial rate for a period of 30 years to enable the construction of a new West Stand as part of their Allianz Park stadium at Copthall. It follows the Committee's decision at its meeting on 19th July 2018 to agree in principle to the loan subject to further due diligence and assurances. This report summarises the outcome of that further work, set out in more detail in the accompanying exempt report

Officer Recommendations

That the Committee:

- 1. Notes the outcome of the due diligence undertaken since July 2018, and the further assurances offered by Saracens, summarised in this report and detailed in the accompanying exempt report.**
- 2. Authorises to the Deputy Chief Executive to take all reasonable steps to prepare to enter into a loan agreement with Saracens Copthall LLP for the provision of a new West Stand as part of the Allianz Park stadium at Copthall.**
- 3. Subject to**
 - the satisfactory completion of audits referred to in paragraph 2.20,**
 - Council agreeing the relevant amendments to the Treasury Management Strategy Statement (TMSS), and**
 - inclusion within the legal documentation of the assurances set out in the exempt report**

authorises the Deputy Chief Executive, in consultation with the Chairman of the Committee, to enter into a loan agreement with Saracens Copthall LLP for £22.9m plus an amount for fees estimated to be less than 1% of the loan value, repayable over 30 years at an interest rate of 6%, for the purpose of constructing a replacement west stand as part of their Allianz Park stadium at Copthall.
- 4. Notes that these monies are anticipated to be borrowed by the Council from the Public Works Loan Board (PWLB), and that the estimated PWLB loan rate as of 12 October 2018 was 2.93%**

1. WHY THIS REPORT IS NEEDED

- 1.1 At its meeting on 19th July 2018, the Committee agreed in principle to support Saracens, in the form of a £22.9m loan at a commercial rate, to facilitate the construction of a replacement West Stand at Copthall. The Committee also instructed that further due diligence be undertaken, and assurances sought, to confirm that in entering into such a loan the council would be acting in accordance with its duty to act prudently. This report summarises the findings of that work, and recommends that, subject to some final checks, the council now proceed to make the loan. Saracens have agreed to pay the council's costs in entering into the loan, and it is proposed that these fees, which are estimated to be less than 1% of the loan amount, are added to the loan.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The July report set out the range of ways in which Saracens contribute to the community in Barnet and the wider benefits to the borough from the delivery of a replacement West Stand at Allianz Park.
- 2.2 The report also noted that the terms of any loan should be justifiable on a purely commercial basis, so that the council receives a proper return and there is not

State Aid to the club, and must be subject to appropriate security. The report summarised the findings of preliminary due diligence and recommended that further assurances were sought and due diligence undertaken. The detailed findings of this work are attached as an appendix to the exempt report, and are summarised below.

Further assurances

2.3 The further assurances sought related to:

- The need to ringfence the income streams available to repay the loan, to prevent them being redirected to other costs faced by the club.
- The need for a loan guarantee from the shareholders.

2.4 The revised proposed loan structure meets both of these requirements.

2.5 It is now proposed that the loan is made to Saracens Copthall LLP (SCLLP), a property company whose sole asset is the headlease of the Allianz Park stadium. Note that this is a change from the original proposal, which was to make the loan to Saracens Ltd.

2.6 SCLLP receives rental income from Saracens Ltd (the rugby club), and will receive rental income from Middlesex University for use of the West Stand. This rental income is sufficient to meet the loan repayments. The element from Middlesex University rises in accordance with RPI, subject to a minimum and maximum increase.

2.7 SCLLP have offered the headlease of Allianz Park stadium as security. The Committee will recall that the council owns the freehold of the stadium.

2.8 The shareholders have also identified a UK registered company (Company A) to act as guarantor to the loan repayments, up to a maximum of £10m. Company A invests in UK property via other UK registered companies. Company A's assets are valued in excess of £20m, meeting the test that the value of the guarantor's assets should be at least double the value of the guarantee.

2.9 In addition, a number of further necessary assurances have been identified. These are set out in the exempt report. Saracens have indicated that these are acceptable and can be incorporated into the final legal documentation.

Due diligence

2.10 The council commissioned Grant Thornton to undertake due diligence, at Saracens' cost on:

- Saracens Copthall LLP (SCLLP)
- Saracens Ltd
- Middlesex University
- Company A, and its investments

2.11 Grant Thornton have also provided advice on the appropriate level of interest to be charged given the level of security offered and the need for the council to charge a commercial rate of interest in order to comply with State Aid rules.

- 2.12 Grant Thornton's report is appended to the exempt report, and its findings are summarised below.
- 2.13 In a number of cases, the most recent audited accounts relate to the financial year 16/17. Grant Thornton have assessed unaudited accounts for 17/18, and recommend that their findings are confirmed by the audited accounts as set out in paragraph 2.20 below.

SCLLP

- 2.14 The due diligence raised no issues of concern. It included an assessment by Dun and Bradstreet which assessed SCLLP as having a low-moderate risk profile, with "Very Low Potential for Severely Delinquent Payments".

Saracens Ltd

- 2.15 The due diligence raised no issues of concern. However, it should be noted that the club is forecasting an operating loss in the two year before the new West Stand opens, and that the council should therefore seek assurances that this loss will be made good by the shareholders.

Middlesex University

- 2.16 The reports notes a number of challenges to the university sector generally, but concludes that Middlesex has a well-diversified range of income streams in the UK and abroad, and is therefore reasonably well placed to withstand these challenges. Nonetheless, it recommends that the council continue to monitor the university's financial position.

Company A

- 2.17 No issues of concern were raised. Further information is included in the appendix to the exempt report.

Conclusion

- 2.18 A synthetic credit rating of SCLLP was undertaken and reached a virtual credit assessment of A3. However, as the assessment was near to the boundary with the B grades, the interest rate assessment described below was based on an assumed B rating.
- 2.19 A commercial assessment was undertaken to ensure that the interest rate offered appropriately reflected the level of risk associated with the loan, based on the security and guarantees offered. This is important both to protect the council's commercial interests, and to ensure that the loan does not constitute State Aid. The assessment has confirmed that the proposed rate of 6% is appropriate in both respects.
- 2.20 Grant Thornton recommend that the council undertake some final due diligence, and ongoing monitoring as set out below:
- Assess SCLLP and Saracens audited accounts for the year to June 2018 when available to ensure no material differences from the provided management accounts.

- Assess the financial position and performance of MU when the FY18 annual report is published. This will provide more relevant information to the Council about the University's latest performance.
- Gain further confirmation (e.g. letters of support from shareholders) from the management of Saracens Limited that shareholders will provide support as required to absorb losses forecasted from FY19 and FY20.
- A request for audited accounts for Company A to validate the information contained in the unaudited and management accounts shared.
- Seek legal advice to confirm the exact form of legal instrument that would be required to provide them with the ability to receive lease payments direct from Saracens and MU, should SCLLP not meet the loan repayments.

2.21 The proposed loan structure has also been given a preliminary review by our legal advisors Anthony Collins LLP, who have identified a number of further assurances that the council would expect to be incorporated into the final legal documentation. The substantive issues have been discussed with Saracens' representatives who have indicated that they are content. These issues are set out in more detail in the exempt report.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 The council could choose not to make the loan to Saracens. This would not be consistent with the decision of July's meeting of P&R, which agreed to make the loan subject to due diligence and appropriate assurances.

4. POST DECISION IMPLEMENTATION

- 4.1 The Deputy Chief Executive will instruct lawyers, at Saracens' cost, to draw up appropriate legal documentation, incorporating the assurances set out in the exempt report.
- 4.2 The s151 officer will undertake the checks set out in paragraph 2.20 above.
- 4.3 The current Treasury Management Strategy Statement (TMSS) requires revision to the investment strategy to be fully compliant with regulations to allow progression to making the loan. The s151 officer will, therefore, propose to Council appropriate revisions to the TMSS to facilitate the council's approach to such loans.
- 4.4 The Deputy Chief Executive will consult the Chairman of Policy & Resources Committee prior to entering into the loan agreement.
- 4.5 Saracens propose to begin drawing down the loan before the end of 2018, to meet their project timescales. In order to facilitate this, work too draw up the legal documentation must commence immediately following the Committee's decision.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 As set out in the July 2018 Committee Report.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The council anticipates borrowing the sum of money from the Public Works Loan Board, and on-lending it to Saracens. This is in accordance with the Statutory Guidance from MHCLG on Local Government Investments (3rd Edition) which came into effect on 1st April 2018.

5.2.2 Projected revenue income from loan repayments would be expected to commence during the 2019/20 financial year, but for reasons of prudence has not yet been factored into the MTFS.

5.2.3 Legal fees will be recharged to Saracens.

5.2.4 The interest rate charged by the PWLB is calculated on a bespoke basis according to a range of factors including the term length, repayment arrangements and drawdown profile. Based on reasonable assumptions for this case, a rate of 2.93% has been estimated as of 12 October 2018.

5.3 Comments of the Chief Financial (s151) Officer

5.3.1 The Chief Financial Officer (CFO) has been involved in the discussions with Saracens since joining the council in December 2017 and can confirm that, as far as is possible, the key assurances referred to in the July report have been met, and that guarantees are in place to ensure the repayments are made in full and thus that council's capital is protected.

5.4 Social Value

5.4.1 The social, economic and environmental benefits of the West Stand scheme are set out in the July report.

5.5 Legal and Constitutional References

5.5.1 The land upon which the stadium is to be built is held under a lease dated 3 July 2015 for 99 years granted to Saracens Copthall LLP from Barnet Council. Article 7 of the council's constitution sets out the functions of Policy and Resources Committee. This includes:

- Strategic policy and finance including recommending capital and revenue budget, Medium-Term Financial Strategy and Corporate Plan to Full Council.
- Finance including: treasury management; local taxation; insurance; corporate procurement; grants; writing off debt; virements; and effective use of resources.

- If any report appears to come within the remit of more than one committee, to avoid the report being discussed at several committees, the report will be presented and determined at the most appropriate committee. If this is not clear, then the report will be discussed and determined by the Policy and Resources Committee.

5.5.2 A key decision is defined as one which:

- will result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates; or
- is significant in terms of its effects on communities living or working in an area comprising two or more wards.

5.5.3 This decision is considered urgent for the reasons set out in paragraph 4.5.

5.5.4 The council have the power to invest under s12 of the Local Government Act 2003. The loan has been assessed to ensure that it is in accordance with the council's investment strategy and complies with the rules on State Aid.

5.6 Risk Management

5.6.1 The July report identified four risks. These are reiterated below, together with an updated comment:

- The loan must be offered at an appropriate commercial rate so that the Council does not fall foul of EU regulations around State Aid.

Grant Thornton have given the proposal a synthetic credit rating of A3. However, for prudence they have assessed the interest rate in accordance with government guidance on State Aid using an assumed credit rating of B. Based in this assessment Grant Thornton have confirmed their view that 6% is an appropriate commercial rate.

- The loan to Saracens will be at a fixed rate. The Council will therefore need to manage interest rate risk. The initial view is that this is relatively easy to do through effective Treasury Management, however this will be further tested during due diligence.
- If the club's corporate strategy changes, for example through a change in ownership, there could be fewer community benefits from the loan and/or a less collaborative approach to resolving any future challenges.

Many of the community benefits are enshrined in the s106 agreements relating to development of the East and West stands. The s106 agreement for the West Stand has been completed since the July Committee.

- The experience of Northampton Borough Council (set out in the July report) suggests that it is important to have arrangements in place to ensure that the loan is spent for the intended purpose. This risk will be managed by making the loan available to draw down quarterly on evidence that works have been delivered as anticipated.

It is now the intention that the loan is drawn down monthly on evidence from a Quantity Surveyor that the works have been delivered as anticipated. This further mitigates the risk compared to the July position.

- 5.6.2 Other risks, particularly those relating to the council's confidence in relation to the repayment of the loan, are addressed in the report attached to the exempt paper.

5.7 Equalities and Diversity

- 5.7.1 Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. Consideration of the duties should precede the decision. It is important that Policy and Resources has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

- 5.7.2 A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 5.7.3 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- 5.7.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

- 5.7.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- Tackle prejudice, and
- Promote understanding.

5.7.6 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

5.7.7 The July report explained that the aim of Copthall is to create a fully inclusive location for sport and recreation within the Borough. The range of sport possible on the site means that all people, including those with disabilities, can use the facilities, or and visit the area as part of the Borough's extensive green spaces network.

5.8 Consultation and Engagement

5.8.1 No public consultation or engagement has taken place in respect of this proposal.

5.9 Corporate Parenting

5.9.1 No specific implications. We are working with Saracens on a number of initiatives to benefit children in care and care leavers.

6 BACKGROUND PAPERS

6.1 [Copthall – Planning Brief](#) September 2016

6.2 [Report to Policy & Resources Committee](#), 19 July 2018.