



ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER IN CONSULTATION WITH THE CHAIRMAN OF THE COMMITTEE – THE LEADER OF THE COUNCIL

Title	Saracens Loan Agreement
Report of	Deputy Chief Executive
Wards	Mill Hill
Status	Public with exempt report and Appendix A
Enclosures	Confidential Appendix A: Legal Advice – (Public)
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Summary

On 23rd October 2018 the Policy and Resources Committee resolved as follows:

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 the Deputy Chief Executive to take all reasonable steps to prepare to enter into a loan agreement with Saracens Cophall LLP for the provision of a new West Stand as part of the Allianz Park stadium at Cophall.
3. Subject to
 - the satisfactory completion of audits referred to in paragraph 2.20 [of the 23rd October P&R report],
 - 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 [to the 23rd October P&R Committee]

authorises the Deputy Chief Executive, in consultation with the Chairman of the Committee, to enter into a loan agreement with Saracens Cophall 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%

This report records the decision of the Deputy Chief Executive in consultation with the Chairman of the Policy and Resources Committee taking into account all of the matters in recommendation 3 cited above.

Decisions

- 1. That the council enter into a loan agreement and associated documents with Saracens Copthall LLP for £22.9m plus an amount for fees not to exceed £229,450, 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.**
- 2. That the documents listed at paragraph 2.3 below are approved.**

1. WHY THIS REPORT IS NEEDED

- 1.1 At its meeting on 19th July 2018, the Policy and Resources 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.
- 1.2 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.
- 1.3 At the meeting on 23rd October the Policy and Resources Committee agreed to:
 1. Note the outcome of the due diligence undertaken since July 2018, and the further assurances offered by Saracens, summarised in [the October committee] report and detailed in the accompanying exempt report.
 2. Authorise 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 [of the October Committee report];
- 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 [to the October committee]
- to authorise 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.
- Note 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%.

1.4 At the time of writing the October P&R Report the council's fees were estimated to be less than 1% of the loan value. In subsequent discussions it has been agreed that these fees associated with entering in to the loan should not exceed £229,450, and this is reflected in the legal agreement.

1.5 In the 23rd October report 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.

1.6 The October Committee 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 no State Aid to Saracens; and that it must be subject to appropriate security.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Following the October Committee, work has been undertaken to complete the actions outlined in that report in relation to the Treasury Management Strategy Statement, legal agreements and further due diligence.

Treasury Management Strategy Statement

- 2.2 On 30th October 2018 Council agreed the report of the Policy and Resources Committee: *Treasury management - out-turn report (2017/18), mid-year review (2018/19) and revised treasury management strategy statement 2018/19*. Council resolved as follows:

1. Note the Treasury Management Outturn 2017/18 (Appendix 1)
2. Note the – Mid-Year Treasury Management Review 2018/19 (Appendix 2)
3. Approve the amended Appendix 5.3 Credit and Counterparty Risk Management to the 2018-19 Treasury Management Strategy Statement as highlighted in Appendix 3

- 2.2.1 Within the revised Treasury Management Strategy Statement 2018-19 there were revisions to appendix 5.3 as follows:

“Loans to Local Organisations

The Council will allow loans (as a form of investment) to be made to organisations operating in the borough that bring community benefits. The Council will undertake due diligence checks to confirm the borrower’s creditworthiness before any sums are advanced and will obtain appropriate level of security or third party guarantees for loans advanced. The Council would expect a return commensurate with the type, risk and duration of the loan. A limit of £25 million per counterparty (and £50 million in aggregate) for this type of investment is proposed with a duration commensurate with the life of the asset and Council’s cash flow requirements.

...

“Other Non-Specified investments are permitted subject to the undertaking of a credit assessment by the Council’s treasury advisory (or in the case of loans to local organisations, by a suitably qualified external advisor appointed by the Council) on a case-by-case basis [emphasis shows the amendment to this paragraph]”

...

<i>Instrument</i>	<i>Maximum maturity</i>	<i>Max £m of portfolio and credit limit</i>	<i>Capital expenditure?</i>	<i>Example</i>
<i>Loans to organisations delivering community benefits</i>	<i>Over the life of the asset</i>	<i>£25million per counterparty</i>	<i>No</i>	<i>Loans to sporting clubs based in the borough</i>

...

Legal agreements

2.3 The following legal agreements have now been prepared, and will be entered into by the council further to this decision:

- A Loan Agreement between the council and SCLLP – this details the amount to be loaned, the conditions upon which the loan is made and can be drawn down and the terms of repayment. This agreement also details the obligations for legal assignments over future contracts and collateral warranties from appropriate entities;
- A Debenture between the council and SCLLP – a fixed and floating charge over all current and future assets of SCLLP including the specific legal charge over the headlease and assignments by way of security over, among other things, future construction contracts;
- A Guarantee, covering part of the liability under the Loan Agreement, between Company A and the council capped at £10million; and
- Collateral Warranties between the council the main contractor to be engaged by SCLLP, the professional team appointed by SCLLP and certain sub-contractors. These warranties mean that the third parties provide a duty of care to the council. There are also provisions for step-in rights in certain circumstances.

Further due diligence

2.4 Responses to to the further due diligence steps outlined in the October Policy and Resources Committee report have been factored in to the preparation and negotiation of the documents listed in paragraph 2.3 above. They are summarised below, and discussed in more detail in paragraph 21 of exempt Appendix A to this report which sets out the steps taken to ensure the maintenance obligations are fulfilled and that the council has precedence in respect of security.

- 2.5 It is a condition to drawing any loan that the latest audited accounts of SCLLP, Saracens and Middlesex University are provided. The council has received the July 2018 accounts for Middlesex University and the June 2017 accounts for SCLLO and Saracens. The June 2018 accounts are not yet available as they do not need to be filed until March 2019). Until such time as the June 2018 accounts are available, then the “latest accounts” for the purposes of the condition precedent are the June 2017 accounts.
- 2.6 Letters of support from Saracens Limited shareholders have been drafted in relation to any losses in FY19 and FY20. It is a condition precedent in the loan agreement that these must be signed before the loan can be drawn down. The letters cover both:
- the assurances that the members of the LLP and the shareholders of Saracens Limited will provide the necessary assurances to the auditors so that both entities can be going concerns; and
 - the assurances direct to the council that the members/shareholders (as appropriate) will continue to support the entities so that there is no underlying insolvency (i.e. they will put equity in to avoid any losses)
- 2.7 The council’s legal advisers and the council have been told that Company A is not required by law to produce audited accounts. The council will be receiving an independent auditor’s statement confirming that they have seen the latest management accounts of Company A and Company A’s net asset value is greater than £20,000,000. This is a condition to drawdown, and must be updated every six months.
- 2.8 The legal documents address the mechanism by which the council would receive lease payments direct from Saracens and MU, should SCLLP not meet the loan repayments. If SCLLP did not make any repayments under the Loan Agreement for any reason this would be an event of default and in that situation the council could enforce its security which include a charge over the headlease. If this was enforced then any receiver appointed would effectively step into the underleases and so would receive the rent directly. In addition, the leases to Saracens and Middlesex University, which the council must approve, will also contain provision allowing the council to step-in where the circumstances arise.

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 or October’s meeting of P&R which, for the reasons set out in the reports to those committees, agreed to make the loan subject to due diligence and appropriate assurances.

4. POST DECISION IMPLEMENTATION

- 4.1 The legal documentation will be entered into immediately following this decision.
- 4.2 Saracens propose to make their first loan draw down in one month from the completion of the legal documentation.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

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 managing the loan in accordance with its Treasury Management Strategy Statement. Any borrowing required will be from the Public Works Loan Board, and on-lending it to Saracens as an investment. This is in accordance with the Statutory Guidance from MHCLG on Local Government Investments (3rd Edition) which came into effect on 1st April 2018, and which specifically identifies loans as a type of investment; and with the Treasury Management Strategy Statement.
- 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 The council's legal and professional fees for entering into the loan will be recharged to Saracens up to 1% of the loan value.
- 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. A rate of 2.93% was estimated as of 12 October 2018; as at 25 January 2019, the estimated rate stands at 2.98%.
- 5.2.5 The work on the financial assessments undertaken in respect of the loan has been supported by the input of Grant Thornton.
- 5.2.6 Legal advice has been obtained on the approach to be taken, including the negotiation of the funding documents, to be taken.
- 5.2.7 The council has adequate security arrangements for the loan. As referred to in the report to the Policy & Resources Committee in October 2018, a UK registered company will act as a guarantor of part of the liability up to a value of £10million. The council will enter into a debenture providing a fixed and floating charge over all current and future assets of Saracens Copthall LLP. The security arrangements will require a legal charge over Saracens Copthall LLP's lease of the Allianz Stadium. The combined value of these security arrangements (including the value of the stadium) has been assessed by Grant Thornton as £52million which is adequate to secure the Loan. In addition, the council will

have the benefit of collateral warranties with certain of the contractors engaged by Saracens Cophall.

5.3 Social Value

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

5.4 Legal and Constitutional References

- 5.4.1 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 Cophall LLP from Barnet Council.

The Council's Power to Act

- 5.4.2 The council has the power to invest (including by providing a loan) under s12 of the Local Government Act 2003. Approving borrowing to fund the loan will be a decision of the Section 151 Officer as part of his delegated Treasury Management responsibilities. Any such borrowing would be within the council's borrowing cap as set in accordance with the Prudential Code for Capital Finance in Local Authorities. 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.
- 5.4.3 The council has had regard to the Statutory Guidance on Local Government Investments, the Prudential Code and the Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes in preparing the amendments to the Treasury Management Strategy Statement and considering the proposals for the Loan. The council is content that the Loan meets the requirements set out in these documents.

State aid compliance

- 5.4.4 If the terms of the Loan were not commercial terms (i.e. what the market would offer) then the difference between the terms offered and the market equivalent would constitute State aid under EU law.
- 5.4.5 If the EU Commission discovers unlawful State aid then it will order repayment of the unlawful aid plus interest. In the event of the UK's withdrawal from the European Union, equivalent rules are expected to be enforced by the Competition and Markets Authority.
- 5.4.6 To ensure that it is offering commercial terms, the council must consider whether it is acting like a market operator in normal market conditions who is in the same position that the council is. Such a market operator is not just necessarily interested in short term profit realisation and may be motivated by a desire to shore up existing investments/interests in a recipient and/or long-term realisations. The council is given a wide margin of discretion in determining how a market operator would act and to fall

outside of this it ultimately has to be inconceivable that a market operator would do what the council proposes.

- 5.4.7 Legal and financial advice has been obtained that an interest rate of 6% is within the range of available interest rates for the council in these circumstances. This has been calculated by reference to an EU Commission formula looking at collateralisation of the loan and the credit rating of the borrower. In both cases a conservative approach has been taken to establishing collateralisation and the synthetic credit rating.
- 5.4.8 In addition to determining the appropriate interest rate, the council has also considered whether the transaction as a whole (including the extent of the funding being provided and any security) is what a market operator in the council's position (including as the ultimate freeholder of the site) would offer. The council has also sought specific advice from Grant Thornton on this and concluded that providing 100% loan funding to Saracens Copthall LLP with the security arrangements (worth a potential £52 million) that have been negotiated would be within the band of reasonable responses that a market operator in the council's position would take.

5.5 Risk Management

- 5.5.1 The council's legal advisers have undertaken a risk assessment, set out in exempt Appendix A. The Appendix details how risks have been identified and mitigated in the preparation of the Loan Agreement and associated documents listed in paragraph 2.3. In the interests of transparency, Annex 1 to that Appendix has been made public. However, in disclosing it the council does not waive professional legal privilege.
- 5.5.2 In addition, the July report identified four risks. These are reiterated below, together with an updated comment:

- a) 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. Further commentary on State aid compliance can be found in paragraph 5.4.4-5.4.8.

- b) The loan will be at a fixed rate. The council will therefore need to manage interest rate risk.

This risk will be managed through the council's usual Treasury Management arrangements.

- c) 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.

- d) 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.

The Loan Agreement includes clauses which state that advances will only be made by the council when SCLLP produces an invoice to the council which is certified by an Employer's Agent and such payment is in accordance with the agreed financial model and development plan.

5.6 Equalities and Diversity

- 5.6.1 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 the decision maker 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:

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.*
- 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.

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.

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.*

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*

5.6.2 The July report explained that Saracens' aim for the Allianz Park stadium 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.

5.7 Corporate Parenting

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

5.8 Consultation and Engagement

No public consultation or engagement has taken place in respect of this proposal. The council does not consider that a formal obligation to consult publicly has arisen.

6. BACKGROUND PAPERS

Report to Policy & Resources Committee, 19th July 2018.

Report to policy and resources Committee 23rd October 2018

Report to Council 30th October 2018

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution. I have consulted the Chairman of the Policy and Resources Committee.*

Chief Officer: **Deputy Chief Executive**

Dated: **28 January 2019**