

**Loan to Saracens Copthall LLP (“SCLLP”) from Barnet Council (the “Council”) pursuant to a loan agreement (the “Loan Agreement”)**

**Final report by the council’s legal advisers on the list of risks to the Council and steps taken to mitigate those risks**

We are unable to completely eradicate all risks from the Council entering in to the loan agreement with SCLLP, and it is evident that we cannot foresee every risk and issue that may arise during the course of this loan, particularly in light of the fact that it is over a 30 year term. We have however compiled a list of risks that we have considered and have taken steps to try and mitigate through various measures.

**Position as at 25 January 2019**

Number	Risk	Steps taken to mitigate risk
<b>1. Loan Drawdown</b>		
1.1	SCLLP holding too much money lent by the Council	Advances of the loan being made in accordance with the drawdown schedule approved by the Council mitigates this slightly as the funds will be received slowly and the Council can stop making advances if it is apparent that the loan is not being applied properly and/or there are some issues with Saracens.
1.2	SCLLP not using the loan for the development/using the loan to pay for work/costs not properly completed/incurred.	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.
<b>2. Development Phase</b>		
2.1	The development is unable to be completed due to an issue with SCLLP, such as insolvency.	This is an event of default under the loan agreement. In the event that there is an event of default under the Loan Agreement that is not waived by the Council then if the Council believe it is the best course of action then they can demand repayment of the loan and if it is not paid then the Council will have security over all the assets of SCLLP, including a fixed charge and

		<p>assignment by way of security over the existing lease of the whole stadium, the existing lease of the East Stand, the Saracens Lease and the Middlesex University Lease which they enforce by, among other things, appointing an administrator to run the business of SCLLP.</p>
2.2	<p>The development is unable to be completed due to an issue with a contractor, such as insolvency.</p>	<p>The Loan Agreement contains provisions that if this occurs then it is a potential event of default but at this point SCLLP has to provide the Council with a plan within set timeframes on how they will deal with this event and this plan has to be approved by the Council. If SCLLP does not comply with the agreed plan then that is an event of default.</p> <p>In the event that there is an event of default under the Loan Agreement that is not waived by the Council then if the Council believe it is the best course of action then they can demand repayment of the loan and if it is not paid then the Council will have security over all the assets of SCLLP, including a fixed charge and assignment by way of security over the existing lease of the whole stadium, which they enforce by, among other things, appointing an administrator to run the business of SCLLP.</p> <p>The Council will require a collateral warranty from any of the appointments in respect of the development. If there are any concerns relating to the chosen contractor and their financial standing, the current draft of the building contract gives the right to SCLLP to require the building contractor to provide a performance bond and/or a parent company guarantee.</p>
2.3	<p>There is a cost overrun in respect of the development.</p>	<p>The Council has been provided with the financial model and this shows a 3% contingency which works out to £650,000 of buffer in the construction costs to cover any potential cost overruns.</p> <p>The Loan Agreement is clear that the Council will not fund cost-</p>

		<p>overruns but they will allow the members of SCLLP to fund those over-runs. Under the Loan Agreement SCLLP should consult the Council in the event that the members are asked to fund any cost-overrun.</p> <p>The Council should be provided with sufficient information to know what (if any) cost over-runs there will be as the Loan Agreement requires that SCLLP provides monthly reports on the progress of the development which includes a progress report, costs breakdown, a comparison against the budgeted costs and a forecast for costs the following month.</p> <p>The schedule of amendments to the current draft of the building contract places additional limitations and controls on the circumstances in which the building contractor can claim additional costs.</p>
2.4	There are defects with the development following completion.	<p>The current draft of the building contract provides for a 12 month rectification period during which the building contractor must remedy any defects in the development.</p> <p>In addition to any rights SCLLP have, the Council will have certain rights under their collateral warranty to take legal action against the building contractor.</p> <p>What is more, the Council have the right under the Loan Agreement to require notice of any certificate of practical completion being issued and a representative of the Council can accompany the Employer's Agent on an inspection. The Council also must receive a copy of any certificate of practical completion.</p>
2.5	The Council discovers that the contractors being used in respect of the development are not appropriate.	The Loan Agreement provides that SCLLP needs the consent of the Council to appoint a contractor and the Council has to consider that the proposed party has sufficient creditworthiness

		<p>and technical competence. In addition, SCLLP has to go through a formal procurement process to appoint a development party as detailed in the Loan Agreement.</p> <p>If there are any concerns relating to the chosen contractor and their financial standing, the current draft of the building contract gives the right to SCLLP to require the building contractor to provide a performance bond and/or a parent company guarantee.</p>
2.6	The time period allocated for the development overruns.	<p>SCLLP is motivated to ensure that there are no delays because it is an event of default under the Loan Agreement if completion of the development goes beyond a certain date. SCLLP cannot extend this date without the consent of the Council.</p> <p>The schedule of amendments to the current draft of the building contract places additional limitations and controls on the circumstances in which the Contractor can claim extensions of time.</p>
<b>3. Leases</b>		
3.1	Non-payment of rent, which would mean no repayments under the loan agreement, as the rental income links directly to the repayments under the loan agreement.	<p>There is also a requirement under the Loan Agreement for SCLLP to provide evidence that the rent has been paid by both Saracens Limited and Middlesex University each month. If either tenant fails to pay the rent in any given month, SCLLP must provide the Council with their most recent set of accounts (management for Saracens, statutory for Middlesex). This monitoring should mean that the Council would have notice early on should either Saracens Limited or Middlesex University come in to financial difficulties.</p> <p>In relation to non-payment by Middlesex University which in turn leads to a non-payment of loan and interest then this is an event of default under the Loan Agreement. At this point the Council</p>

		<p>can enforce all its rights.</p> <p>In relation to non-payment by Saracens then the Council will have the right to claim any unpaid sums due under the lease under the guarantee up to a maximum of £10,000,000. However, it should be noted that this guarantee is only of comfort while the guarantor has sufficient funds to pay any demand made under the guarantee. To help mitigate this risk there is an obligation under the Loan Agreement on SCLLP that they must procure that the Guarantor's net asset value is not less than £20,000,000 and this is tested on a 6-monthly basis with the evidence to be provided by the guarantor's auditors. It is also an event of default if the Guarantor's net asset value falls below this level.</p>
3.2	Saracens Limited or Middlesex University do not comply with their obligations under the leases.	This will be an event of default if it has or would be likely to result in a Material Adverse Effect (which essentially means that if it will lead to SCLLP not being able to comply with the loan agreement and repay any monies).
3.3	SCLLP goes insolvent	<p>The Council will be assigned by way of security SCLLP's rights under the University lease and the Saracens lease and so the council can "step into the shoes" of SCLLP in that situation, if it chooses to do so.</p> <p>SCLLP going insolvent is also an event of default under the Loan Agreement. If there is an event of default under the Loan Agreement that is not waived by the Council then if the Council believe it is the best course of action then they can demand repayment of the loan and if it is not paid then the Council will have security over all the assets of SCLLP, including a charge and an assignment by way of security over the lease of the stadium, which they can enforce by, among other things, appointing an administrator to run the business of SCLLP.</p>

		<p>If an administrator is appointed, their role will be to try and satisfy any claims of all the creditors of SCLLP. To do this it will look to sell the assets of SCLLP, which will include the leasehold interest in the stadium. It will only be able to satisfy any claims to the extent it is able to sell any assets.</p>
3.4	Saracens Limited or Middlesex University go insolvent	<p>The Loan Agreement contains provisions that if this occurs then it is a potential event of default but at this point SCLLP have to provide the Council with a plan within set timeframes on how they will deal with this event and this plan has to be approved by the Council. If SCLLP does not comply with the agreed plan then that is an event of default.</p> <p>If Middlesex University goes insolvent then until a replacement tenant is found then that portion of the rent is not paid and if that leads to a non-payment of the loan or interest then this is still technically an event of default.</p> <p>In respect of Saracens Limited, if there is also a non-payment of rent then there could be a claim under the guarantee provided up to a maximum of £10,000,000. Please see above note about the risks in relation to the guarantee.</p> <p>If there is an event of default under the Loan Agreement that is not waived by the Council then if the Council believe it is the best course of action then they can demand repayment of the loan and if it is not paid then the Council will have security over all the assets of SCLLP, including a charge over the stadium which they can enforce by, among other things, appointing an administrator to run the business of SCLLP.</p> <p>If an administrator is appointed, their role will be to try and satisfy any claims of all the creditors of SCLLP. To do this it will look to sell the assets of SCLLP, which will include the leasehold</p>

		interest in the stadium. It will only be able to satisfy any claims to the extent it is able to sell any assets.
--	--	--