

	<p><b>Financial Performance and Contracts Committee</b></p> <p><b>30 January 2020</b></p>
<b>Title</b>	<b>Saracens Loan – Update Report</b>
<b>Report of</b>	Deputy Chief Executive
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	No
<b>Enclosures</b>	None
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<b>Summary</b>
This paper updates the Committee on the position with the loan to Saracens Cophall LLP.

<b>Officer Recommendations</b>
<p><b>That the Committee:</b></p> <ol style="list-style-type: none"> <li><b>1. Notes the position with the loan to Saracens Cophall LLP and the safeguards in place to protect the council’s interests.</b></li> <li><b>2. Notes the proposed next steps set out in paragraphs 2.1 to 2.3.</b></li> </ol>

## 1. WHY THIS REPORT IS NEEDED

### Background

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

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 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 [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 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.

1.2. Under the DPR dated 28<sup>th</sup> January 2019 the following decisions were made:

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 of the DPR are approved.

1.3. In accordance with the decisions of P&R committee on 19 July 2018 and 23 October 2018, and the Delegated Powers Report dated 28 January 2019, the Council has entered into the following legal agreements:

- A Loan Agreement between the council and Saracens Copthall LLP (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.

1.4. Saracens Copthall LLP leases Allianz Park stadium at Copthall from Barnet Council, with a sub-lease to Saracens Ltd (the club). The Council does not have a direct financial relationship with the club in relation to the West Stand or the loan.

1.5. The loan is guaranteed up to the value of £10m by a UK registered company, Company A, under the terms set out in the exempt report to P&R Committee on 23 October 2018. This is backed by Company A's investment in UK property.

1.6. Company A's assets are valued in excess of £20m, consistent with the requirement for the value of the guarantor's assets to be at least double the value of the guarantee. Confirmation of Company A's net asset value was most recently provided on 29 July 2019 in relation to the position as at 30 June 2019. Informal assurance that the position is maintained as at 31 December 2019 has been provided, with formal assurance due by 29 January 2020. Oral confirmation that this has been received will be provided at the meeting.

- 1.7. To date, Saracens Copthall LLP (SCLLP) has drawn down £3.2m of the agreed £22.9m loan facility.
- 1.8. On 5 November 2019, it was announced that Saracens had been fined £5.4m and docked 35 points by Premiership Rugby Limited (PRL). Following that announcement, the club wrote to the council on 18 November 2019 to confirm that the fine was to be met by the shareholders and setting out evidence that the business plan for the development of the West Stand remained robust.
- 1.9. On 17 January 2020, in response to media speculation about further action to be taken by PRL against Saracens, council officers placed a temporary stop on loan drawdowns. It has subsequently been confirmed by PRL on 18 January 2020 that the club is to be relegated automatically at the end of the 19/20 season.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1. In light of recent events, the club and SCLLP are taking stock of their plans for the West Stand. This is expected to take until the end of February 2020.
- 2.2. No further drawdowns will be approved until a way forward has been agreed between the council, SCLLP and the club. Interest will continue to accrue on the £3.2m already drawn down.
- 2.3. Should SCLLP wish to pursue the development of the West Stand, the council will require a robust revised business plan, subject to independent due diligence, before any further loan drawdowns are made.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1. The council could continue to allow loan drawdowns up to the guarantee of £10m without requiring a revised business plan, however given the significant financial implications that follow from relegation, this would not be in the council's best financial interests.
- 3.2. The agreement allows the council to terminate the loan if "any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to have a Material Adverse Effect". However, terminating the loan before the club have had a chance to take stock of the current position could put the council in conflict with the club, which is likely to make it harder to recover the £3.2m already drawn down. Putting the council in conflict with the club may

also jeopardise any community benefits brought by the development of the West Stand.

#### **4. POST DECISION IMPLEMENTATION**

- 4.1. If SCLLP wish to continue with the development of the West Stand, the council will require a revised business plan to be presented and subject to independent due diligence at SCLLP's cost.

#### **5. IMPLICATIONS OF DECISION**

##### **5.1. Corporate Priorities and Performance**

- 5.1.1. The July and October 2018 P&R reports noted that the granting of this loan helps to meet Corporate Plan 2015-20 strategic objectives. The council has since updated its Corporate Plan. The granting of the loan also supports the objectives of the council's current Corporate Plan, Barnet 2024, in particular "Investing in community facilities to support a growing population" and "Encouraging residents to lead active and healthy lifestyles and maintain their mental wellbeing".

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

- 5.2.1. The council will fund the loan to Saracens from existing cash balances and from new borrowing, including from the Public Works Loan Board. This is in accordance with the Statutory Guidance from MHCLG on Local Government Investments (3<sup>rd</sup> Edition) which came into effect on 1 April 2018.
- 5.2.2. Interest is charged on the loan at 6% and as at 31 December 2019, interest of £72,000 has been earned. The 6% interest rate on the loan is considerably higher than the rate of interest paid on new long-term borrowing in the last year of 1.94% or the return being earned on the Council's Treasury investments of 0.83% as at 31 December 2019. The loan continues to provide a positive contribution to the Council's MTFS.
- 5.2.3. The security conditions set when the loan was agreed continue to be met [and the Council's investment remains protected by way of a guarantee].

##### **5.3. Legal and Constitutional References**

- 5.3.1. The Council Constitution Article 7 (Committees, Forums and Working Groups) outlines the terms of reference of the Financial Performance & Contracts Committee, which includes responsibility for the oversight and scrutiny of the

overall financial performance of the council.

5.3.2. 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.

5.3.3. The steps set out in this report are consistent with the legal agreements entered into.

#### **5.4. Risk Management**

5.4.1. The council must act in a way that is consistent with the framework set out in the existing legal agreements.

5.4.2. If SCLLP wish to proceed with the development of the West Stand, any revised arrangements must continue to comply with State Aid rules.

5.4.3. While the sums drawn down to date are well within the £10m separately guaranteed by Company A and are secured against UK property assets, the council must ensure that there is a clear plan in place to ensure recovery of the loan and associated interest.

5.4.4. If the club's corporate strategy changes as a result of relegation and the changes in management, there could be fewer community benefits from the loan and/or a less collaborative approach to resolving any future challenges.

#### **5.5. Social Value**

5.5.1. As per the July and October 2018 P&R reports, social benefits will be secured through opportunity to increase participation in sport and physical activity in the Borough. This includes the health benefits, but also the benefits of participation.

5.5.2. Environmental benefits will be delivered through enhancing the parkland setting of Copthall, which links to the Parks and Open Spaces Strategy.

#### **5.6. Corporate Parenting**

5.6.1. As per the July and October 2018 P&R reports, there are no specific implications. We are working with Saracens on a number of initiatives to benefit children in care and care leavers.

## 5.7. Equalities and Diversity

5.7.1. Equality and diversity issues are a mandatory consideration in the council's decision-making process. 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. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that the Committee, or the officer decision maker if the decision is delegated to them, 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.

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) 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:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) 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;
- (c) 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:

- (a) Tackle prejudice, and
- (b) 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

5.7.2. There are no specific equalities implications from this report, which is for noting.

## 5.8. **Consultation and Engagement**

5.8.1. N/A

## 5.9. **Insight**

5.9.1. N/A

## 6. **BACKGROUND PAPERS**

6.1. Policy and Resources Committee Report on Saracens Loan Agreement, 19 July 2019:

<https://barnet.moderngov.co.uk/documents/s47458/Copthall%20Report%20Public.pdf>

6.2. Policy and Resources Committee Report on Saracens Loan Agreement, 23 October 2018:

<https://barnet.moderngov.co.uk/documents/s49008/Saracens%20Loan%20Agreement.pdf>

6.3. Delegated Powers Report on Saracens Loan Agreement, 28 January 2019:

<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7108>