



## CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT

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| <b>Title</b>                   | Loan Agreement with Saracens Cophall LLP   |
| <b>Report of</b>               | Cath Shaw, Deputy Chief Executive  |
| <b>Wards</b>                   | All  |
| <b>Status</b>                  | Public   |
| <b>Enclosures</b>              |  |
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### Summary

This paper authorises short extensions to key dates in legal agreements between the council and Saracens Cophall LLP (SCLLP), and Middlesex University and SCLLP, relating to the delivery of the new West Stand at Allianz Park. It also notes that a revised business plan has been received from SCLLP, an update on which will be submitted to the next meeting of Financial Performance and Contracts Committee.

### Decisions

1. To authorise extension to 8 January 2021 of the Condition Precedent Longstop Date set out in the Agreement to Lease between Middlesex University and Saracens Cophall LLP dated 8 March 2019.
2. To authorise the extension to 30 November 2022 of the Availability Period in the Loan Agreement dated 29 January 2019 between the council and Saracens Cophall LLP (the “**Loan Agreement**”).

3. To note that a revised business plan has been received from Saracens Cophall LLP, and that an update will be provided to the next meeting of Financial Performance and Contracts Committee.

## 1. WHY THIS REPORT IS NEEDED

### Background

- 1.1. On 23 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 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, 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 Cophall.
- 1.2. Under the DPR dated 28 January 2019 the following decisions were made:
    1. That the council enter into a loan agreement and associated documents with Saracens Cophall 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 Cophall.
    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 (DPR) 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. Confirmation of Company A's net asset value – which under the terms of the loan must exceed £20m – is currently received every three months. The last such report was received by the council on 30 June 2020 and confirms that Company A's net asset value remains at the required level.
- 1.6. To date, Saracens Copthall LLP (SCLLP) has drawn down £3.896m of the agreed £22.9m loan facility.
- 1.7. In January 2020 the council and SCLLP agreed that loan drawdowns should be paused while Saracens took stock of its plans following relegation from

Rugby's Premiership. A revised business plan was initially anticipated to be submitted by the end of February 2020, and this was subsequently extended to June 2020 for the reasons set out in the DPR dated 24 April 2020.

- 1.8. In March 2019 Middlesex University entered into an Agreement to Lease with SCLLP, which commits the University to taking on a tenancy for part of the West Stand. This Agreement includes a Condition Precedent, requiring SCLLP to appoint a main contractor for development of the West Stand by the Condition Precedent Longstop Date. This date can only be varied with the Council's approval.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 In April 2020 the council authorised short extensions to key dates in legal agreements between the council and Saracens Copthall LLP (SCLLP), and Middlesex University and SCLLP, relating to the delivery of the new West Stand at Allianz Park.
- 2.2 The Condition Precedent Longstop Date in the Agreement to Lease between Middlesex University and SCLLP was originally 7 March 2020. The Council consented to a number of extensions to this date in light for the reasons set out in the DPR dated 24 April 2020. The Parties have now proposed a further extension of this date to 8 January 2021.
- 2.3 The Loan Agreement between the council and SCLLP includes a period known as the 'Availability Period' during which the loan must be drawn. This Period currently ends on 28 February 2022. As recorded in the DPR dated 24 April 2020, the council had authorised an extension to 31 May 2022, although the relevant Deed of Variation had not been finalised. Saracens have now proposed extending this date to 30 November 2022.
- 2.4 This DPR records the decision to agree to both of these requests.
- 2.5 The DPR dated 24 April 2020 noted that a revised business plan was anticipated to be received by the council for scrutiny in the summer of 2020. This has now been received. An update will be provided to the next meeting of the Financial Performance and Contracts Committee.

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

- 3.1 Alternative options open to the Council are to agree to shorter extensions or not to agree to any extensions. The periods of extension (approximately four and six months) are already short relative to the duration of the arrangements. Given these extensions have been prompted by COVID-19, it is not considered reasonable to require a shorter period of extension where the impact of COVID-19 remains uncertain. Whilst the Council could deny the requests for extension, it is not considered that this would be reasonable given the requirement for extension has arisen due to factors outside of the control of SCLLP and Middlesex University. Denying the requests for extensions would also impact upon the achievement of the Council's original purpose in entering into the arrangements with SCLLP.

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

- 4.1 The key contractual dates will be revised as set out above, and a Deed of Variation agreed in respect of the Availability Date in the Loan Agreement.
- 4.2 Confirmation of the Net Asset Value of the guarantor will continue to be sought every three months.
- 4.3 An update on the revised business plan will be prepared for the next meeting of the Financial Performance and Contracts Committee.

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

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

- 5.1.1 As set out in previous committee reports.

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

- 5.2.1 A three-month delay equates to approximately £50,000 of additional interest to be received by the Council, however the actual delay may be shorter than that authorised through the extension to the key dates.

##### **5.3 Social Value**

- 5.3.1 As set out in previous committee reports.

##### **5.4 Legal and Constitutional References**

- 5.4.1 The powers of the Council to enter into the arrangements are discussed in detail in the DPR dated 28<sup>th</sup> January 2019. The Council is principally acting under its power to invest (Section 12, Local Government Act 2003). In respect of the decisions set out in this report, the power to invest is relevant as is the Council's power to do anything incidental to any of its functions (Section 111, Local Government Act 1972). The decisions outlined in this report are consistent with the Council's investment strategy developed in accordance with the Statutory Guidance on Local Government Investments, the CIPFA Prudential Code and the CIPFA Treasury Management in the Public Services: Code of Practice.
- 5.4.2 The EU State aid regime still applies in England during the Brexit transition period. As detailed in the DPR dated 28 January 2019, the Council has entered into the arrangements with SCLLP on market terms so that no unlawful State aid is present. 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.
- 5.4.3 In agreeing to the extensions outlined in this report the Council is agreeing that the availability period of the loan will be extended by nine months when compared to the original availability period to 28 February 2022. The Council is also agreeing to extend the period for the appointment of a principal contractor by ten months (against an original period for appointment of 7 March 2020). Both extensions have arisen due to COVID-19. The Council has taken legal advice and considers that, in agreeing to these extensions, it would be operating as a market operator. Therefore, the grant of the extensions does not constitute unlawful State aid.
- 5.4.4 Under Article 10 of the Constitution Chief Officers in consultation with the Committee Chairman have delegated authority to make decisions which are not key decisions up to a maximum value of £500,000.

## 5.5 Risk Management

- 5.5.1 As set out in previous Committee Reports

## 5.6 Equalities and Diversity

5.6.1 As set out in previous Committee Reports.

5.6.2 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; foster good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination. Officers do not consider that this decision would have any adverse equality impacts.

## 5.7 Consultation and Engagement

5.7.1 None in relation to this paper.

## 6. BACKGROUND PAPERS

6.1 Policy & Resources Committee, 19 July 2018:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9725&Ver=4>

6.2 Policy & Resources Committee, 23 October 2018:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9459&Ver=4>

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

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

6.4 Delegated Powers Report, Loan Agreement with Saracens Copthall LLP, 24 April 2020:

<https://barnet.moderngov.co.uk/documents/s59718/Loan%20Agreement%20with%20Saracens%20Copthall%20LLP.pdf>

## 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.*

**Chairman: Cllr D Thomas, Leader  
Has been consulted**

**Signed:**



**Dated: 28<sup>th</sup> September 2020**

**Chief Officer: Cath Shaw, Deputy Chief Executive  
Decision maker having taken into account the views of the Chairman**

**Signed:**



**Dated: 28<sup>th</sup> September 2020**