

INDOOR ARENA UPDATE: PRE-DECISION SCRUTINY

Appendices 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Cabinet Report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 and paragraph 21 of Part 5 of Schedule 12A of the Local Government Act 1972. It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Purpose of the Report

1. To give Members background information to aid the scrutiny of the report to Cabinet that provides an update on the Indoor Arena, which is due to be considered by Cabinet at their meeting on 19 December 2019. The report is attached as **Appendix A** and has ten appendices.
2. Members should note that **all Appendices 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10** of the report to Cabinet are exempt from publication. Members are requested to keep this information confidential, in line with their responsibilities as set out in the Members Code of Conduct and the Cardiff Undertaking for Councillors.

Scope of Scrutiny

3. At their meeting on 19 December 2019, the Cabinet will consider a report that provides an update on the procurement process to secure a developer/ operator consortium to deliver a new 15,000 capacity multi-purpose Indoor Arena at Atlantic Wharf, Cardiff Bay. The report seeks cabinet approval to acquire the Red Dragon Centre and to consider a new financial strategy as part of the procurement process based on the same financial envelope as previously agreed by Cabinet and Council.

4. During this scrutiny, Members have the opportunity to explore:
 - i) The proposed approach for the delivery of the Indoor Arena;
 - ii) The proposed acquisition of the Red Dragon Centre;
 - iii) The proposed new financial strategy;
 - iv) Whether there are any risks to the Council;
 - v) The timeline and next steps for delivering the indoor arena project;
 - vi) The recommendations to Cabinet.

Structure of the meeting

5. The Chair will move that this item be considered in two parts: an open session, where Members will be able to ask questions on the issues and papers that are in the public domain; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Appendices 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.**
6. Members will hear from Councillor Russell Goodway (Cabinet Member – Investment and Development) and Neil Hanratty (Director of Economic Development). There will be a presentation taking Members through the proposals and recommendations to Cabinet, followed by Members questions.
7. Members will then be able to decide what comments, observations or recommendations they wish to pass on to the Cabinet for their consideration prior to making their decisions.

Background

8. In July 2017, the Council's new Administration set out a policy programme and associated delivery commitments entitled 'Capital Ambition', which included a commitment to:

'Prioritise the delivery of a new Multi-Purpose Indoor Arena in the best possible location to ensure it can attract premier national and international events.'
9. At their meeting on **15 February 2018**, Cabinet approved the selection of the Atlantic Wharf site as the preferred location for the indoor arena project. Atlantic

Wharf consists of the County Hall site, owned by Cardiff Council, and the Red Dragon Centre, owned by British Airways Pension Fund. Since February 2018, officers have been working with the British Airways Pension Fund to develop a delivery plan.

10. At their meeting on **15 November 2018**, the Cabinet resolved to meet the Council's due diligence costs and to underwrite the design and pre-development costs incurred by the Developer and Landowner. Cabinet also resolved that *'authority be delegated to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development and the Section 151 Officer to deal with all aspects of the procurement of independent advisors as set out in Confidential Appendix 4'* and to explore the best financial approach to deliver the project.

11. In **February 2019**, as part of the budget setting process, Council approved an affordability envelope in the Council's Medium Term Financial Plan to support delivery of a new Indoor Arena including financial provision for the acquisition of the Red Dragon Centre site in the current budget.

12. At their meeting on **11 July 2019**, the Cabinet resolved to note the preliminary due diligence set out in the appendices to the report, and resolved the following:
 - i) *authority be delegated to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Monitoring Officer to enter into the Memorandum of Understanding (MOU) attached at Confidential Appendix 4 relating to the acquisition of the Red Dragon Centre site and to report back to Cabinet before any legal agreements are entered into.*

 - ii) *authority be delegated to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Monitoring Officer to deal with all aspects of the procurement of a developer/operator consortium for delivery of the new Indoor Arena subject to the approval of the preferred bidder by Cabinet at a later meeting.*

- iii) *authority be delegated to the Section 151 Officer and the Monitoring Officer to commission an independent review of the Full Business Case, including the implications of any land assembly requirements, to be presented back to Cabinet as part of its consideration of the Full Business Case in due course.*

13. The report to Cabinet entitled 'Indoor Arena: Update' is attached at **Appendix A** and has **ten confidential** appendices:

- **Appendix 1 - Confidential** - Site Plan
- **Appendix 2 - Confidential** - Procurement Report
- **Appendix 3 - Confidential** – Procurement Financial Models
- **Appendix 4 - Confidential** – Independent Legal Advice
- **Appendix 5 – Confidential** – Site Due Diligence
- **Appendix 6 – Confidential** – Heads of Terms RDC
- **Appendix 7 – Confidential** – Independent Purchase Report & Valuation
- **Appendix 8 – Confidential** – Independent Financial Advice
- **Appendix 9 – Confidential** – Finance Payment Schedule
- **Appendix 10 – Confidential** - Asset Management Report.

Issues identified in the Cabinet Report

14. **Points 11 – 20** of the report to Cabinet provide details of the Competitive Dialogue procurement process underway to secure a private sector consortium to deliver and operate a new Indoor Arena.

15. The next stage of the procurement process will require bidders to spend significant resource to produce a detailed submission. The report to Council, at **point 9**, states:

'As such, the Council will be required to demonstrate that it can deliver full control of all land required for the new Indoor Arena on the Atlantic Wharf site.'

16. In addition, the competitive dialogue process has highlighted that additional flexibility in how bidders respond to the Council's requirements would be beneficial to the Council. This would still be within the financial envelope approved by Council in February 2019. **Points 19-20** provide more details on this.

17. **Point 21** of the report to Cabinet outlines that the Council has taken advice to understand State Aid implications and approaches to mitigation; **Confidential Appendix 4** provides more details on this.

18. **Points 23-34** deal with the acquisition of the Red Dragon Centre. **Points 23-27** cover the acquisition of the Red Dragon Centre, with **points 28–32** outlining the risks associated with this and highlighting that **Confidential Appendix 7** considers property related risks and **Confidential Appendix 8** considers financial risks. **Points 33-34** cover the investment strategy for the Red Dragon Centre. **Point 25** states that:

‘The Council has negotiated a two-phase payment to reduce the risk to the Council of acquiring the asset in advance of the Council having concluded its procurement process for a new Arena. The second payment will only be payable at the point of submission of a planning application for the new Arena project on any part of the Atlantic Wharf site (the combined County Hall and Red Dragon Centre site) in the next 10 years. This provides mitigation in the event that the Council is unable to bring forward the Arena project on the site.’

19. The Cabinet report states, at **points 35-36** that the next steps, if Cabinet approve the recommendations, will be to seek to complete acquisition of the Red Dragon Centre in January 2020. The indicative timetable for delivery of the new Indoor Arena, subject to Cabinet selecting a preferred bid in March 2020, is as follows:

June 2020 - Development Agreement approved by Cabinet.

September 2020 - Detailed planning submission by the Developer.

May 2021 – Construction contract awarded with start on site.

Summer 2023 - Construction and associated works completed.

20. Financial implications are set out at **Points 39- 55**, with Legal implications at **Points 56 – 68**.

Proposed Recommendations to Cabinet

21. The report to Cabinet contains the following recommendations:

- i) Note progress with the procurement process to secure a developer/operator consortium to deliver the new Indoor Arena;*
- ii) Authorise the acquisition of the RDC investment in line with the independent valuation and purchase report attached at Confidential Appendix 7 and the payment schedule attached at Confidential Appendix 9 and in accordance with the legal advice provided at Confidential Appendix 4;*
- iii) Agree to the deferred payment set out in Confidential Appendix 6 payable in the event that a new Indoor Arena is brought forward on the Atlantic Wharf site illustrated by the red line boundary in the plan attached at Confidential Appendix 1;*
- iv) Note that authorising the acquisition of the Red Dragon Centre investment will trigger the Indoor Arena affordability envelope, originally agreed as part of the Council approved Budget in February 2019, and therefore requiring relevant adjustments to the Budgetary Framework for 2019/20 agreed by Council in February 2019.*
- v) Approve a new financial strategy as part of the procurement process as to the available funding models which bidders are able and required to submit their final tenders on and, for any grant and/or income strip commitment the Council may be required to provide as detailed in this report and set out in Confidential Appendix 3; and*
- vi) Delegate authority to the Director of Economic Development to appropriate land for planning purposes as set out in this report.*

Previous Scrutiny

22. This Committee undertook policy development scrutiny of the Multi-Purpose Indoor Arena proposals at their meeting on **5 October 2017**. Overall, Members were supportive of proposals for a multi-purpose indoor arena, recognising the benefits that will accrue to the city region from increased footfall and enhanced infrastructure. In the Chair's letter following this meeting, Members highlighted:

- i. It would be sensible to explore a range of funding options, given the need to identify and secure c. £110 million;*
- ii. The business case for the indoor arena should clearly detail the likely impact the arena will have on other venues in the city region.*

23. At their Committee meeting on **13 February 2018**, Members scrutinised the report to Cabinet regarding the preferred location for the multi- purpose indoor arena, namely Atlantic Wharf. In the Chair's letter following this meeting, Members highlighted¹:

- iv) Members' initial support for the preferred location, subject to future consideration of additional information that will emerge from the overall business case and financial implications;
- v) The need for the arena proposals to include high quality, reliable and affordable public transport to avoid adding to congestion in Cardiff;
- vi) Members wish to undertake further scrutiny of the delivery strategy, including the financial implications for the Council.

24. As well as sending a public letter, the Chair, Councillor Nigel Howells, sent a confidential letter to Councillor Russell Goodway, dated 14 February 2018, capturing the Committee's thoughts regarding the confidential information considered at the meeting. A copy of this letter was shared with Committee Members, who are reminded of the need to keep the contents of the letter confidential.

25. At their Committee meeting on **8 November 2018**, Members scrutinised the report to Cabinet regarding the next steps in delivering the indoor arena. In the Chair's letter following this meeting, Members highlighted²:

- vii) Their support for the recommendations to Cabinet;
- viii) That Members wish to be kept abreast of proposals for the Motorpoint site;
- ix) That costs for design, pre-development work and independent consultants to undertake verification checks are necessary and appropriate;

¹ Public Letter from Councillor Howells, Chair Economy & Culture Scrutiny Committee, to Councillor Goodway, Cabinet Member – Investment & Development, dated 14 February 2018.

² Public Letter from Councillor Howells, Chair Economy & Culture Scrutiny Committee, to Councillor Goodway, Cabinet Member – Investment & Development, dated 9 November 2018

- x) Members would like to receive evidence of market testing to demonstrate the indoor arena development is able to hold its own against competitors.

26. As well as sending a public letter, the Chair, Councillor Nigel Howells, sent a confidential letter to Councillor Russell Goodway, dated 9 November 2018, capturing the Committee's thoughts regarding the confidential information considered at the meeting. A copy of this letter was shared with Committee Members, who are reminded of the need to keep the contents of the letter confidential.

27. At their committee meeting on **4 July 2019**, Members scrutinised the report to Cabinet regarding the next steps in delivering the indoor arena. Following this, the Chair sent a confidential letter to Councillor Russell Goodway, dated 8 July 2019. A copy of this letter has been shared with Committee Members, who are reminded of the need to keep the contents of the letter confidential.

Way Forward

28. Councillor Russell Goodway (Cabinet Member – Investment and Development) will be invited to make a statement. Neil Hanratty (Director of Economic Development) will attend to give a presentation and answer Members' questions.

29. All Members are reminded of the need to maintain confidentiality with regard to the information provided in all **Appendices 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

Legal Implications

30. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations

for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

31. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i) Consider the information in this report, its appendices and the information presented at the meeting;
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter in time for its meeting on 19 December 2019; and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

DAVINA FIORE

Director of Governance & Legal Services

13 December 2019