

## ATLANTIC WHARF UPDATE: PRE-DECISION SCRUTINY

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*Appendices 1-3, and 5-9 of the Cabinet Report attached at Appendix A are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 and paragraph 21 of Part 5 of Schedule 12A of the Local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 draft report to Cabinet titled '*Atlantic Wharf Update*', which is due to be considered by Cabinet at their meeting on 13 July 2023.

### Structure of papers

2. Attached to this cover report are the following appendices:
  - i) Appendix A – report to Cabinet titled '*Atlantic Wharf Update*'
  - ii) Confidential Appendix 1 - Legal Reports & Agreements Bevans
  - iii) Confidential Appendix 2 - Arena Design Update
  - iv) Confidential Appendix 3 - Atlantic Wharf Market Exercise Review
  - v) Appendix 4 - Area Plans A & B
  - vi) Confidential Appendix 5 - Area A Development Plan
  - vii) Confidential Appendix 6 - Procurement Strategy
  - viii) Confidential Appendix 7 - Capella Production Studio Proposal
  - ix) Confidential Appendix 8 - Updated Masterplan
  - x) Confidential Appendix 9 - Financial Overview & Strategy
  - xi) Appendix 10 - Single Impact Assessment (SIA).
3. Members should note that **Appendices 1-3 and 5-9** of the Cabinet report 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.

### **Scope of Scrutiny**

4. At their meeting on 13 July 2023, the Cabinet will consider a report that:
  - i) Provides an update on the Indoor Arena
  - ii) Seeks approval of the Pre-Contract Service Agreement (PCSA) and Development and Funding Agreement (DFA) for the Indoor Arena
  - iii) Provides an update on the soft market testing exercise for the development of Atlantic Wharf
  - iv) Seeks approval to implement a procurement strategy relating to Atlantic Wharf
  - v) Seeks approval of the Outline Project Proposal for the Capella Production Studio Project and seeks approval to proceed to a Full Business Case
  - vi) Seeks approval to develop a Full Business Case for the development plan for Area A
  - vii) Seeks approval to undertake a further market testing exercise for Area B.
  
5. During this scrutiny, Members can explore:
  - i) The updates on the Indoor Arena and wider Atlantic Wharf regeneration
  - ii) The proposals regarding the PCSA and DFA relating to the Indoor Arena
  - iii) The proposals regarding the procurement strategy
  - iv) The proposals regarding Area A and Area B
  - v) The proposal regarding the Capella Production Studio Project
  - vi) The financial, legal and property implications for the Council and whether there are any risks to the Council
  - vii) The next steps and timelines involved, and
  - viii) The recommendations to Cabinet.

### **Structure of the meeting**

6. 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 1-3 and 5-9**.

7. Members will hear from Councillor Russell Goodway (Cabinet Member – Investment and Development), Neil Hanratty (Director of Economic Development) and Chris Barnett (Operational Manager – Major Projects). There will be a presentation taking Members through the proposals and recommendations to Cabinet, followed by Members' questions.
8. 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**

9. In January 2020, the Council acquired the Red Dragon Centre site to secure control of the wider Atlantic Wharf site for regeneration. In December 2020, Cabinet approved the Atlantic Wharf masterplan, the development of an Outline Business Case (OBC) to redevelop the Red Dragon Centre, and submission of a hybrid planning application.
10. In November 2020, Cabinet approved the Live Nation consortium as the preferred bidder for delivery of the new Indoor Arena, authorised the land strategy, and authorised a Pre-Contract Service Agreement (PCSA). The Indoor Arena Full Business Case (FBC) was approved by Cabinet in September 2021.
11. In March 2022, detailed planning consent for the new Indoor Arena and outline consent for the Atlantic Wharf regeneration scheme was granted.
12. In March 2023, Cabinet approved the extension of the PCSA, a soft market testing exercise for the Atlantic Wharf site, the Red Dragon Centre financial strategy, a Memorandum of Understanding (MoU) for the Capella Project authorising the development of an OBC, and the development of an OBC for the Atlantic Wharf Energy Strategy.

13. In June 2023, Cabinet authorised the development of a FBC for the provision of a new Council office building at Atlantic Wharf.

### **Issues identified in the Cabinet Report**

14. The report to Cabinet contains the following sections:

- i) **Points 10-12** – Overarching Issues – inflation, risk
- ii) **Points 13-17** – Indoor Arena
- iii) **Points 18- 27** – Atlantic Wharf Update
- iv) **Point 28** – Capella (Production Studio)
- v) **Point 29** – Atlantic Wharf Masterplan
- vi) **Point 30** – Next Steps

15. The main points contained in the report are:

#### Indoor Arena

- i. Inflationary pressures mean projected costs have increased from £180M to circa £280M, leading to Live Nation reviewing the design of the Indoor Arena and infrastructure requirements; a Section 73 planning application is due to be submitted July 2023 for the revised arena and hotel.
- ii. The redesign has led to delays in the programme, requiring an extension to the long stop date of the PCSA to 31 March 2024
- iii. Confidential Appendix 1 - sets out the draft Development and Funding Agreement (DFA) – the time period for entering the DFA is 30 November 2023 – 31 March 2024
- iv. Further detailed design will take place during the DFA stage; it is proposed the Council extends its original underwrite from £5M to £7M; this will come from the planned underwrite available under the DFA
- v. The long stop date to achieve Financial Close in the DFA is brought forward from 24 months to 6 months; the intention is to commence advance works Autumn 2023, with main works starting in early 2024
- vi. The Council's financial exposure/ liability is capped, via the financial envelope.
- vii. The Council is working on a funding strategy to manage the short-term position, allowing a longer-term strategy to be entered into when interest rates become more favourable

- viii. The extension to the PCSA and delay in entering the DFA gives Live Nation time to procure a contractor and gives the Council time to agree a financial strategy to mitigate the current interest rate uncertainty.

#### Atlantic Wharf Update

- ix. The soft market testing exercise generated six expressions of interest, underlined the importance of confirming delivery of the Indoor Arena and future of County Hall, and has shaped the proposal to split the site into Area A & B
- x. Area A –
  - i) Confidential Appendix 5 – sets out site will include offices, Capella Production Studio, event halls, shared foyer and management suite and revised highway infrastructure
  - ii) Confidential Appendix 6 - sets out the procurement strategy, with decision to proceed subject to satisfactory conclusion of procurement and approval at a future Cabinet meeting
- xi. Area B -
  - i) proposed there is a further market exercise in August 2023
  - ii) proposed to allocate land within Area B to deliver circa 500 open market residential units, via the Council's Housing Partnering Scheme development partner
- xii. The OBC for the redevelopment of the Red Dragon Centre is scheduled to be considered by Cabinet Autumn 2023

#### Capella (Production Studio)

- xiii. Confidential Appendix 7 – sets out the OBC; authority is sought to progress to a FBC

#### Atlantic Wharf Masterplan

- xiv. Confidential Appendix 8 - provides an updated masterplan taking into account the above.

### **Financial Implications**

16. **Points 32 - 40** highlight that it is critical the interlinkages between other significant major projects and the projects in this report are understood given the potential knock-on effects and implications, and set out:

- i) Indoor Arena

- Cabinet must have a degree of confidence a funding solution is viable before agreeing to extend the PCSA and increasing the underwrite – further details are in Confidential Appendix 9. Underwrite costs only become payable where the Developer meets their contractual obligations but the Council is unable to, or chooses not to, proceed
  - It is imperative that a clearly agreed funding strategy can be implemented prior to signing the DFA
  - The Council will be taking on an element of delivery and financial risk, mitigated by procuring a developer to deliver within the agreed cost envelope.
  - Further due diligence is required to understand whether the proposed approach will be self-financing, affordable and remains within the Council's risk appetite
  - Cabinet must be clear that the proposed procurement strategy, at Confidential Appendix 6, delivers value for money and whether a best value approach is clearly demonstrated within the business case.
- ii) Business Cases and Soft Market Exercise
- The costs associated with developing business cases and soft market testing exercises will need to be identified by the directorate along with suitable funding.

### **Legal Implications**

17. **Points 41 - 56** set out Public Contracts Regulations (2015) apply with regard to Site A, the law enabling the Council to do, arrange, and contribute to entertainment provision, the law enabling the Council to invest, and the need to take account of the Council's fiduciary duties to local residents and taxpayers. They also set out the need for the Council to consider its duties with regard to the Equality Act 2010, the Well- Being of Future Generations (Wales) Act 2015, Welsh Language Measure (Wales) 2011 and Welsh Language Standards, and ensure the proposal is within the Policy and Budget Framework.

### **Property Implications**

18. **Points 57-58** set out all property implications are contained in the body of the report.

## Human Resources Implications

19. There are no HR implications included in the report

## Proposed Recommendations to Cabinet

20. The report to Cabinet contains the following recommendations:

- i. Approve an extension and variation to the Pre-Contract Service Agreement (PCSA) for the delivery of the new Indoor Arena in line with the legal conditions set out at **Confidential Appendix 1** and the Financial Report **Confidential Appendix 9**.*
- ii. Approve the Development and Funding Agreement (DFA) attached at **Confidential Appendix 1** and delegate authority to the Director of Economic Development, in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Legal Officer to:
  - a. approve the final terms of the DFA and in so doing approve any amendments to the legal documentation approved as may be necessary, for reasons including but not limited to ensuring consistency between them and finalising any outstanding areas; and*
  - b. approve any further deeds and documents which are ancillary to the legal documents approved;*with entry into the DFA being subject to approval of the funding strategy at a future meeting of Cabinet.*
- iii. Approve the Outline Project Proposal for the Capella Production Studios as set out at **Confidential Appendix 7**.*
- iv. Approve the procurement strategy set out at **Confidential Appendix 6** including the development of a Full Business Case for the Capella Production Studios proposal as set out at **Confidential Appendix 7** and a Full Business Case for the development plan for Area A as set out at **Appendix 4** and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Legal Officer to deal with all aspects of the procurement strategy and to return to Cabinet for approval of the Full Business Cases in advance of the appointment of any contractors.*
- v. Approve a further market testing exercise for the area marked B on the plan attached at **Appendix 4** to assist with the completion of the Outline Business Case for the redevelopment of the Red Dragon Centre and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Corporate Director of People and Communities, the Section 151 Officer and the Legal Officer to identify land to support the Council's Partnering Scheme as set out in this report.*

## **Previous Scrutiny**

21. The previous Committee undertook regular scrutiny of the various reports on the Atlantic Wharf regeneration, as set out in the previous report to this Committee on 11 July 2022, available [here](#) .
22. This Committee has undertaken pre-decision scrutiny of the following reports to Cabinet on the Atlantic Wharf scheme:
  - i) July 2022 - focusing on land acquisition and appropriation, the Multi-Storey Car Park, and updates to the Indoor Arena and overall masterplan. Following this scrutiny, the Chair, Councillor Wong, wrote a public letter to Councillor Russell Goodway, Cabinet Member – Investment and Development, dated 13 July 2022, setting out the Committee’s comments and observations and a recommendation. Councillor Goodway responded to this recommendation, in a letter dated 15 November 2022. Copies of these letters have been shared with Committee Members.
  - ii) March 2023 – focusing on the Multi-Storey Car Park, Energy Provision, Infrastructure Review, Council Costs, and overall masterplan. Following this scrutiny, the Chair, Councillor Wong, wrote a public letter and a confidential letter to Councillor Russell Goodway, Cabinet Member – Investment and Development, both dated 23 March 2023, setting out the Committee’s comments and observations. These letters did not require a response. Copies of these letters have been shared with Committee Members and the public letter is available [here](#) .

## **Way Forward**

23. Councillor Russell Goodway (Cabinet Member – Investment and Development) will be invited to make a statement. Neil Hanratty (Director of Economic Development) and Chris Barnett (Operational Manager – Major Projects) will attend to give a presentation and all witnesses will be available to answer Members’ questions on the proposals.



24. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendices 1-3 and 5-9**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

### **Legal Implications**

25. 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**

26. 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 13 July 2023, and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**05 July 2023**