

INDOOR ARENA FUNDING STRATEGY: PRE-DECISION SCRUTINY

Appendices 1 and 2 of the Cabinet Report attached at Appendix A are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 and paragraph 21 of Part 5 of Schedule 12A of the Local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 '*Indoor Arena Funding Strategy*', which is due to be considered by Cabinet at their meeting on 23 November 2023.

Structure of papers

2. Attached to this cover report are the following appendices:
 - i) Appendix A – report to Cabinet titled '*Indoor Arena Funding Strategy*'
 - ii) Confidential Appendix 1 – Report and Financial Modelling by Council Treasury Advisers (LINK)
 - iii) Confidential Appendix 2 – Council Funding Strategy
3. Members should note that **Appendices 1 and 2** 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 23 November 2023, the Cabinet will consider a report that:
 - i) Seeks approval of the Funding Strategy for the Indoor Arena
 - ii) Seeks authorisation to enter into and execute the Development and Funding Agreement (DFA) for the Indoor Arena

- iii) Requests Cabinet to note that relevant financial implications will be updated in the Medium-Term Financial Plan, Capital, and Treasury Management Strategies to be consistent with this funding strategy, to form a revised affordability envelope, and
 - iv) Requests Cabinet to note that implementation and review of this funding strategy will be undertaken as part of the annual updates to the Treasury Management Strategy and checkpoints in respect to this project specifically as part of post project review.
5. During this scrutiny, Members can explore:
- i) The proposed Indoor Arena Funding Strategy
 - ii) The financial, legal and property implications for the Council
 - iii) Key risks to the Council and proposed mitigations
 - iv) The proposed reporting and monitoring structure
 - v) The next steps and timelines involved, and
 - vi) 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 and 2**.
7. Members will hear from Councillor Huw Thomas (Leader), Councillor Chris Weaver (Finance, Modernisation and Performance), Chris Lee (Corporate Director – Resources), Kyle Godfrey (Project Accountant) 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. Given the potential impact of the proposed Funding Strategy on the Council's Capital Strategy, Capital Programme and Treasury Management Strategy, Councillor Joel Williams, Chair – Policy Review and Performance Scrutiny

Committee (PRAP), has been invited to attend this meeting and ask questions on these areas, as these fall within the remit of the PRAP committee.

9. 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

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. In March 2022, detailed planning consent for the new Indoor Arena was granted.
11. In March 2023, Cabinet approved an extension of the PCSA and the interim business case for the Multi Storey Car Park (MSCP). In July 2023, Cabinet considered a report detailing the inflationary pressures, increased projected costs, proposed redesign, extension of the PCSA to 31 March 2024, and the draft Development and Funding Agreement (DFA), including increasing the underwrite of the DFA from £5M to £7M. The report also set out proposals to bring forward the long stop date to achieve Financial Close. Cabinet agreed to these proposals.

Issues

12. The report to Cabinet, attached at **Appendix A**, sets out the proposed Funding Strategy for the Indoor Arena, highlights key risks for the Council and details mitigations to counter these risk.

Proposed Funding Strategy

13. In terms of the proposed funding strategy, the report sets out:
 - i) The cost of funding the Indoor Arena has increased, due to significant increases in the costs of borrowing
 - ii) **Confidential Appendix 2** details the Council's proposed funding strategy
 - iii) The proposed funding strategy focuses on temporary borrowing arrangements during the three-year construction period, and then entering into a more long-

- term borrowing arrangement at a fixed term interest rate when this is most appropriate and affordable for the Council
- iv) Key Principles of the funding strategy include capitalisation of interest, a Minimum Revenue Provision holiday, using earmarked reserves and Medium-Term Financial Plan budgets to reduce debt burden early, proactive risk mitigation, and milestone reviews
 - v) The base budget provision of £1.5m, and Medium-Term Financial Plan provision for this to increase to £2.9M to cover initial debt repayments and interest costs, will be retained in the medium term
 - vi) The Capital Strategy approved by Full Council in March 2023 includes
 - i. Council's capital contribution - £27.3M - due to be funded by a mixture of earmarked capital receipts and borrowing
 - ii. Council's Funding (Self-Financing) – £138.1M direct borrowing, funded by the annual lease income from the Arena Operator, backed by a parent company guarantee, and £46M enabling funding for and assembly and MSCP, self-funded by income generated by the MSCP
 - vii) There are a number of key assumptions in the Indoor Arena Financing Model, including interest rates, as set out at points 28 – 29 and Confidential Appendix 2
 - viii) The Indoor Arena Financing Model forecasts the Indoor Arena will be self-financing over the term of the 46-year contract. However, in the short term, additional funding requirements are expected to be needed for circa 4 years; these can likely be funded from within existing earmarked reserves, including the Central Enterprise Zone reserve and Treasury Management reserve.
 - ix) the majority of the Council's initial investment, circa 80%, is being used to support Arena construction, which will be repaid by an income stream, which is backed by a parent company guarantee
 - x) for prudence, a contingency budget has been identified within earmarked reserves.

Key Risks and Mitigations

14. In terms of the key risks and mitigations, the report sets out:

- i) The Council is seeking to identify and manage risks at the start of the project, with prudence, affordability and sustainability at the heart of this approach

- ii) It is essential that the Council has mitigations in place, to counter the risks posed by economic uncertainty, such as future interest rates levels
- iii) key risks are: interest rate risks; RPI risks; and MSCP income risks
- iv) potential mitigations are detailed at **Point 31** and include: generating additional capital receipts; identify additional sources of revenue income within Atlantic Wharf; reduce debt early whilst retaining some reserves; review and update the Council's accounting practices, including capitalisation of interest (circa £15.5M) and Minimum Revenue Provision holiday
- v) the majority of the funding risk relates to circa 20% of the Council initial investment, in relation to enabling works and MSCP development and income streams.

15. **Point 32** highlights the implications of the above on other Council projects, stating

'It is therefore recommended the Council move towards more developer led solutions for Major Projects that do not rely on the Council increasing its levels of borrowing or risk exposure further until Council has greater certainty of affordability and sustainability of Arena/MSCP costs and income proposals.'

16. **Points 35 and 36** set out there are costs of not progressing with the Indoor Arena development, including direct costs, with further details in Confidential Appendix 2.

17. **Points 37 and 38** set out the next steps and timeline, including entering into the Development and Funding Agreement, commencing enabling works, achieving Financial Close, starting construction, and opening the Arena in late 2026/9.

18. **Financial Implications** are at **Points 40 – 53** and include the following additional information:

- i) The business case for the MSCP is yet to be considered by Cabinet. If following consideration additional mitigations are required, these should be included as updates to this funding strategy and included in budget proposals
- ii) Any revisions to the funding strategy, including additional borrowing to meet interest costs, will mean the Capital Strategy and investment programme will need to be updated
- iii) Some of the proposed mitigations have no data on their achievability or deliverability; these should be logged on the project risk register and continue to be reviewed, with outcomes included in project management updates

- iv) Where deviations to mitigations are made, these should be clearly set out with risk and financial implications impact considered over the whole term of the project
- v) The report does not set out whom, where and how often the funding strategy performance and progress would be reported – this is essential
- vi) The estimated £15.5M interest to be capitalised will result in an increase in the capital expenditure investment programme, which will need to be updated as part of the budget proposals 2024/25
- vii) It is unclear what further commitments further phases of the Atlantic Wharf Master Plan and other major projects will have on the Council's borrowing requirement – consideration needs to be given to limiting further council expenditure.

19. Legal Implications are at **Points 54 – 63** and include:

- i) Regard should be had to the legal implications set out in the July 2023 report to Cabinet on this matter¹
- ii) Further external legal advice is appended to Appendix 2 regarding the enactment of the Subsidy Control Act 2022
- iii) the need for the Council to consider its duties with regard to the Equality Act 2010, Welsh Language Measure (Wales) 2011 and Welsh Language Standards, the Well- Being of Future Generations (Wales) Act 2015.

20. Property Implications are at **Points 64 – 66** and include:

- i) Any delays in signing the Development and Funding Agreement will add to practical pressures of managing vacant assets assembled as part of the enabling works referred to in the report
- ii) These assets are managed and leased to the maximum potential given the overall Atlantic Wharf project needs
- iii) Work on the MSCP business plan is ongoing.

Proposed Recommendations to Cabinet

21. The report to Cabinet contains the following recommendations:

¹ Available [Agenda for Cabinet on Thursday, 13th July, 2023, 2.00 pm : Cardiff Council \(moderngov.co.uk\)](#) - item 127

- 1) *Approve the Indoor Arena Funding Strategy as set out within this report and in more detail at **Confidential Appendix 2**.*
- 2) *Authorise entry into and execution of the Development and Funding Agreement (DFA) previously approved by Cabinet in July 2023, and in so doing approve any amendments to the legal documentation as may be necessary, for reasons including but not limited to ensuring consistency between them and finalising any outstanding areas of further deeds and documents which are ancillary to the legal documents approved, subject to consultation with S151 Officer and Legal Officers.*
- 3) *To note that, subject to entering in to a DFA with the Arena Developer/Operator and approval by Cabinet of the MSCP Business Case at a future meeting, relevant financial implications will be updated in the Medium-Term Financial Plan, Capital, and Treasury Management Strategies to be consistent with this funding strategy, to form a revised affordability envelope.*
- 4) *To note that Treasury Management Activities are delegated to the S151 Officer and implementation and review of this funding strategy will be undertaken as part of the annual updates to the strategy and checkpoints in respect to this project specifically as part of post project review.*

Previous Scrutiny

22. The previous Committee undertook regular scrutiny of the various reports on the Indoor Arena, as set out in the previous report to this Committee on 11 July 2022, available [here](#).

23. This Committee has undertaken pre-decision scrutiny of the following reports to Cabinet on the Indoor Arena:

- i) July 2022 - the Multi-Storey Car Park, and updates to the Indoor Arena. 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 – 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](#).

- iii) July 2023 – the draft Development and Funding Agreement, extension of the Pre-Contract Service Agreement, and Council costs. Following this scrutiny, the Chair, Councillor Wong, wrote a public letter and a confidential letter to Councillor Thomas, Leader, 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

24. Councillor Huw Thomas (Leader) and Councillor Chris Weaver (Finance, Modernisation and Performance) will be invited to make a statement. Chris Lee (Corporate Director – Resources), Kyle Godfrey (Project Accountant) 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.

25. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendices 1 and 2**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

Legal 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 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

27. 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 23 November 2023, and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

LEANNE WESTON

Interim Deputy Monitoring Officer

15 November 2023