



Joint Report of the Leader and Cabinet Member for Service Transformation and Business Operations

Cabinet – 16 November 2017

Liberty Stadium

Purpose:	To update on commercial negotiations between Swansea City AFC and Swansea Council on existing lease arrangements.
Policy Framework:	Asset Management Plan 2017/2021
Consultation:	Legal, Finance, Access to Service
Recommendation(s):	It is recommended that Cabinet: <ol style="list-style-type: none">1) Approve the Heads of Terms, as set out in this report.2) Authorises the Director of Place, in consultation with the Cabinet Member for Service Transformation and Business Operations to negotiate and agree any further or final terms as may be necessary.3) Authorises the Head of Legal, Democratic Services and Business Intelligence to prepare any legal documentation required to conclude the agreement and to execute the documentation on behalf of the Council4) Authorises the Director of Place following the agreement of final terms, to report the update position to the European Commission in accordance with the Council's continuing obligations.
Report Author:	Geoff Bacon
Finance Officer:	Ben Smith
Legal Officer:	Debbie Smith
Access to Services Officer:	Sherill Hopkins

1. Background

- 1.1 The Liberty Stadium was constructed by the Council at a direct cost of £32.406M. It was subsequently let to Swansea Stadium Management Company and is for a term of 50 years. A rent payable is by way of a dividend providing that the Auditors Report is signed within 6 months of the end of the financial year. The tenant is to retain a balance in the Repairs/Renewal fund. If the profit is zero or if the accounts are later than 6 months the rent is a peppercorn, however, to date no rent under this agreement has ever been paid.
- 1.2 Out of the headlease there is a joint venture agreement (JVA) between the original parties namely the Council of the City and County of Swansea, Swansea City AFC, South Wales RFC (The Ospreys) and Swansea Stadium Management Co Ltd. This provided confirmation that the company is responsible for the running costs and receives various incomes based on the shared gate receipts revenue.
- 1.3 The joint venture agreement gives the ability (subject to pre conditions) to renegotiate the allocation of gate receipts and season ticket revenue and if it is not agreed the matter could be referred to determination by an independent expert.
- 1.4 To date the only income received by the City and County of Swansea is in relation to additional rent payable of £15,000 for use of Council space facilities and services.
- 1.5 The above arrangements regarding the construction and ongoing operation and use of the Stadium were the subject of complaint to the European Commission of unlawful State Aid and the Council is subject to ongoing reporting obligations.
- 1.6 The Council defended the position to the Commission in 2015 on the basis that previous and current aid is covered by Art 55 General Block Exemption regulations and is compatible aid. The Council is under a continuing obligation to report annually on the granting of compatible aid and the terms and impact of any revised commercial agreement negotiated between the parties.

2. Proposal

- 2.1 Following the Council's defence of the State Aid complaint negotiations have continued and the following sets out the revisions agreed to the original headlease dated the 22nd April 2005 between the Council of the City and County of Swansea as Landlord and Swansea Stadium Management Company Limited as Tenant.

2.2 The main points as set out below will require amendment or insertion of additional clauses to vary the headlease and the drafting of a supplemental deed of agreement to properly record the matters agreed between Swansea City Football Club and the City and County of Swansea:-

- **Rent**

Rent to be agreed in the sum of £300,000 per annum, subject to 5 yearly fixed increases of £50,000. Such rent to be paid annually from the 1st August with a proportion of rent to be paid from the signing of variation of the lease.

Rents will be payable on this basis for the remainder of the term, with no reduction in the event of relegation.

- **Naming Rights**

City and County of Swansea to receive 10% of any naming rights deal agreed, such income to be payable from the date of agreement. It is agreed that if the naming rights element forms part of a front of shirt partnership, the 10% value of the naming rights will represent 20% of the whole. With any other team partnership outside of front of shirt, the Council to be paid their 10% fee upon the entire cost of overall agreement. No naming rights fees to be paid to the Council until it is collected by SCAFC. The appropriate and corresponding naming rights payment due the Council shall be paid by SCAFC within 30 days of receipt of payment from sponsor. It is recognised there is a reputational risk dependent upon final agreement, the City and County of Swansea to be consulted and be allowed to make reasonable representation. The City and County of Swansea will be permitted sight of the final agreement to confirm true value.

In the event of relegation from the Premier League no percentage of naming rights will be payable but will be reinstated if promotion is achieved.

Should a naming rights agreement be completed before the formal variation of lease and deed of agreement arrangement is in place between the Council and SCAFC, the Council agrees that SCAFC will receive their share of naming rights revenue as contemplated in this new agreement. Should this happen, any naming rights revenue shall be placed in escrow in a manner which secures the Council's entitlement until the new contractual arrangements take effect.

- **3G Pitches**

Two full sized 3G pitches will be constructed every 5 years at an estimated sum of £550,000 per pitch, a sum which includes £50,000 which shall go to the City and County of Swansea to facilitate future maintenance. This is an equivalent value of £220,000 per annum. The City and County of Swansea will be responsible for management of pitches on sites currently in Council ownership. SCAFC will have no interest in the pitches. In the event of relegation the construction of any proposed, but unfunded 3G pitch will be postponed, however, if money has already been secured for development, then that specific scheme will continue through to completion. Should SCAFC have difficulty securing grants that would fund a portion of the construction costs, a mutually agreeable alternative scheme will be explored between the Council and SCAFC.

No consideration will be expected for the value of the land for the construction of a pitch other than if additional elements are required then further lease agreements will have to be considered and negotiated, but due regard will be given to the benefit of a community scheme.

- **Alterations**

Any structural alterations will require consent from the landlord, however, such consent is not to be unreasonably withheld or delayed. Non-structural alterations will not require landlord's consent.

- **Repair**

The tenant is to be responsible for all internal and external repairs. This does not include items currently under dispute, specifically the paint related to the structural steelwork and concourse flooring issues.

- **Economic Development, Recognition and City Promotion**

The Council will retain use of a Box for football games and 2 boxes for Rugby games, as well as seat allocations in order to promote the City and region for economic development and marketing purposes, or to recognise achievements or work undertaken by voluntary groups or others for example Veterans.

3. Equality and Engagement Implications

- 3.1 An EIA screening form has been completed and reviewed. The agreed outcome was that a full EIA report was not required as there are no equalities and engagement implications at this time. Any developments will be subject to normal planning procedures.

4. Financial Implications

- 4.1 The revised arrangements will provide guaranteed rental income of £300,000 per annum subject to 5 yearly fixed reviews. Furthermore, the Council will receive a proportion of total value of the naming rights. At this stage the value of this benefit is not known but could generate a figure of circa £100,000 per annum, dependent upon the structure of the agreement. Furthermore, the Council will also receive the benefit of two 3G pitches being constructed every 5 years, which will release the current costs expected for their construction from the Capital Programme, annualised value circa £220,000.
- 4.2 In total, dependent upon the value of the naming rights deal struck by SCAFC this could accrue a financial ongoing revenue (and equivalent capital) financial benefit starting in the region of £620,000 per annum, **albeit only £300,000 relating to the rent is guaranteed cash income, albeit with future upwards fixed revisions.**
- 4.3 An independent valuation as procured at the time of the defence of the State Aid complaint, and on the basis of a FRI lease for 25 years being granted a rental in the region of £1.2m per annum could be expected.
- 4.4 The current arrangement allows SCAFC to occupy but make no rental payment. This position could continue for 38 years under the existing terms.
- 4.5 Usually it is a straight forward calculation to assess the value of the tenant's position being given up and then rentalise that "premium" value against the Market figure. In this case, the 38 year term exaggerates the tenant's position.

5. Legal Implications

- 5.1 The mechanism for delivering the agreed terms will be a deed of variation to the Head lease dealing with the rent, repairing obligations and alterations and a separate Deed of Agreement dealing with the other matters.

At this stage, the process/timeline for achieving this has not been determined but will involve a succession of conditions providing for:-

- Ospreys transferring their shareholding to the SCAFC
- The Council transferring its shareholding to the SCAFC
- The termination of the JVA and SJVA and various Licences
- The entering into of the Deed of Variation and Deed of Agreement
- An agreed Longstop date

SSMC then becomes a wholly owned subsidiary of SCAFC and SCAFC will need to amend the Articles of Association to reflect the revised constitution of the company. The contractual relationships between the parties will take the form of the Head Lease as varied, the Deed of Agreement and a new Licence between SCAFC and the Ospreys.

- 5.2 Further advice has been sought from the independent valuer who was originally instructed at the time of the State Aid defence and has confirmed that the proposed terms as set out above represent best consideration.

Consequently under S.123 of the Local Government Act 1972, the Council has a duty to obtain best consideration reasonably obtainable on a disposal. After taking independent external advice, the Director of Place certifies that he is satisfied that the current offer represents the best price likely to be achieved in the current market and that the Council is prima facie complying with its statutory duty.

- 5.3 Once there is certainty around the commercial deal, the Council will have to report the new commercial arrangements to the European Commission. There is a possibility, dependent on the view taken by the EC that it will be determined that either no aid is being granted or it is compatible aid covered by Art 55 of the General Block Exemption Regulations.

Background Papers: None

Appendix A: EIA Screening Form