

## **CABINET – 07 04 15 EXECUTIVE SUMMARY OF AGENDA ITEM 8**

### **Report title: Bristol Arena- Progress Update**

**Wards affected: Lawrence Hill, Windmill Hill, and City Wide**

**Strategic Director: Barra Mac Ruairí**

**Report Authors: Stuart Woods, Arena Project Director**

### **RECOMMENDATION for the Mayor's Approval:**

**There are no recommendations, this is an update paper for Cabinet and no decisions are required**

### **Key background / detail:**

a. Purpose of the report: Following December 2014 Cabinet this report is to update Cabinet on project progress in particular the operator Preferred Bidder procurement and the outcome of the Design Competition. Appendix 1 also provides an update on items raised at the OSM meeting on 14.11.14.

#### **b. Key details:**

1. In December 2014 Cabinet approved the selection of a consortium made up of Live Nation and SMG as Preferred Bidder to operate the arena. Whilst the paper gave the Strategic Director for Place the Authority to conclude the negotiations with the operator, it was agreed at that meeting that there should be a further update report to cabinet.

2. Final negotiation with the selected operator is nearing completion and the council and operator will sign the Agreement for Lease, which is a legally binding document, by the end of April.

3. The Design Competition has now concluded, and the contract has been awarded to Populous (with Feilden Clegg Bradley and BuroHappold), and the Standstill Letters issued. The Evaluation Panel approved this appointment on 20.02.15 and this decision was endorsed by the Arena Project Board on 26.02.15.

4. Procurement of the Building Contractor is now underway via a two-stage Design and Build process. A short-list is nearing completion prior to the next stage of the procurement, but this will not be confirmed until 7<sup>th</sup> April, the date this paper goes to cabinet.

5. A separate paper to April Cabinet deals with the Arena Island site acquisition process (this is an update on the December 2014 cabinet paper).

## AGENDA ITEM 8

### BRISTOL CITY COUNCIL CABINET 7<sup>th</sup> April 2015

**REPORT TITLE: BRISTOL ARENA  
OPERATOR SELECTION AND SITE ACQUISITION UPDATE**  
**Ward(s) affected by this report: Lawrence Hill, Windmill Hill and City Wide**

**Strategic Director: Barra Mac Ruairí**

**Report author: Stuart Woods, Arena Project Director**

**Contact telephone no. 01179 224 355**  
**& E-mail address: [stuart.woods@bristol.gov.uk](mailto:stuart.woods@bristol.gov.uk)**

**Purpose of the report:** Following December 2014 Cabinet this report is to update Cabinet on project progress in particular the operator Preferred Bidder procurement and the outcome of the Design Competition. It also provides an update on items raised at the OSM meeting on 14.11.14.

#### **RECOMMENDATION for the Mayor's Approval:**

**There are no recommendations, this is an update paper for Cabinet and no decisions are required**

#### **Key background / detail:**

1. This update paper has three sections covering the operator appointment, design team appointment, and general progress update.
2. Located on the former Diesel Depot Site, the Arena will be a catalyst for the development of the Bristol Temple Quarter Enterprise Zone (BTQEZ) in terms of spatial planning, creating jobs and generating economic and business rate growth.
3. At December 2014 Cabinet it was agreed that project reports would come back to Cabinet at the following dates:
  - Conclusion of Operator selection process (April 2015)- update

paper

- Conclusion of Design Team selection process (April 2015)- update paper
- Detailed Planning Application submission (July 2015)-update paper
- Building Contractor appointment (October 2015)-decision paper

## **Operator Procurement**

4. In December 2014 Live Nation/SMG were selected as Preferred Bidder to operate the arena. A number of steps were needed before the final contracts could be agreed and the report recommended that authority for this should be delegated to the Strategic Director for Place (in consultation with the Service Director Legal Services).
5. The operator will assist in the design development of the project, but more importantly once the lease is granted will provide an annual rental payment. At the end of the lease period (25 years) the asset returns to council ownership. The operator will maintain and service the building and carry out lifecycle replacements according to their tender proposal, which has been reviewed by the consultant team.
6. The contract (the "Agreement for Lease") commits the council to grant and the operator to accept a 25-year lease following Practical Completion of the facility to procure the operation and maintenance of the Arena, and sets out a number of arrangements to allocate commercial and other risks. This approach has been used successfully on recent arena projects in the U.K.
7. As agreed at the February 2014 Full council meeting the Agreement for Lease will also in effect commit the council to prudentially borrow the funds needed for the construction of the Arena. Funding from the Local Enterprise Partnership (LEP) and the operator rental stream will meet the cost of borrowing for the project.

## **Funding Package and Insurance**

8. The lease payment will provide a secure income stream, which will be received once the Arena is operational. This fixed rent begins shortly after Practical Completion and is subject to R.P.I (Retail Price Index) and should increase annually in line with inflation, together with

potential for further payments to the council via a profit-share arrangement.

9. The Arena will need to be insured during the construction phase and also when it is in operation. The council has appointed insurance advisors to finalise insurance matters with the operator and to develop a strategic approach to insurance for other aspects of the project, which includes reviewing Single Project Insurance and/or an Owner Controlled Insurance Programme options. Another approach is to allow the building contractor to insure instead of the council.

## **Design Competition**

10. The second stage of the design competition was launched on 24<sup>th</sup> November 2014. The following five companies were asked to respond to the brief and submit design and fee proposals by 26<sup>th</sup> January 2015:

- Grimshaw
- IDOM
- Populous
- White Arkitekter
- Wilkinson Eyre

11. The Evaluation Panel consisted of the following members:

- Barra Mac Ruairí, BCC Strategic Director (Chair)
- George Ferguson, Mayor
- Lynn Sullivan, Sustainable by Design (RIBA Advisor)
- Harvey Goldsmith, Promoter
- Peter Ayres, Structural Engineer, AECOM

12. The Evaluation Panel was supported by a Technical Advisory Team consisting of the following members:

- BCC Arena Project Director (Chair)
- BCC Arena Project Manager
- BCC City Design Group
- AECOM, Cost Consultants
- Sport Concepts, Technical Advisor
- Live Nation and SMG, Arena operator

- Gleeds, CDM Coordinator
- RIBA Facilitator and observer (compliance role)

13. The Evaluation Criteria, as set out more fully in the Tender Report Appendix, had 20% allocated to Price (fee proposal) and 80% to Quality comprising five key criteria set out below,:

	<b>Quality Score %</b>	<b>Price Score %</b>
Design Response (Aesthetics, main concept)	17.5	0
Sustainability and Buildability	17.5	0
Compliance with the Facilities Requirements and Operator Service Requirements	20	0
Overall economy of the proposed design (cost)	35	0
BIM, Health & Safety	10	0
Quality Score	100	0
Fee proposal (Price)	0	20
<b>Total Weighted score</b>	<b>80</b>	<b>20</b>

14. The RIBA Facilitator attended the assessment to document the selection process and provide procedural support. Other representatives from Bristol City Council (together with their appointed consultants) attended the assessments to provide technical advice, support and input. The Technical Advisory Team based their evaluation on the Evaluation Guidance and a moderation meeting was held on 9<sup>th</sup> February.

15. The Technical Advisory Team presented an overall summary report for presentation to the Evaluation Panel on 12<sup>th</sup> February, at which moderation took place. There was also a further moderation after the interviews on 20<sup>th</sup> February.

16. The Evaluation Panel's decision was to appoint Populous as design team to the project. Populous will now work with the council to develop their submitted scheme. This decision was endorsed by the Arena Project Board on 26<sup>th</sup> February.

## **Project Progress update**

17. A revised cost plan taking into account the latest tender price inflation, the appointed design team actual fees and the winning design will now be required. This work will commence shortly when the scope of the winning design is confirmed.
18. Building Contractor Procurement began on 21<sup>st</sup> January 2015, with a Bidders Day taking place on 28<sup>th</sup> January. The deadline for submissions of the Pre-Qualification Questionnaire was 3<sup>rd</sup> March. A number of applications were evaluated during March, with the intention of taking through a minimum of 5 companies to the Invitation to Tender stage beginning on 15<sup>th</sup> April. Project Board agreed on 26.02.15 to use an NEC 3 contract option C, Target Cost, as a preferred choice pending further work by the project team.
19. The council will be using an NEC contract for the building contractor procurement, and there are specific clauses in the contract which require the contractor to provide a specific number of apprenticeships and job opportunities.
20. The Transport Assessment (TA) will be complete by the beginning of July. The Transport Assessment will be a key component of the Detailed Planning Application for the Arena. It will provide an update on the strategic approach for Transport for the Arena and also details of the mitigation measures required as a result, including solutions to give comfort to local residents. The project team has also provided the consultants carrying out the work with details of expected outputs for the rest of Arena Island to enable a TA to be prepared for the whole site and to assist the Outline Planning application for Arena Island.
21. The Council will not be providing any additional car parking to support the Arena. The Arena is in the heart of the city and it would be difficult to find a more sustainable location. There are significant amounts of car parking already available within comfortable walking distances and the operator is confident that there is more than enough car parking available to support the Arena.
22. Physical signage and a smartphone app will guide users to the most convenient car parks and additional traffic management measures will be in place for larger 12,000 capacity events. It is worth noting that the city copes with large numbers of visitors to a variety of cultural and supporting events; for example, the Harbour Festival

attracts over 100,000 people and Bristol City Football club has regular crowds larger than most arena events. Whilst it is absolutely right that there are concerns about transport impacts this is the right location for an arena and the planning application will fully address all the concerns.

23. Design Development- As set out in Paragraphs 10 to 16, the Populous design team has now been appointed. The team will now progress the design development of the project. The Design Process Review document sets out how the design and cost plan will be signed off by the council at key stages, as well as the relationship between the design team, council, contractor, and operator.
24. A detailed Planning Application is being prepared for the submission at the end of July 2015. Pre-planning meetings have been held with the planning authority. An outline planning application will also be submitted at the same time for the rest of Arena Island. Planning Consultants have been appointed as agents to put together the Planning Application on behalf of the council.
25. The Arena Project Team has initiated a meeting between the BCC Licensing team and the arena operator. The operator will be responsible for obtaining the Provisional Statement and then the premises licence for the facility.
26. Living Wage: The operator has provided an estimate of the cost of implementing the Living Wage on the Arena project for consideration by the Project Board. The NEC contract for the building contractor will ask them to price an option for delivery of the project applying the Living Wage.
27. The site acquisition is covered in a separate report to cabinet of the same date, detailing the arrangements with the Department for Communities and Local Government (DCLG) and the Homes and Communities Agency (HCA) and the relationship between the Arena Island site and the acquisition of the Cattle Market Road site currently in private ownership.
28. As set out in a separate paper to April cabinet, now that the whole of the Arena Island site is transferring from HCA into the council's ownership, a way now has to be found to take forward the remaining development (currently known as "Arena Island Phase II". It is anticipated that the council will seek a developer or developers to take



forward this part of the site. In the meantime the project itself needs to be developed with a Project Mandate, budget and resource allocation so that it can be kept separate from the Arena project in budget terms.

## **Programme**

29. The overall programme for the development of the project has not changed since December cabinet and is set out below.

<b>Date</b>	<b>Activity</b>
July 2015	Planning application submission
January 2015- July 2015	Building contractor procurement
January 2016- December 2017	Construction and fit out
End 2017	Facility opens

## **Consultation and scrutiny input:**

30. A meeting of Overview Scrutiny Management (OSM) will be held on 9<sup>th</sup> April 2015.

### **a. Internal consultation:**

31. The Strategic Director for Place is the Senior Responsible Officer for the project, and chairs the Arena Project Board. There are regular briefings with the Mayor and cabinet portfolio Assistant Mayors, and also a reporting line into the BTQEZ governance structure.

### **b. External consultation:**

32. A Stakeholder Engagement Plan and Communications Strategy are in place. A briefing for local councillors and Neighbourhood Partnership leads took place in September 2014 to update them on the Enterprise Zone and Arena. A further meeting will take place in the next few months.

33. Public engagement for the Arena Design Competition took place in January 2015:

- Over 50,000 people viewed the five shortlisted designs on-line

- Over 950 people visited the RIBA exhibition truck at three locations across the city
- Over 9,000 people visited M Shed while the exhibition of designs was located in the entrance foyer
- Over 550 comments on the designs were received

34. A stakeholder meeting took place on 18<sup>th</sup> March at the Passenger Shed with a focus on the arena. Further pre planning consultation will take place in June prior to the submission of the Planning Application.

### Risk management / assessment:

35. The key risks are set out in the following table. There are standard risks associated with any construction project e.g. Cost increases, delay to programme, or a procurement challenge.

The risks associated with the development of the Arena:								
No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls)		RISK CONTROL MEASURES Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation).	CURRENT RISK (After controls)		RISK OWNER	
		Impa	Probabilit		Impa	Probabil		
1	Building Contractor cannot deliver the Design within the cost plan	High	Med	Do not make changes to the brief. Ensure Design Competition outputs are cost controlled. Update cost plan regularly.	Med	Low	Project Team	
2	Failure to acquire Diesel Depot site	High	Low	Failure to or delay in acquiring the site leads to project delay, cost increases and in the case of non-acquisition, the need for an alternative site. Risk will be resolved end March when site is acquired.	Low	Low	Project Board	
3	The council's funding of the project is considered to be State Aid	High	Low	Implement State Aid strategy with legal advisors, submission now made to EU Commission	Low	Low	Legal Services and Legal Advisors	
5	Operator default- Operator unable to continue with Lease arrangement	Med	Low	Include provision for operator replacement in contract with operator.	Low	Low	Project Board	
6	The council's assumptions on how City Deal money is to be made available are not the same as the final funding mechanics-potential for increased costs to the Council	Med	Low	Ensure modelling projections for servicing the debt are at all ranges and cover all scenarios. Work with LEP to clarify how the EDF money will be paid to Bristol	Med	Low	Project Board	
7	City Deal income projections do not materialise	Low	Med	Modelling shows this is unlikely- in the very unlikely event that they were delayed this may have an impact on our servicing of the debt.	Low	Med	Project Board	

## **Resource and legal implications:**

### **Finance**

36. The Arena project is forecast to cost up to £91m. This takes account solely of the cost of developing the Arena itself on the chosen site and does not take into account site acquisition costs or the development of the rest of the Arena Island site. The cost of the project will be funded by up to £91m of prudential borrowing.

37. A revised cost plan will be produced during April as a number of costs such as design and project development costs and design fees costs become more certain.

#### **a. Financial (revenue) implications**

38. The Council will prudentially borrow up to £91m to pay for the Arena construction. To fund the cost of borrowing, the council will rely upon two main sources of income, the Economic Development Fund (EDF), part of City Deal and rental income from the operator of the Arena. The Council will also need to cash flow the project to allow for deficits in income compared to the cost of borrowing in the early years of the Arena's operation.

39. **City Deal Funding £53m:** The Council expects the EDF to meet the full cost of borrowing £53m. City Deal is based on the retention of business rates growth from Enterprise Areas and Enterprise Zone across four partner councils. Income to Bristol City Council is reliant upon the expected growth in business rates being realised in amount and timing.

40. If there are any shortfalls in funding from City Deal the council will still need to meet the annual cost of borrowing £53m. However, funding from the EDF allows for variations in funding availability. Funded projects would expect to recover any income shortfalls, as and when funds become available in later years.

41. **Operator Rental sponsored funding - £38m:** The cost of borrowing £38m should be more than covered by rentals received from the Arena operator. Operator rentals are indexed annually by inflation and will increase over time. Current modelling shows the project making a surplus over the 25 years of the contract. The model relies upon borrowing costs as at March 2015 and an average rate of inflation

of 2.5% over 25 years.

42. Using these parameters, the model suggests the maximum cumulative deficit the council would need to fund is under £1.5m. Any such deficit assumes no other income stream is identified either from within the council or from any arrangement with the Operator such as profit sharing.
43. Again, using these parameters, the project would show a surplus from year 9 and breakeven from year 15.
44. The offer from the Operator is better than that estimated in the OBC, borrowing costs have reduced and construction inflation has increased from that forecast. It is assumed that the capital contribution from the Operator in their bid will be used to reduce the net borrowing required by the council.

### **Financial risks**

45. The council will borrow the funds required to build the Arena at a fixed rate from the PWLB. By having a fixed rate of interest, the council is not exposed to interest rate risk once the finance is in place. The operator bears the risk associated with paying the rentals to the council. The council is not reliant upon any risk factors in receiving the rentals.
46. The council is exposed to three key risks:
  - The first risk is that Economic Development Fund of City Deal does not receive sufficient funds from business rate growth to meet the council's cost of borrowing £53m.
  - The second risk is inflation risk. Our model makes the assumption that inflation averages 2.5% over the 25 years of the contract and in turn the rental payments from the Operator are increased by 2.5% year on year. If inflation averaged 2% over the 25 years, the annual breakeven point would be delayed by three years.
  - The third risk is that the cost of borrowing increases before the council can fix its borrowing rate.
47. In summary, the council needs to borrow up to £91m to fund the Arena project. The cost of borrowing will be fixed. However, there is a

limited risk that interest rates increase before the cost of borrowing is fixed. If inflation falls below that current modelled, the council will also have less income to cover the cost of borrowing. The cost of £53m of debt to be met from City Deal is at risk should business rate growth not materialise.

### **Council spending commitments**

48. The council will have spending commitments as key project milestones are passed. At present, the council is committed to project development costs and once the design team is appointed, the council will be committed to staged payments for fees, pro rata to the design stage reached.
49. In October 2015, the council will commit to the remaining project costs, once a contract for the Arena construction is signed. These costs will include the Arena construction cost, contingencies and allowance for inflation. In addition, on and off site works would be expected to be contracted at around the same time.
50. Community Infrastructure Levy (CIL): The Arena is liable for CIL. It is expected that the CIL payments will not add to the overall cost of the project but any allocation of CIL from the Arena would remain a key decision and will require Cabinet approval.
51. Any decision on CIL would need to be made in conjunction with the final decision for the building contractor appointment, a decision expected to go to October Cabinet.
52. Part of CIL, in respect of the Arena, will be a 15% neighbourhood contribution. This amount will be made available for neighbourhood initiatives.

#### **b. Financial (capital) implications:**

53. The council will need to borrow up to £91m to pay for the Arena project. The timing of any borrowing will be determined by the council's treasury management strategy and especially its view on the future cost of borrowing. The council will need to balance any need to secure current low borrowing rates and the need to be able to pay bills received from the Arena construction project.

**Advice given by: Mike Allen, Finance Business Partner**

**Date:** 20.03.15

**c. Legal implications:**

54. State Aid – State Aid was identified as a key legal issue and advice received recommended seeking formal approval from the EU Commission. Detailed discussions have taken place with BIS (Department for Business, Innovation and Skills) and an application was made before Christmas. Initial feedback from the Commission is positive, indicating that the proposal appeared relatively unproblematic (in particular because this is a multipurpose arena, and not one for a single sports team, which have caused the most problems in the past). The selection of the operator by open competition was viewed positively; it was accepted that it did not fall within any of the Block Exemptions. Further information was requested regarding pricing of tickets and it has been confirmed that the Council will not have any control over ticket prices. The operator will set ticket prices based on what they believe to be the market rate.
55. The operator procurement, being a service concession and sitting outside the Procurement Regulations on the whole, has followed a form of negotiated procedure. The procedure had been well publicised and no objections or complaints have been received at any time during the process. The procedure concludes with the signing of the Agreement for Lease which commits both parties to the project.
56. As part of the ITT process the Bidders were provided with a draft Agreement for Lease and a draft Lease which are detailed but where detailed drafting has not been possible (i.e. site specific drafting) we have provided drafting which can be modified as site acquisition is finalised. Bidders made their representations, comments, amendments etc to the draft documents, which were then subject of negotiation and discussion. None of the legal issues raised by Bidders in their submissions would prevent the council from signing an Agreement for Lease with them. The Agreement is conditional on a number of key issues:
- a) The grant of a satisfactory detailed planning permission
  - b) The exchange of any satisfactory Planning Agreements
  - c) The licensing condition – i.e. the grant of a provisional statement.
  - d) The funding condition – i.e. the Council securing funding
  - e) Site investigation condition – i.e. no unacceptable ground conditions

- f) Site assembly condition – this is the acquisition of the land
- g) State aid condition
- h) Network rail consent – consent to carry out the development works

A key risk to the project would be failure to satisfy the conditions of the Agreement for Lease.

57. The Design Competition Stage I is complete; the deadline for unsuccessful teams to contact the council passed on 02.01.15, thus the risk of challenge from these parties is greatly reduced.

58. The competition for the award of the design contract has followed the restricted tendering procedure, in accordance with Procurement Regulations, and conducted with the assistance of RIBA.

59. Stage II of the Competition is now complete, with the issue of the standstill letters and appointment of the successful design team. There were no challenges from unsuccessful teams during the standstill period.

**Advice given by**            **Eric Andrews / Solicitor, Legal Services**  
**Date:** 20.03.15

## **Appendices:**

**Appendix 1- Issues raised at OSM on 14.11.14**

## APPENDIX 1- BRISTOL ARENA ISSUES RAISED AT OSM 14.11.14

A number of questions were asked at OSM. Those items not covered in the main paper are set out in the table below:

No.	Question	Answer
1	SPV due diligence and status of Parent Company Guarantees	<p><b>Special Purpose Vehicle</b>            The Operator (i.e. the party signing the Agreement for Lease and the Lease) will be a Special Purpose Vehicle established for that purpose by the two bidding companies (Live Nation and SMG). The details of the SPV (name, shareholdings etc) have not yet been provided.</p> <p>Both the bidding companies (both UK based) will provide a joint and several guarantee in respect of the SPV, guaranteeing performance of its obligations under the legal agreements. Both companies are financially sound, and either would have been accepted as an operator in their own right without any further guarantees etc.</p> <p><b>Parent Company Guarantees</b>            There was no requirement at PQQ state for Ultimate Parent Guarantees. Advice from Legal Services is that Parent Company Guarantees from SMG Europe and Live Nation UK are sufficient, as these are large companies that have satisfied our Financial requirements and are joint and severally liable.</p>
2	When is the operator capital contribution made to the project?	This will be paid on practical completion of the Arena project.
3	Cost of Transport Mitigation measures	These will be identified at the end of April; There is a sum for these set aside in the cost plan



4	Are there any break clauses in the lease and what happens in case of termination?	<p>The Agreement for Lease (AfL) requires that the various pre-conditions are met by the date 18 months from the date of the AfL. If any of these conditions has not been met by that date, then either party <u>may</u> determine the agreement. If the outstanding condition relates to planning and is subject to appeal etc, then the condition period is extended by a set period (which cannot go beyond the longstop date). If practical completion has not been achieved by the Longstop date, (i.e. 7 years from commencement of works), then the tenant may determine the agreement.</p> <p>The Council can determine the agreement for tenant default. This can comprise failing to meet its obligations under the AfL or insolvency.</p> <p>Once the Lease is granted then the normal landlord and tenant provisions operate, namely the right to re-enter in the event of non-payment of rent, breach of the lease terms, administration/winding up etc of either the tenant or guarantor. Of course in the event of the tenant being in breach, the Council would expect one or other of the guarantors to step in and meet any outstanding rent, or otherwise deal with the breach.</p>
5	Skills, Employment and Training	<p>The arena operator and design and build contractor will agree an Employment &amp; Training Strategy with the council to cover both construction and end use phases and includes commitments around local procurement, local recruitment, apprenticeships and monitoring.</p> <p>An Enterprise Zone roadshow is visiting public libraries with information about future jobs in the Zone and the likely skills required. An Enterprise Zone skills coordinator has been appointed to manage the skills agenda for the Enterprise Zone and a draft strategy is being produced.</p>