

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2644

Title: Wembley National Stadium Limited – Extension of Financing Facility

Executive Summary:

The original financing package for the construction of the English National Stadium project, Wembley Stadium, to the Football Association (FA)'s special purpose subsidiary, Wembley National Stadium Limited (WNSL), was put in place in September 2002. The now dissolved London Development Agency (LDA) was one of three Public Sector Funders providing grants. The GLA assumed the role of the provider of grant, such grant having been drawn in full prior to construction completion. In September 2002 WNSL entered into a facilities agreement with a group of commercial banks as part of the original financing package (the Original Bank Facility).

The GLA previously provided consent for a refinancing of the Original Bank Facility via MD1550 in September 2015. On 1 October 2015, The FA and WNSL entered into a facilities agreement with a group of commercial banks to refinance the Original Bank Facility (the Existing Bank Facility). Now, like many organisations, the COVID-19 pandemic is having an impact on the financial position of The FA. The FA is seeking to extend the borrowing limits under and term of the Existing Bank Facility and certain consents are required of the GLA, the other Public Sector Funders and Wembley National Stadium Trust in relation to an amendment to an intercreditor and security trust deed originally dated 26 September 2002 and amended and restated on 1 October 2015. DCMS and Sport England, the other two Public Sector Funders, and Wembley National Stadium Trust are also providing their consent.

Decision:

The Mayor approves the following:

1. The GLA providing such consents and waivers as may be required by it in relation to the proposed extension of the term and amount of an existing bank facility between the Football Association, Wembley National Stadium Limited and a group commercial banks in relation to the English National Stadium project, Wembley Stadium (Existing Bank Facility); and a related increase in the "Senior Principal Limit" under an existing Intercreditor and Security Trust Deed; and
2. The GLA entering into an Amendment Agreement between the GLA, The FA, Wembley National Stadium Trust, other Public Sector Funders and the Security Trustee in relation to the amendment of an Intercreditor and Security Trust Deed, to consent to and effect the amendments to the Intercreditor and Security Trust Deed, any other agreements or documentation as may be required to be entered by the GLA in relation to the extension of the term and amount of the Existing Bank Facility or amendment to the Intercreditor and Security Trust Deed.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date: 2 July 2020

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 The original financing package for the construction of the English National Stadium Project, Wembley (Stadium) provided to the Football Association Limited (FA)'s special purpose subsidiary, Wembley National Stadium Limited (WNSL), was put in place in September 2002. The now dissolved London Development Agency (LDA) provided grant funding of £21 million under a funding agreement with WNSL (Funding Agreement) and was one of three "Public Sector Funders" providing grants, the other two being Sport England which provided £120 million and the Department for Culture, Media and Sport (DCMS) which provided £20m. The GLA assumed the role of provider of the LDA grant under the Funding Agreement, the grant having been paid to WNSL in full prior to the completion of construction of the Stadium.
- 1.2 Private sector borrowing via a term loan facility dated 26 September 2002 (the Original Facilities Agreement) secured on the stadium business and supported by hedging arrangements was also undertaken by WNSL. An Intercreditor and Security Trust Deed governing the terms between WNSL, The FA and the Public Sector Funders and senior lenders was also agreed.
- 1.3 In 2015, following on from the original financing package set in September 2002, after eight years of successfully operating the Stadium, The FA sought to refinance the Original Facilities Agreement with new corporate facilities with a new group of commercial lenders that would be simpler, less onerous and which would generate an overall lower cost to The FA's group. Pursuant to MD1550, the GLA provided its consent to that refinancing proposal and on 1 October 2015 the FA entered into a facilities agreement with a new group of commercial lenders (the Existing Facilities Agreement) and appropriate amendments were made to the original Intercreditor and Security Trust Deed and Funding Agreement to effect this.
- 1.4 Due to the ongoing COVID-19 pandemic, The FA is seeking the approval of the GLA, the other Public Sector Funders, Wembley National Stadium Trust and Barclays Bank PLC as the Security Trustee in relation to an increase in approved borrowing limits and term under the Existing Facility Agreement and to increase the "Senior Principal Limit" under the Intercreditor and Security Trust Deed (as amended and restated on 1 October 2015). Amendments, consents and waivers under the Intercreditor and Security Trust Deed and Funding Agreement will be required as described further below.

2. Objectives and expected outcomes

- 2.1 The FA, like many organisations, has been impacted by the COVID-19 pandemic, more specifically the financial position of the organisation. The FA is therefore looking to extend its borrowing limit under the Existing Facility Agreement with its commercial banks.
- 2.2 The Intercreditor and Security Trust Deed (as amended on the 1 October 2015) permits a certain level of "Senior Debt" (up to the "Senior Principal Limit" to be repaid to the commercial banks in priority to the debt owed to the Public Sector Funders and Wembley National Stadium Trust).
- 2.3 In order to provide an increase in the borrowing limits under and the term of the Existing Facilities Agreement, The FA requires the consent of the Public Sector Funders to increase the existing "Senior Principal Limit" under the Intercreditor and Security Trust Deed so that the entire amount of the increased borrowing limit ranks in priority to the debt owed to the Public Sector Funders (for which GLA consent is being requested via this Mayoral Decision). The proposal requires that the principal borrowing limits within schedule 9 of the Intercreditor and Security Trust Deed are amended relatively marginally to new principal borrowing limits specified in the Amendment Agreement to the Intercreditor and Security Trust Deed. It should be noted that those limits are still within the overall £300m potential facility size which was referred to in MD1550.

- 2.4 The proposal will be effected by an Amendment Agreement to the Intercreditor and Security Trust Deed. This agreement will also waive in respect of the current amendments being effected, certain rights of the GLA and other Public Sector Funders in respect of a 40-day notice period normally required in respect of any amendments proposed to the Intercreditor and Security Trust Deed. Given the current COVID-19 pandemic, a waiver of this normal notice period is deemed reasonable.

3. Equality comments

- 3.1 There are no direct equalities implications to the GLA arising from this decision. However, as per the Equality Act 2010, the GLA has a responsibility to give due regard to promoting equality in all its activities, including financial administration and decision-making. The GLA, by agreeing to the extension of The FA's borrowing limits and term under the Existing Facility Agreement will enable The FA to ensure the financial impact on their day-to-day activities are minimised during the COVID-19 crisis, thus protecting its investments into grassroots facilities and education as part of its strategic plans in the short, medium and long term and thereby having positive equality impacts by ensuring such facilities remain available to all socio-economic groups – promoting healthy lifestyles and well-being nationally.

4. Other considerations

- 4.1 As the GLA is one of the three Public Sector Funders of the construction of the Stadium, The FA has been in direct contact with senior GLA officers and our legal team to discuss the refinancing proposal and the implications arising from variations required to the Intercreditor and Security Trust Deed. This includes the formal sign-off required by each Public Sector Funder. Discussions have taken place in the form of formal virtual meetings and presentations outlining details and consequences of the proposal.
- 4.2 In-line with MD1550, the GLA's contingent claim against the original grant funding being repaid should an event of default occur will remain in place. While the risk is deemed minimal, the increase in the debt increases under the Existing Bank Facility the risk of potential default and the increase in debt will be "Senior Debt" below the "Senior Principal Limit" whereby the senior lenders will rank above the GLA (and the other Public Sector Funders) in seniority with regards to any potential repayment of funding. Given the current climate, this risk is deemed acceptable in the sense that the original LDA grant was paid with the conditions of the grant having been met.

5. Financial comments

- 5.1 There are no direct financial implications to the GLA relating to agreeing the proposed extension of the borrowing limits under the financing arrangements outlined in this report, including the consequent variations to the Intercreditor and Security Trust Deed. This is because the £21m grant to WNSL, originally provided by the LDA has already been paid to WNSL in full, with WNSL having met the conditions of the grant to date as per the funding agreement. However, it should be noted that any additional debt drawn under the increase in the Existing Facilities Agreement will be "Senior Debt" and will be below the "Senior Principal Limit", and will rank above the GLA's and the other Public Sector Funders' grant funding in the same way that "Senior Debt" under the Existing Facilities Agreement does (as noted above).
- 5.2 As noted within MD1550, The FA are, however still required to continue to comply with the information and reporting obligations as part of the project and under the terms of the Funding Agreement. The GLA's contingent claim against the original grant funding being repaid should an event of default occur remains in place.

5.3 The Funding Agreement between the GLA and WNSL continues to provide for certain clawbacks of funds should there be any disposal of the Stadium. Under the terms of the Funding Agreement, WNSL would have to notify the GLA on each occasion any clawback on disposal occurs and will liaise with GLA officers as required.

6. Legal comments

- 6.1 The refinancing is to be on the terms outlined in this report. It is proposed that the parties to the refinancing execute a single Amendment Agreement to the Intercreditor and Security Deed.
- 6.2 This Amendment Agreement will effect the increase in the "Senior Principal Limit" described in paragraph 2.3 above. The Amendment Agreement will also record the GLA and other Public Sector Funders' consent to these amendments for the purposes of their respective funding agreements, as well as the waiver of the normal 40-day notice period required under the terms of the existing Intercreditor and Security Trust Deed in respect of any proposed amendments to that deed.
- 6.3 The GLA's exercise of functions in respect of the Funding Agreement and Intercreditor and Security Trust Deed (including providing the consents and waivers proposed in this form) is consistent with the GLA's powers under section 30 of the Greater London Authority Act 1999 (GLA Act) to do anything which it considers will further any of its principal purposes of promoting economic development and wealth creation, social development and the improvement of the environment in Greater London.
- 6.4 Section 34 of the GLA Act allows the GLA, acting by the Mayor, to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any functions of the GLA exercisable by the Mayor. In this case, the amendments to the Intercreditor and Security Trust Deed referred to above, to which the GLA is a party, may reasonably be seen as being calculated to facilitate the GLA performing its functions as described above.

7. Planned delivery approach and next steps

- 7.1. The FA has been in discussions with the senior lenders, Security Trustee and the three Public Sector Funders to ensure all parties agree to proceed with the extension of the corporate financing facility. A draft Amendment Agreement to the Intercreditor and Security Trust Deed produced by the FA's legal advisers is being progressed following initial review by the GLA and other Public Sector Funders. The next stages include for such agreement to be reviewed by the Security Trustee and again by the GLA and other Public Sector Funders before being finalised and entered into in due course.

Activity	Timeline
Engagement with and approval from Public Sector Funders	May 2020 to July 2020
Commercial terms to be agreed with senior lenders	May 2020 to July 2020
FA's legal adviser's preparation of legal documentation; and review, approval and entry into by GLA and the other relevant parties	May 2020 to July 2020

Supporting papers:

MD1550

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 – Deferral**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason: To avoid prejudicing the commercial negotiations between The FA, the commercial banks and the Public Sector Funders, the publication should be deferred until the completion and signature of the re-financing agreements (including the amended Intercreditor and Security Trust Deed)

Until what date: (a date is required if deferring) 7 days after completion of the re-financing, which is currently expected to be no later than 31 July 2020.

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

Drafting officer:

Abdel Reza Nauyeck has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

David Gallie has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Leah Kreitzman has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 29 June 2020.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date

30 June 2020

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

Date

29 June 2020