

## APPENDIX 2

### Hoylake Golf Resort Development (Celtic Manor)

#### 1.0 Introduction

1.1 During the Internal Audit Manager's presentation of the Internal Audit update report at the ARMC meeting on 26 October 2022, Members queried details in the report around the Hoylake Golf Resort Development and lessons learned from it. In particular, whether decisions relating to the development were made with full information being available at the time, including risks relating to financial penalties. The Chair subsequently asked for further information on this to be brought back to a future meeting of the Committee.

#### 2.0 Additional work undertaken by Internal Audit.

2.1. Minutes of the ARMC meeting and the webcast were reviewed in detail to clarify the areas where Members sought further confirmation around the decisions made in relation to Hoylake Golf Resort Development. Three areas were identified, and audit work undertaken to ensure that these had been considered appropriately during the project lifecycle and evidence was available to support this. These are summarised below:

#### 2.2. Signing the Framework Development Agreement.

2.2.1 At the Cabinet meeting of 7 November 2016, the report of the Leader of the Council was introduced. The report stated that the risks associated with the project, had previously been reported to Cabinet on 20 July 2015. The report included an exempt appendix which was the report of Pinsent Masons, that also included the draft Framework Development Agreement (FDA). The Pinsent Masons report provided the Council with an assessment of the implications of signing the FDA and the measures in place to protect the Council. The draft FDA set out all the legal parameters relating to the project, including a dispute resolution clause. It was resolved that the signing of the FDA under the terms reported, and the formal closing of the Competitive Dialogue procurement process be authorised.

2.2.2 At a Special 'Call In' meeting of the Business Overview and Scrutiny Committee meeting on 7 December 2016, the Chair referred to the Cabinet's decision on Hoylake Golf Resort and the signing of an FDA on the terms reported. The agenda pack included the report of the Leader of the Council and the exempt appendices that had been taken to Cabinet on 7 November 2016. Members expressed their concern over signing the FDA and a motion was put by Members of the Conservative Party and lost. It was resolved (9:6) that the Committee upholds the Cabinet decision to take the necessary next steps in the development of the Hoylake Golf Resort.

#### Summary Conclusion

- 2.2.3 It is clear that Members had sight of the draft Development Agreement, were aware that it was a binding legal agreement and received advice in relation to its terms at the Cabinet meeting of 7 November 2016. It is also clear that disputes could arise along the way, as there is a dispute resolution clause in the agreement which was used when the Developer made a claim that the Council had breached the agreement.
- 2.3. Not investing in the Hoylake Golf Resort development in response to the funding application submitted under the Development Agreement entered into between the Council and NJVG.
- 2.3.1 At the Business Overview and Scrutiny Committee meeting on 27 June 2019, the Director of Finance & Investment (S151) presented their exempt report, advising that the Council had undertaken external due diligence of the NJVG funding and phasing agreement, which was included as an appendix to the report. The committee report recommended that Members consider the NJVG's Funding and Phasing Plan and convey their recommendations to Cabinet regarding the requirement for a prudential borrowing loan of £26m to NJVG, to allow the project to progress to the next stage.
- 2.3.2 The report produced by IPW details the risks of securing a £26m prudential loan for NJVG and also advised of the potential consequences of the Council not providing the loan. It was moved by a member of the Green Party, and duly seconded by a member of the Labour Party, that it be recommended to Cabinet (13:0) that the Council do not enter into a separate agreement to fund the Celtic Manor project at this time.
- 2.3.3 At the Cabinet meeting on 8 July 2019, on a motion moved by the Leader, duly seconded by a member of the Labour Party, it was resolved (10:0) that the Council won't be investing in the Hoylake development.
- 2.3.4 The Leader of the Council emailed NJVG on 15 July 2019 expressing that despite the decision not to invest the Council was still committed to the development agreement.

### **Summary Conclusion**

- 2.3.5 It is clear that Members were provided with details of the overall potential project risks and any key risks for the Council in respect of the proposed loan to the NJVG, which were included in the external report of IPW presented to Members at the Business Overview and Scrutiny Committee meeting on 27 June 2019 and Cabinet meeting on 8 July 2019.
- 2.4. Paying the sum of £495,000 to NJVG and releasing the Council from any and all obligations under the Development Agreement.
- 2.4.1 At the Economy Regeneration and Development Committee meeting of 26 January 2021, the Director of Law and Governance presented a report to Members advising that Legal challenge had been received in respect of the

contractual provisions of the Development Agreement by way of a Dispute Notice. It was resolved that the actions taken thus far in responding to the legal challenges received, be ratified.

- 2.4.2 At the Economy Regeneration and Development Committee meeting of 26 July 2021 the Director of Law and Governance presented a report recommending that Members endorse the continuation of such actions as the Director of Law and Governance considers is necessary and in the public interest to contest and /or seek to settle any potential litigation. Members were given details regarding a legal issue and a potential solution. Members asked questions regarding the position, the background issues, the issues involved and the possibilities for resolution. It was resolved that the Hoylake Golf Resort Development Agreement item be referred as urgent business to Policy and Resources Committee meeting on Wednesday 28 July 2021 for consideration.
- 2.4.3 At the Policy and Resources Committee meeting of 28 July 2021, the exempt report of the Director of Law and Governance report was presented to Members, which sought agreement to the proposed settlement to avoid potentially costly litigation and any associated financial or reputational risks arising out of such process. The report included a note from Leading Counsel which included the risks faced by the Council of not settling. Following a lengthy and considered debate, on a motion by the Chair/member of the Labour Party, and seconded by a Labour Party member, it was resolved (8:7) that the recommendations within the report be approved. A member of the Conservative Party proposed that a vote be taken on removing the matter from the Committee's delegation and six Members voted in favour of removal and the matter then became a referral to Council for a decision.
- 2.4.4 At the Extraordinary Council meeting of 11 August 2021, the Director of Law and Governance, introduced their exempt report on the matter of the dispute with NJVG and a number of Councillors sought clarification on a number of areas relating to the report, such as the general history and timeline of the Development Agreement. Following a lengthy and considered debate, it was resolved (22:21) that the recommendations within the report be approved.

### **Summary Conclusion**

- 2.4.5 It is clear that Members were provided with sufficient information during the Policy and Resources Committee meeting of 28 July 2021 and Extraordinary Council meeting of 11 August 2021, to enable them to make informed decisions about whether or not to pay NJVG £495,000 and releasing the Council from any and all obligations under the Development Agreement.