

CARDIFF CAPITAL REGION CABINET

CABINET MEETING 14th JULY 2017

CARDIFF CAPITAL REGION COMPOUND SEMICONDUCTOR PROJECT – SPECIAL PURPOSE VEHICLE

REPORT OF CARDIFF CAPITAL REGION PROGRAMME DIRECTOR

AGENDA ITEM: 5

Appendices 1A, 1B, 2A, 2B, 3 and 4 of this report are not for publication as they contain exempt information of the kind described in paragraphs 14, 16 and 21 of parts 4 and 5 of Schedule 12A to the Local Government Act 1972

Reason for this Report

1. To seek approval of the Regional Cabinet to establish a Special Purpose Vehicle (SPV) to deliver the Compound Semiconductor Project (CSC Project).
2. To consider and agree the required details necessary to establish the SPV including such matters as scope, objectives, name, shareholder arrangements and composition of the Board.

Background

3. At its meeting on 2nd May 2017 the Regional Cabinet resolved that subject to:
 - (i) Compliance with the conditions contained in the external specialist advice contained in the confidential appendices to the main report,
 - (ii) Reaching agreement as to the Heads of Terms referred to in Paragraphs a) and c) below,
 - (iii) The matters referred to in Paragraph 10.3 of the confidential Appendix 6(a) (The Compound Semiconductor Project Proposal) being resolved.

To support the development of a Compound Semiconductor Industry Cluster in the region by establishing an anchor space in the region for high end production and manufacturing by:

- a) Entering initially into a Heads of Terms agreement with Welsh Government and subsequently the transfer for the purchase of a specific facility;
- b) In accordance with section 2.4 of the JWA, commit £38.4m of the HMT Contribution to the Wider Investment Fund for landlord works to the facility referred to in Paragraph a), building fit-out, ancillary works and associated management and supervision costs;

- c) Entering initially into a Heads of Terms agreement for an eleven-year lease, and subsequently granting a lease (of the facility referred to in Paragraph a) to the proposed lessee, with an in-built stair-cased rental profile and flexible Option to Purchase;
- d) To allow the head lessee, to enter into a sub-lease arrangement; and
- e) To make a direct award for the development and fit-out of the facility.

It was further resolved:

- f) In principle to establish a Special Purpose Vehicle to implement the proposal, the detailed arrangements of which will be the subject of a further report to the Regional Cabinet for approval;
- g) Prior to a Special Purpose Vehicle being established, to agree that for the purposes of continuity, Monmouthshire County Council continues to act as lead Authority to progress this matter.

4. It was also noted in the meeting:

‘as regards one of the matters referred to Paragraph 10.3 of the confidential Appendix 6(a) (The Compound Semiconductor Project Proposal), Rhondda Cynon Taf County Borough Council (RCT) has agreed, in principle, to provide bridging finance for cash flow purposes as set out in Paragraph 31 of the report, through the most viable and cost effective mechanism and in the best interest of RCT and the wider City Deal constituent Councils at that time and in line with RCT’s Treasury Management Strategy.’

- 5. Since the decision of the Regional Cabinet on 2nd May, in accordance with resolution g), Monmouthshire County Council officers have worked to progress the resolution of the outstanding matters.
- 6. This work included commissioning external advice to ensure the most appropriate means of delivering the project is used and, in accordance with resolution f), details related to the establishment of an SPV to implement the Compound Semiconductor Project.
- 7. It should be noted that legal advice by Pinsent Masons, contained in exempt Appendix 2 of report of 2nd May states an SPV can be established within the parameters of the Joint Working Agreement.

Issues

Delivery Options for the Compound Semiconductor Project

- 8. In accordance with resolution f), of the 2nd May meeting, expert external advice has been commissioned to assess the options available to deliver the CSC Project in the most cost effective, efficient and timely manner, with a particular focus on the matters associated with establishing an SPV.
- 9. The options appraisal report is contained in exempt **Appendix 1B** and, in 5.1 of that report, recommends that the Regional Cabinet establish an SPV as a Company at the outset with a view to exploring the opportunity to establishing an alternative LLP vehicle to which the CSC Project can be novated.

10. In 5.2 of the specialist advisors' options appraisal it is confirmed "the establishment of the SPV and entry into the project documentation for the CSC Project is consistent with the requirements of the Joint Working Agreement (JWA) and the Welsh Government funding conditions".

Shareholders' Agreement

11. To enable the completion of the Shareholders' Agreement specific details need to be confirmed:
 - The scope of the SPV's activity;
 - The name of the Company;
 - Shareholders and the Company Board;
 - The Annual Business Plan for the Company;
 - Liability; and
 - Finance.
12. An overview of these details and the role of the Lead Authority are contained in exempt **Appendix 2A** with the proposed Shareholder Agreement contained in exempt **Appendix 2B**.
13. The proposed Annual Business Plan for the Company is attached as **Appendix 4** for approval by the Regional Cabinet.
14. It is proposed that Monmouthshire County Council continue to act as the Lead Authority, on behalf of the Regional Cabinet.

Financial Implications

15. The attached report seeks approval of Regional Cabinet to establish a Special Purpose Vehicle (SPV) to deliver the Compound Semiconductor Project (CSC) following the in principal approval to establish an SPV by Regional Cabinet at its meeting of the 2nd May 2017.
16. A total budget of £38.4 million was approved in respect of the CSC project, consisting of £37.9 million for project investment and £0.5 million for SPV set-up costs, preparation of project documentation and SPV running costs for the first two years of operation.
17. The project is to be funded from the £50 million HMT monies approved in respect of 'Initial Project Investments', ahead of the full JWA Business Plan being approved.
18. Further work has been undertaken to refine the individual cost headings making-up the £0.5 million SPV budget. This has identified additional cost pressures in respect of advisor related support and the report seeks approval to increase the budget by a £100k to £0.6 million. It should be noted that any increase approved for this project will result in a corresponding reduction in the amount available from the Wider Investment Fund (WIF) to fund other projects and priorities contained within the JWA Business Plan, once approved.

19. As matters contained within the exempt appendices are confidential and commercially sensitive, an additional set of Confidential Financial Implications have been set-out at **Appendix 3** and should be considered in conjunction with the financial advice above.

Legal Implications

20. The legal implications in respect of the Compound Semiconductor Project contain exempt information of the kind described in paragraphs 14, 16 and 21 of parts 4 and 5 of Schedule 12A to the Local Government Act 1972 and is therefore contained in exempt **Appendix 1A**.

Equalities Impact Statement

21. To follow.

Reasons for Recommendations

22. To approve the creation of a Special Purpose Vehicle – Company Limited by Shares; the associated Shareholders’ Agreement and the make-up, composition and operation of the corporate legal entity. To endorse the proposed structure of the company in relation to achieving the most beneficial and efficient outcome on all taxation matters.
23. To approve a Lead Authority to enter into a direct payment agreement with Welsh Government and undertake duties to progress the CSC Project.

RECOMMENDATIONS

It is recommended that, further to its decision of 2nd May 2017, the Cardiff Capital Region Cabinet:

- a) Establish a Special Purpose Vehicle Company Limited by Shares as detailed in the SPV Options Appraisal report contained in **Appendix 1B**;
- b) Agree to name the Special Purpose Vehicle Company ‘**CSC Foundry Ltd**’ – ‘**LDC Ffowndri Cyn**’¹.
- c) Approve the Shareholders’ Agreement related to ‘CSC Foundry Ltd’, as detailed in **Appendix 2B**;
- d) Request each authority appoint a Director to sit on the ‘CSC Foundry Ltd’ Company Board;
- e) Agree that for the purposes of the CSC Project the Lead Authority continues to be Monmouthshire County Council, and delegate to the Chief Executive Officer of that Authority, in consultation with the Regional Cabinet Chair and Programme Director, the power:
 - i. Deal with all matters pending formation of the SPV; and
 - ii. Thereafter all matters that fall to the Lead Authority as set out in the Shareholders’ Agreement and any matters that are required to facilitate the CSC Project and fall outside the remit of the SPV provided the delegation is executed within the remit of the financial commitment approved.

¹ ‘Lled-Ddargludyddion Cyfansawdd Ffowndri Cyfngedig’

- f) Agree that the Lead Authority enter into a direct payment guarantee with the Welsh Government as detailed in 8.9 of the Shareholders' Agreement related to 'CSC Foundry Ltd'; and
- g) That the CCR Programme Director, in consultation with the Lead Authority, SPV and Accountable Body, report to Regional Cabinet, at the appropriate time, for decisions on any changes to the roles and responsibilities of the Lead Authority and SPV.
- h) Approve the CSC Foundry Ltd Annual Business Plan as detailed in **Appendix 4.**

Sheila Davies
CCR Programme Director
10th July 2017

The following exempt Appendices are attached:

- Appendix 1A: Legal Implications provided by the Accountable Body (Confidential)
- Appendix 1B: CSC Project Special Purpose Vehicle Options Appraisal – Pinsent Masons (Confidential)
- Appendix 2A: Over-view of the Shareholders' Agreement & Role of Lead Authority
- Appendix 2B: Shareholders Agreement relating to CSC Foundry Limited – Pinsent Masons (Confidential)
- Appendix 3: Financial Implications provided by the Accountable Body (Confidential)
- Appendix 4: CSC Foundry Ltd Annual Business Plan

Background Documentation (exempt):

(Note: All Background Documents will be issued to S151 and Monitoring Officers prior to the Regional Cabinet meeting to enable them to fully brief their respective Leaders)

Cardiff Capital Region Cabinet Report of 2nd May 2017 and associated exempt Appendices; plus the exempt reports listed below:

Ref #	Title
CSC-D-0020	Heads of terms: WG sale of land
CSC-D-0021	Heads of terms: IQE Lease
CSC-D-0023	SPV Articles of Incorporation
CSC-D-0027	HMT A Loan Note Instrument
CSC-D-0028	Council Bridge A Loan Note Instrument

CSC-D-0029	HMT Security Agreement
CSC-D-0030	Council Bridge Security Agreement
CSC-D-0031	IQE Parent Company Guarantee
CSC-D-0032	Payment Guarantee from MCC to WG
CSC-D-0034	Sale and Transfer Agreement
CSC-D-0035	IQE Development Agreement for Lease
CSC-D-0036	IQE Lease agreement
CSC-D-0042	IQE Warranties
CSC-D-0047	Council Collateral warranties
CSC-D-0048	IQE Collateral Warranties
CSC-D-0055	KPMG Corporation Tax Advice
CSC-D-0056	KPMG Due Diligence on IQE Silicon Compounds, CMB & Atkins
CSC-D-0057	P&T Site Plan