

08th OCTOBER 2018 MEETING

CSC PROJECT – PROGRESS UPDATE, ANNUAL BUSINESS PLAN 2018-19 AND PROPOSED AMENDMENTS TO THE DEVELOPMENT AGREEMENT FOR LEASE

REPORT OF MONMOUTHSHIRE COUNTY COUNCIL AS LEAD AUTHORITY TO CSC FOUNDRY LTD

AGENDA ITEM: 4

Appendices 1-10 of this report are exempt from publication because they contain information of the kind described in para 14 {Information relating to the financial or business affairs of any particular person (including the authority holding that information)} of Part IV and Para 21 (that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information) of Part V of schedule 12 A of the Local Government Act 1972

Appendix 8 contains information which is exempt from publication under paragraphs 16 (legal professional privilege) of Schedule 12 A part IV of the Local Government Act 1972, Para 14 {Information relating to the financial or business affairs of any particular person (including the authority holding that information)} of Part IV and Para 21 (that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information) of Part V of schedule 12 A of the Local Government Act 1972

Reason for this Report

1. To present Regional Cabinet with the CSC Foundry Limited Annual Business Plan for 2018-19 for approval, together with a proposed deed of variation to the Development Agreement for Lease (DafL).
2. To provide Regional Cabinet with an update on progress with the CSC Project.

Background

3. On 2 May 2017, the Regional Cabinet approved investment in the CSC Project, subject to conditions and provisions subsequently discharged at the meeting on 14 July 2017. To advance the project in line with the approved objectives and all legal and contractual agreements, a Special Purpose Vehicle (Company Limited by Shares), CSC Foundry Ltd, was established and incorporated on 28

July 2017. Representatives from all ten Councils have been nominated to serve as Directors on the Board of CSC Foundry Ltd.

4. The company's incorporation enabled activation of all of the necessary contracts for the property acquisition and transfer; granting of the lease and enactment of all initial site development works (landlord works) with effect from 3 August 2017.
5. The Regional Cabinet received its last update on the CSC Project at its meeting on 26 March 2018. Subsequent to this meetings of the board took place on 28 March 2018 and 3 September 2018. In view of the function and responsibility of CSC Foundry Ltd, the Board plays an active and ongoing role in overseeing and monitoring all key aspects of project delivery and implementation. As such, this report aims to provide a high-level overview for the Regional Cabinet, with more comprehensive and detailed information available ongoing via CSC Foundry Ltd.
6. The Shareholders' Agreement that was entered into between the Councils requires the production of an Annual Business Plan and which regulates the operation and management of the Company and the relationship between the Councils as Shareholders of the Company. The Board are responsible for endorsing the annual business plan and then recommending it to Regional Cabinet for approval and adoption.

Issues

7. The second Annual Business Plan very much represents a continuation of the first Annual Business Plan.
8. At its meeting on the 3rd September 2018 the Board of CSC Foundry Limited endorsed its second Annual Business Plan of the Company for the year ended 31st March 2019 pursuant to Clause 12.4 (Annual Business Plan) of the Shareholders' Agreement.
9. The Annual Business Plan has however been subsequently updated as a result of the subsequent scrutiny of the business plan by the Accountable Body. The CSC Foundry Board will be asked to further endorse these changes ahead of the Regional Cabinet considering the plan for approval. A verbal update to that effect will be provided at the meeting.
10. As the project transitioned between phases, a number of issues were identified with the Development Agreement for Lease. A number of items related to the phasing of the project, relating to schedule 9 of the Development Agreement for Lease (DaFL), did not align correctly. It will therefore be necessary to issue a variation to the existing agreement to allow the remainder of the project to be managed and delivered successfully.
11. The advice from Pinsent Masons, legal advisors to the Board, is to maintain the DaFL as close as practicably possible to the original agreement by way of variation. The position arrived at looks to support IQE in continuing site development and meeting their needs, but also protects the key outcomes laid out in the original Development Agreement for Lease.

12. Further to the revisions proposed to the funding caps and phases of funding it is also necessary to make some amendments to the pre-conditions necessary to allow funding to be drawn down and released.
13. The Year 2 Annual Business Plan has been prepared in line with the above changes.
14. A risk register is maintained and reported to the Board at each of its Board meetings. The deed of variation to the Development Agreement for Lease will address new live issues that have temporarily prevented further drawdown of funds and payment to IQE.

Reason for Recommendations

15. To seek approval from the Regional Cabinet for the Annual Business Plan for 2018/19 for CSC Foundry Limited, including approval of the proposed deed of variation to the Development Agreement for Lease.
16. To provide Regional Cabinet with an update on progress with the CSC Project

Financial Implications

17. The attached report provides an update on progress made against the Compound Semi-Conductor (CSC) Foundry project investment, approved by Regional Cabinet at its meeting of the 14th July 2017 and builds on the update provided to Regional Cabinet at its meeting of the 26th March 2018.
18. The report also seeks approval of CSC Foundry Ltd's 2018/19 Annual Business Plan as well as requesting approval of a proposed variation to the Development Agreement for Lease, further details of which are set-out in the exempt appendices to this report. As matters are of a confidential nature, Regional Cabinet are referred to a separate set of confidential Financial Implications set-out at Appendix 9.

Legal Implications (including Equality Impact Assessment where appropriate)

19. The legal advice in respect of the Compound Semiconductor Project ('the Project') has been provided by external lawyers Pinsent Masons and Members are referred to that advice set out in the confidential appendices to the report.
20. As with any decision, Members will need to be satisfied that they have before them all material information and have had appropriate time to consider matters and raise any queries they may have, so that a reasonable and informed decision may be made.
21. These legal implications were written ahead of all external legal advice being finalised and may require to be supplemented once the authority has had sight of the final advice.
22. In considering this matter regard should be had, amongst other matters, to:
 - (a) the Councils' duties under the Well-being of Future Generations (Wales) Act 2015 and;

- (b) Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief

RECOMMENDATIONS

The Cardiff Capital Region Cabinet is recommended to:

- a) Approve the CSC Foundry Limited Annual Business Plan 2018-19 and the proposed deed of variation to the Development Agreement for Lease, as set out in the body of the report and contained in the relevant confidential appendices to the report;
- b) To note the update on progress with the CSC Project.

Peter Davies

Monmouthshire County Council

Chief Officer for Resources, Actping S151 Officer

Date: 2nd October 2018

The following **Confidential Appendices** are attached:-

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Appendix 1 – CSC Report – Confidential Appendix

Appendix 2 – CSC Foundry Ltd Annual Business Plan 2018-19

Appendix 3 – CSC Foundry Ltd Board paper – Project update report

Appendix 4 – Letter from IQE Board

Appendix 5 – Revised funding caps

Appendix 6 – Proposed variation to the Development Agreement for Lease

Appendix 7 – GVA letter confirming MEIP / State Aid Analysis

Appendix 8 – Pinsents letter confirming legal advice on the report

Appendix 9 – Confidential financial implications

Appendix 10 – Future Generations Evaluation