



9 November 2017

Dear ,

Request for Information – ATISN 11554

I wrote to you on 11 October regarding your request for information. You asked for:

1. The release of all official advice provided by HM Treasury to Welsh Government Ministers/Officials/Special Advisers in relation to the Circuit of Wales project in the last two years
2. Details of 'discussions' held between HM Treasury and Welsh Government Ministers/Officials/Special Advisers in relation to the possibility that the debt of the entire project might be classified against Welsh Government capital expenditure, including the date this advice was received.
3. Full release and publication of the paper presented to Welsh Government Cabinet Ministers on 27 June, referenced in the minutes of the meeting
<http://gov.wales/about/cabinet/meetings/2016-2021new/27june2017/?lang=en>

For question 1, I can confirm that the Welsh Government has not received any official advice from HM Treasury and so does not hold any information of that description

For the remaining questions, I can confirm that the Welsh Government holds information of the type described. For question two, the information we hold is being released to you at Annex A to this letter. I have concluded, however, that some of this information is exempt from disclosure under the Environmental Information Regulations 2004 (EIRs). 'Environmental information' is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

In the recent Court of Appeal decision in *The Dept for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of 'environmental information' does not mean that the information itself must be intrinsically environmental. They confirmed it is well established that the term "environmental information" in the Directive is to be given a broad meaning and that the intention of the Community's legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities

As the Circuit of Wales is a policy/plan likely to affect the environment, and as the information requested relates to the potential implementation of such a measure, then it falls within the definition set out in the Regulations. We also believe that some of the information captured by question 2 is exempt under Reg12(4)(e) (internal communications) and Reg13 (personal information), of the (EIRs).

Some of the above information being released to you refers to local authority funding. In consulting with the relevant local authorities as part of this request, we have been asked to clarify that the funding referred to never had formal council approval and therefore did not proceed.

For your third question, I have concluded the Cabinet paper you refer to is also exempt from disclosure under Reg12(4)(e) of the EIRs.

Full reasoning for applying these exceptions are given at Annex B to this letter.

If you have any queries about this request, please do not hesitate to contact me at the address below. Please remember to quote the reference number above in any future correspondence.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at: Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or FreedomOfInformationOfficer@wales.gsi.gov.uk. Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

INFORMATION FOR RELEASE

1.	<p>From: XXXXX, HMT Sent: 19 June 2017 13:26 To: XXXXX, WG Treasury Subject: RE: Urgent: Circuit of Wales funding structure</p> <p>I am really sorry I have spoken to IPA about this we just don't understand the cash-flows involved in this and what actually is going. Therefore I don't think it is really appropriate or possible for me provide a view on whether the shareholding and refinancing debt can be included as part of the total funding to determine the level of the guarantee. IPA and I would be very happy to meet with officials in the near future to get a proper handle on all of this if that would help appreciate that does not resolve your meeting this afternoon with Ministers.</p> <p>Apologies again,</p>																																				
2.	<p>From: XXXXX, WG Treasury Sent: 19 June 2017 09:58 To: XXXXX, HMT Subject: RE: Urgent: Circuit of Wales funding structure</p> <p>On you question below about construction costs vs total financing, the table below should be helpful as it separates out expected fees and profits. Hope this helps.</p> <table border="1" data-bbox="261 1093 1102 1800"> <thead> <tr> <th>Estimated costs</th> <th>£m</th> </tr> </thead> <tbody> <tr> <td>Construction JV</td> <td>209.6</td> </tr> <tr> <td>Construction contingency</td> <td>XXX</td> </tr> <tr> <td>Client contingency</td> <td>XXX</td> </tr> <tr> <td>Equipment & Utilities</td> <td>XXX</td> </tr> <tr> <td>Non construction JV</td> <td>XXX</td> </tr> <tr> <td>Land</td> <td>XXX</td> </tr> <tr> <td>Operating costs pre PC and Moto GP Fee</td> <td>XXX</td> </tr> <tr> <td>Funding fees and bridge loan interest</td> <td>XXX</td> </tr> <tr> <td>Third party fees</td> <td>XXX</td> </tr> <tr> <td>Staff costs</td> <td>XXX</td> </tr> <tr> <td>Development Profit</td> <td>XXX</td> </tr> <tr> <td>XXXXX Construction reserve</td> <td>XXX</td> </tr> <tr> <td>Tax</td> <td>XXX</td> </tr> <tr> <td>Debt interest, fees and repayments</td> <td>XXX</td> </tr> <tr> <td>Working Capital</td> <td>XXX</td> </tr> <tr> <td>Initial Funding repayment plus interest and costs</td> <td>XXX</td> </tr> <tr> <td>TOTAL</td> <td>XXX</td> </tr> </tbody> </table>	Estimated costs	£m	Construction JV	209.6	Construction contingency	XXX	Client contingency	XXX	Equipment & Utilities	XXX	Non construction JV	XXX	Land	XXX	Operating costs pre PC and Moto GP Fee	XXX	Funding fees and bridge loan interest	XXX	Third party fees	XXX	Staff costs	XXX	Development Profit	XXX	XXXXX Construction reserve	XXX	Tax	XXX	Debt interest, fees and repayments	XXX	Working Capital	XXX	Initial Funding repayment plus interest and costs	XXX	TOTAL	XXX
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3.	<p>From: XXXXX, WG Treasury Sent: 16 June 2017 15:44 To: XXXXX, HMT Subject: RE: Urgent: Circuit of Wales funding structure</p> <p>Many thanks for your helpful advice below. We are meeting on Monday afternoon</p>																																				

here to agree advice for Ministers, and it would be extremely helpful (again) if you were able to reflect urgently on the points below, where ideally we would want to be a little more concrete in term of our advice.

- We've noted your point about the risk weightings that should be applied to different tranches of debt and risk capital, as set out in the PPP chapter of MGDD (2016). Would you advise that the weightings be applied, while acknowledging that the CoW structure is more akin to a concession than a PPP? I would recommend that you consider whether the types of debt are exposed to significantly different levels of risk and what weight they should be given. As you are aware with the changes introduced to the PPP guidance last year while recognising that it might be pertinent to attribute appropriate weights to the different types of debt we continually challenged during the process the assumption that the 2.5 multiplier was suitable to no avail. In a concession arrangement if, when they update the guidance, they wish to attribute a multiplier to account for different types of debt we will argue that the multiplier should be lower because of the different way that concessions are typically financed compared to a PPP.
- Noting your point about the direction of travel – i.e., the prospect that Eurostat will seek to mirror PPP provisions when it updates the concession guidance in MGDD – is there a risk that a decision not to apply the risk weightings now could lead to an adverse classification decision should the concession rules change in due course? (To clarify, if no formal classification decision were taken on CoW now, then if and when assessed in future, would it be assessed under the rules in force at that time, or under the rules in force when contracts were signed?). In regards to PPPs Eurostat have always said that only the relevant guidance that existed at the time that the contract reached financial close should only be applied, this is the exception rather than the rule in applying guidance. The justification for the PPP contracts is that they are long and complicated and it would be too resource intensive to apply the latest guidance to each contract every time it was updated. I think there would be a justification for arguing for a similar exemption for reviewing concession contracts but I will need to test it with Eurostat as that question has never been asked largely because we haven't seen any significant updates to the guidance on concessions for it to be an issue.
- Are you able to advise whether the shareholdings and refinancing debt (referred to in the original paper) can be included as part of total funding for the purposes of establishing the level of the guarantee? As discussed I will consider this over the weekend. I have discussed with my manager and agree it is difficult but I do have one initial question is the actual cost of the project to construct £XXXX or £XXXX?

Please also note that since we exchanged emails on Wednesday, state aid advice has necessitated a change to the capital structure whereby the two loans to be provided by XXXXX (one guaranteed by WG, one not) are now expected to be provided as a single loan. We would welcome views as to whether there are any classification implications arising from the restructuring. I do not believe there to be any classification implications from amalgamating the loans but if we were weighting on principle of risks, presumably the weightings would come out differently?

Funder	Original Amount £m	Security	Revised Amount £m	Security

Cash	XXXX	None	XXXX	None
Rent Reserve	XXXX		XXXX	
Ordinary Equity	XXXX		XXXX	
Preference Equity	XXXX		XXXX	
XXXXX	210.00	WG Guarantee & Second Charge on property	XXXX	WG Guarantee over £210m & Second Charge on property
XXXXX – lease Premium	XXXX	Freehold		
XXXX	XXXX	Senior Charge on Property	XXXX	Senior Charge on Property
XXXXX Land Purchase	XXXX	Freehold	XXXX	Freehold

Happy to discuss, as ever.

4. **From:** XXXXX, HMT
Sent: 16 June 2017 16:47
To: XXXXX, WG Treasury
Subject: RE: Urgent: Circuit of Wales funding structure

I have annotated below in red my initial thoughts and will think further over the weekend and will come back to you again on Monday. I have discussed with my manager the financing/reinvestment question and I have raised a question below. I will probably discuss with IPA on Monday as well on this point as it is obviously a tipping point to the project automatically coming on balance sheet.

5. **From:** XXXXX, HMT
Sent: 14 June 2017 18:14
To: XXXXX, WG Treasury
Subject: RE: Urgent: Circuit of Wales funding structure

Thank you for providing the paper explaining the proposed funding structure for the CoW. On first glance the this does not seem to raise many concerns from a classification perspective but when you think about what the actual proposal is then alarm bells start to ring. Although the argument is pretty strong that this is a private project and that all that is being requested is a guarantee you still have to think how it might be interpreted when national accounts guidance is applied. For both XXXXX and XXXXX ONS have rules that these most closely resemble a concession. Concession guidance that currently exists is limited but in both the projects ONS ruled that they were not on balance sheet. I suspect the level of government intervention both central and local that will be required to deliver this project as with the projects mentioned above will result in ONS applying the concession guidance when considering. I am sure this is why understanding whether certain elements of funding would contribute to the overall financing costs and whether this would result in the guarantee being provided to cover the XXXXX loan being greater than 50% which would tip automatically the project on balance sheet if viewed as a concession.

The paper provided states that it is a high risk project and states that it has currently secured a contract to run a British round of Moto GP and has an

agreement in place with an established sports promoter. It also states that in addition to offering race and testing facilities to motor sport, the company proposes to offer a variety of adrenalin sports and major musical festivals. In the paper there is no explanation of what the anticipated income levels are or what the repayment profiles are for the debt secured and other operating expenses once operational making it difficult to fully understand whether the proposal will ever be self-financing which is why I assume XXXXX are requiring a guarantee for the loan that they are making to ensure that it is repaid.

Looking at the guarantee I think we need to understand:

- What the different sources of funding are.
- XXXXX have their entire £210m loan fully covered by the guarantee. Has XXXXX borrowed this money or is it their own?
- Assume WG must be charging a very small premium over gilts as it is pure sovereign risk. There will be state aid concerns if not.
- Why is WG taking second charge of the assets as security for the guarantee?
- The XXXXX Premium/Purchase facilities sound like they may be secured against the land, whereas the XXXXX senior debt has preferential terms in comparison to the HMG guaranteed tranche over the companies assets (not clear if this is land or not).
- There is then only £XXXX of equity which presumably is first loss.
- So each tranche is taking very different risk profiles - so we need to understand better the nature of the guaranteed tranche - a 20:20:50:10 (various tranches of debt/equity split) feels off and seems unlikely given the highly speculative nature of the revenue streams.

If you consider the latest PPP guidance that you are already familiar with you may want to apply the multiplier to the different tranches of financing this may make you come to different conclusions on the weight of the debt being guaranteed. I know that the PPP guidance shouldn't be applied to the concession guidance but you can definitely see the direction of travel even if the weightings for debt in a concession could be argued to be materially different from those for a PPP.

If you consider that this might be assessed as a concession then I think there is a high probability that the debt being guaranteed will likely have greater weight than 50% and could therefore be on balance sheet even if not it might be okay to consider the existence of the guarantee as a contingent liability but that is only justified if it is of low risk and little chance of being called. My interpretation of what has been provided is that there is likely a high probability of the guarantee being called and that the WG should really be considering this as a provision for future spending that is likely to crystallise.

My initial thoughts therefore from a classification and commercial perspective are that this is a high risk project where there is a high probability that the whole project will come on balance sheet from inception because of the guarantee or even if it doesn't then there is an equally high chance of a call on the guarantee bringing £210m on balance sheet probably in the near future.

As always happy to discuss but I think if WG are seriously considering this then you should speak to some of the experts in IPA about the UK guarantee scheme and get their views.

6.	<p>From: XXXXX, WG Treasury Sent: 14 June 2017 11:05 To: XXXXX, HMT Subject: Urgent: Circuit of Wales funding structure</p> <p>First of all, thank you very much for your help in running the classification workshop in Cardiff on Monday – the feedback has been very positive.</p> <p>When you were here, you had a brief opportunity to hear about the current status of developments on the Circuit of Wales (CoW) proposal from my colleague XXXX. It was agreed that we would provide you with a short introduction to the proposal as it now stands, with concise information about the proposed funding structure and the Welsh Government's proposed intervention (which takes the form of a financial guarantee).</p> <p>Yesterday, our Ministers met to consider the proposal. One of the issues about which they were absolutely clear was the need for an authoritative opinion on the classification implications of the proposed structure.</p> <p>With that in mind, please find attached a summary note on which we would very much welcome your views. There is, as ever, a degree of urgency around this proposal, as a further meeting of Ministers is planned shortly – a meeting we will need to inform with a considered view on classification matters. If you were therefore able to expedite consideration of the attached note and let us have your thoughts by close of play on Friday, we would be extremely grateful.</p> <p>Please do get in touch if any points need further elaboration.</p>
7.	<p>From: XXXXX, HMT Sent: 05 December 2016 14:43 To: Christopher Munday, WG Sectors & Business Cc: XXXXX, WG Treasury; Mick McGuire, WG Sectors & Business Subject: RE: Circuit of Wales</p> <p>In basic terms I can see that the proposed guarantee does appear to cover less than 50% of the project finance which would be necessary if we were looking at some sort of PPP arrangement.</p> <p>It's not clear whether the guaranteed loan is pari passu with or subordinated to the lease and the loan. I note that the guaranteed loan is unsecured, but does WG as guarantor have any additional rights or security? Consequently I do have concerns that if the WG were guaranteeing subordinated debt then Eurostat may want the same multiple factor of 2.5 applied to it that it does when it is looking at public sector financing of a subordinated nature going into a PPP structure. Based on the email it appears to rank behind both the sales and lease back and the senior loan.</p> <p>I have discussed with colleagues and have noted the comment that WG won't be able to exercise any control over the company, but would expect them to have the typical controls that a commercial guarantor or lender would have to protect its position and mitigate loss in the event of a claim. This would need to be designed carefully to ensure that control over the corporate governance was not included that could result in the entity being classified to the public sector.</p> <p>There's no detail on the tenor of the lease or the senior loan, but if shorter than 35 years then the guaranteed loan would also be effectively subordinated by time.</p>

The terms of the guarantee and the guarantee fee charged will have to comply with the EU Guarantees notice:

http://ec.europa.eu/competition/state_aid/reform/guarantee_notice_en.pdf

Based on colleagues existing knowledge of the proposal and given the high gearing, they would expect the rating of the guaranteed tranche to be well below investment grade. IPAs experience has shown that it has been very difficult to determine appropriate benchmarks for guarantee pricing as you move lower down the risk spectrum, especially at the longer dated end, since there is virtually no market precedent.

Happy to discuss

8. **From:** Christopher Munday, WG Sectors & Business
Sent: 29 November 2016 15:34
To: XXXXX, HMT
Cc: XXXXX, WG Treasury; Mick McGuire, Sectors & Business **Subject:** Circuit of Wales

You may recall we exchanged some emails earlier this year in connection with the above project.

In March of this year my then Minister rejected the proposal from the developers on the grounds that at 100% Welsh Government guarantee it did not represent value for money, which meant we did not get into any detailed discussion with the promoter about public sector finance implications of that funding structure. Subsequently, in late July, the developer presented a restructured proposal which though limiting the Welsh Government loan guarantee to 50% additionally included public finance in the form of Welsh Government grant and local authority commercial loan. Overall this meant that the proposal was based upon 76% finance that was provided or directly supported by the Welsh public sector. At that time the current Cabinet Secretary Economy and Infrastructure rejected the proposal on the basis that it did not represent a fair balance of financing or risk, though he did challenge the developers to come back to us should they be able to put forward a proposal where public support was under 50%.

The current position is that the developers have indeed come back with a proposal which appears to meet the Cabinet Secretary's challenge, though as at today they have not completed all of their fundraising. At this early stage I would welcome your views and advice on the likely classification treatment of this new funding structure. Until the company have completed their external fundraising I do not have a final proposal but I do have a very clear idea of the structure that is likely to emerge and which, subject to due diligence and economic impact appraisal, could be acceptable to us from a risk and VFM perspective, which I outline below

Party	Form	Quantum (approx.)	Participation
XXXXX	Sale and Leaseback	£XXXX	Freehold
Senior Lender	Loan	£XXXX	First ranked fixed and floating charge on COW assets (the benefit of the 125 year lease)

	XXXXX	35 year term Loan / Guaranteed by WG	£XXXX	Un-secured but with a WG guarantee
	Investor	Investor	£XXXX	Sub-ordinated to senior lender
	Investor	Ordinary Equity	£XXXX	No security
	<p>Since the original proposals the requirement for a Welsh Government grant has been removed. We have not yet agreed the terms for the provision of our guarantee but these will be on a wholly commercial basis inline with the state aid principles of Market Economy. Unlike the previous structure we will not be linking any part of the fee directly to performance of the company and will ensure that Welsh Government is not able to exercise any controls over the company.</p> <p>I realise that this information is very high level but it illustrates that the Welsh Government guarantee will only support 49.4% of the project finance and as such falls within the 50% threshold you have previously advised is critical to keeping the loan and the company of our balance sheet. I would nonetheless value your advice and your comments before we progress further with discussions with the developer and any guidance you are able to give on the key issues that I will need to address going forward in those negotiations.</p>			
9.	<p>From: XXXXX, HMT Sent: 17 May 2016 14:52 To: Christopher Munday, WG Sectors & Business Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG, Sectors & Business; Mick McGuire, WG Sectors & Business; XXX HMT Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Thank you for this. I think ONS would consider that this arrangement under national account rules would most closely resemble a concession when they come to consider how it should be classified. To determine whether it should be on the private or public sectors balance sheet they will be particularly interested in the level of general government intervention in the arrangement. In financing terms i.e. the central government guarantee and grant and the local authority loan will leave general government supporting in aggregate 77% of the total project cost. Consequently it is likely that this would result in the project coming on balance sheet from a national accounts, public sector finance and budgets perspective. I have discussed my concerns with IPA and it is likely that XXXX will give XXXX a call to discuss these type structures.</p> <p>I was slightly confused on the fee for the guarantee, are you suggesting that it will be the same as the interest charged on the XXXXX loan so they will in affect only retain the rate for the 20% that is not guaranteed?</p> <p>Happy to discuss</p>			
10.	<p>From: Christopher Munday, WG Sectors & Business; Sent: 16 May 2016 12:24 To: XXXXX, HMT; XXXXX, WG Treasury Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG Sectors & Business; Mick McGuire, WG Sectors & Business; Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Here is a copy of the flow chart [WITHHELD] as a pdf file which may be easier to read.</p>			

11. **From:** Christopher Munday, WG Sectors & Business
Sent: 16 May 2016 12:13
To: XXXXX, HMT
Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG Sectors & Business; Mick McGuire, WG Sectors & Business
Subject: Circuit of Wales (CoW) Proposal

Partly as a consequence of your advice on 30th March (see below) and partly because of state aid issues Ministers here took the decision, prior to the Assembly elections, that we could not proceed with the Circuit of Wales project as it was structured.

In reaching that conclusion there remained strong political support for the project, as it has the potential to be transformational in an area of high unemployment and which needs a significant boost to the local economy. Consequently the private sector promoters of the project were invited to explore alternative funding structures and to come back should a viable new proposition emerge. We are now examining the revised proposal but I still have some questions regarding classification and would welcome your further views.

To assist you in understanding the new proposal I attach a flow chart [WITHHELD] that illustrates the sources and flows of funding and the funding risks.

You will see that this shows that the XXXXX financing is now in the form of a loan (and not a lease as previously proposed), with a guarantee of 80% requested from Welsh Government. The amount guaranteed of £XXXX is significantly lower than the earlier proposal and now represents XXXX% of the total project finance. The other key change in the structure is that part of the XXXXX funding is not supported by the public sector and this, together with the introduction of private equity and private subordinated debt, brings £XXXX (XXXX% of total) of private capital into the financing.

As the flow chart illustrates there is however still a very substantial additional element of public sector funding in the form a commercial loan from the two Local Councils of £XXXX. This will be funded by the Councils through borrowings raised under their existing Prudential Borrowing powers, and consequently on their respective balance sheets. This money will be evidenced as being on market terms and will be on the basis of a first charge security over the completed circuit. The Councils have however requested that Welsh Government provide additional grant in aid to cover two thirds of any revenue shortfall (between payments from CoW and payments due on the Councils loans) in any year during the loan term.

The final element of the project finance will be the state aid compliant grant of £16m that has been awarded by Welsh Government to support Job creation.

The new proposal has also addressed the other key points raised in your March email as follows:

- **Guarantee Fee** – Whilst final terms have yet to be agreed, this is will mirror the approach taken under the UK GS in that the fee will reflect the credit rating of the debt instrument that we are guaranteeing and will be benchmarked to similarly rated instruments in the market. The fee will be paid parri passu with the commercial interest payable to XXXXX and WG will also have a first charge, ranking alongside the two LA's, over the completed circuit as security against a call under the guarantee.

	<ul style="list-style-type: none"> Profit share/WG approvals – Following your comments that these points could create “control” we shall be omitting such requirements from the revised structure. <p>Overall Welsh Government direct exposure has reduced very substantially, with our guarantee to XXXXX now at less than 50% of the project financing. I am unclear however how the provision of some 25% of the funding through local council loans would impact on the potential ONS classification, most particularly in whether the Circuit of Wales would be classified to the public or private sector. If it were to be classified to the public sector what does that mean in the context of the devolved budget?</p> <p>I would welcome your preliminary thoughts and would be happy to discuss on the phone.</p>
12.	<p>From: XXXXX, HMT Sent: 30 March 2016 15:53 To: Christopher Munday, WG Sectors & Business Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, , WG Sectors & Business Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Thank you for providing the relevant classification guidance from XXXXX which was interesting but I am not sure particularly helpful, I should draw your attention to §1.85 of the CBG.</p> <p>As you suggest in your email this is a complex area and without more information I am unable to highlight the key areas of risk in the overall project. From my perspective it would be helpful if I had seen a diagram that would show how the finance has been structured between the relevant bodies. The areas of concern that I would have in relation to the guarantee from the head of terms document provided by XXXXX yesterday are:</p> <ul style="list-style-type: none"> A WG guarantee of 100% of the rental income for the operational lease period of 33 years between XXXXX and CoW ltd which would suggest that the risk lies solely with the public sector especially as in XXXXX’s email it implies that we are supplying the guarantee in exchange for the £XXXX investment by XXXXX in the CoW project costs. You did though now suggest that the size of the guarantee might be brought down to 80% of rental income to be compliant with State Aid regulations. Why is WG also supplying a £16m grant? The fee structure looks unusual. Under the UK GS we charge a fee which reflects our internal credit rating of the debt instrument that we are guaranteeing and is benchmarked to similarly rated instruments in the market. From the term sheet it appears there is a fixed fee (the Priority Fee) and a guarantee fee, the level of which depends on EBITDA. Whilst the guarantee fee is paid in priority to distributions (which is what we’d expect to see from a senior debt instrument) the fact that it is linked to profits, rather than a fixed sum, is unusual. XXXX was a CLG and because of the government risk exposure to its debt it was classified to the public sector, I wonder if there might be parallels with CoW ltd? Although I can see symmetry with how guarantees are formulated in the commercial world there are several points that would raise concerns with me when considering the classification for public sector finance perspective these include aspects in relation to the tie in provisions and overage: ensuring that

	<p>the CEO remains in place; the guarantor needing to approve the appointment of key personnel and the enhanced value sharing appears to give the WG a share in upside which seems unusual. The first two would be significant indicators of control of CoW Ltd which could result in the entity being classified to the public sector.</p> <ul style="list-style-type: none"> • From a classification perspective I would have concerns about some of the clauses in the general covenants section which would also indicate public sector control. I was also interested in clause 9 about <i>pari passu</i> ranking and wondered how this was relevant in this structure. • I also wanted to know what happens to the asset once the lease has expired. <p>ONS have opined recently on several major infrastructure projects and looked at them as if they were concessions. With the obvious level of government intervention in this project I could see ONS deciding to view this arrangement as a concession. Similarly with PPPs because government has in essence guaranteed over 50% of the construction costs then I would suspect that ONS would say that the project is on balance sheet.</p> <p>I think there is a strong likelihood that ONS would also consider the CoW would be classified to the public sector so all the assets and debt would be on balance sheet.</p> <p>Please can you ensure that you keep me and your HMT spending team up to speed with how you intend to progress with this project as based on limited information provided I already have serious doubts about this being off balance sheet. I note that XXXXX made reference to the XXXX project which I alluded to this morning. That took nearly nine months to adjust the structure so that it could be classified as off balance sheet so this type of arrangement is not straightforward.</p>
13.	<p>From: Christopher Munday; WG Sectors & Business Sent: 30 March 2016 12:33 To: XXXXX, HMT Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG Sectors & Business Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Many thanks for your time this morning. As explained there is now a strong possibility that this project will not proceed but before I give full advice to Ministers on the matter I am seeking to better understand where the primary obstacles might lie, including in accounting treatment.</p> <p>Whilst I understand that this is a complex area where you would need to undertake a detailed review of the transaction documentation it would be helpful to have your initial, high level, view as to whether there is a potential balance sheet issue that will need to be addressed should the project proceed. I am aware from our discussion that there are factors around control/influence over the affairs of the company that we might wish to impose for commercial reasons that could be important in determining the classification.</p> <p>I would be grateful if you can let me have an e mail highlighting the key areas of risk that we would need to address. To help with this I set out below the preliminary XXXXX view of the matter.</p> <p><i>INFORMATION WITHHELD</i></p>

	This is a complex area, I suggest we have a call to discuss
14.	<p>From: XXXXX, HMT Sent: 29 March 2016 17:27 To: Christopher Munday, WG Sectors & Business Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG Sectors & Business Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>I will give you a call in the morning to discuss. I will want more information about the developer and about the purchase and lease of the land.</p>
15.	<p>From: Christopher Munday, WG Sectors & Business Sent: 29 March 2016 15:32 To: XXXXX, HMT Cc: Andrew Jeffreys, WG Treasury; XXXXX, WG Treasury; XXXX, WG Sectors & Business Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Yes, I believe that to be the case.</p>
16.	<p>From: XXXXX, HMT Sent: 29 March 2016 15:29 To: XXXXX, WG Treasury Cc: Christopher Munday, WG Sectors & Business; Andrew Jeffreys, WG Treasury Subject: RE: Circuit of Wales (CoW) Proposal</p> <p>Before I even start looking can I ask if this is a strip income lease?</p>
17.	<p>From: XXXXX, WG Treasury Sent: 29 March 2016 15:19 To: XXXXX, HMT Cc: Christopher Munday, WG Sectors & Business; Andrew Jeffreys, WG Treasury Subject: Circuit of Wales (CoW) Proposal</p> <p>We spoke this morning about the Circuit of Wales (CoW) proposition – thanks for agreeing to consider the draft Heads of Terms at short notice, with a view to classification considerations.</p> <ul style="list-style-type: none"> • Briefly, XXXXX Investors are proposing to provide £XXX towards the total Circuit of Wales (CoW) project costs of £XXXX (the difference is expected to be funded via a £16million grant) in return for a Welsh Government guarantee of a 33-year lease between XXXXX Investors and Circuit of Wales Ltd. • The structure provides for XXXXX to purchase the land from the current land owners and to grant to Circuit of Wales Ltd a lease for a term of 33 years, without break from practical completion of construction. The lease will be accounted for as finance lease, i.e. on the balance sheet of the Developer. • The WG guarantee is for 100% of the annual rental payments. The XXXXX financing has been based on a 33-year lease at an initial rent of £XXXX per annum, which reflects a financing cost of XXXX%, with the rent subject to annual increases in line with RPI, up to a maximum of 5% per annum. <p>I've copied this email to Chris Munday, the project lead, who would be more than</p>

happy to provide additional detail as required; including in relation to advice that we have received from XXXXX on accounting treatment.

Thanks again, and happy to discuss further (I'll be in XXXX for the next couple of days, with XXXX et al).

ARGUMENTS FOR AND AGAINST DISCLOSURE

Regulation 12(4)(e) – internal communications

This Annex sets out the reasons for the engagement of regulation 12(4)(e) - Internal communications of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

Guidance from the Information Commissioner has confirmed that this exception is drafted broadly and is a class based exception which covers *all* internal communications, not just those that are sensitive or actually reflect internal thinking. The concept of 'internal communications' covers a wide range of information and includes any information intended to be communicated to others or saved in a file where it may be consulted by others. I can confirm that the information held by the Welsh Government which is captured by your request amounts to internal communications.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2) and we acknowledge there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely on behalf of the people of Wales.

However, the information in question captured by your second question relates to the exchange of advice between Welsh Government officials and a UK Government Department, namely HM Treasury, regarding funding options for the proposed Circuit of Wales. Some of that information is particularly sensitive information regarding a project which is still live. It is important for good governance that officials are able to fully engage and exchange sensitive information and advice away from the public gaze and that there should be no disincentive in doing so.

Similarly, the Cabinet paper as requested by your third question relates to the provision of advice by officials to Cabinet Ministers regarding funding options and support for the Circuit of Wales, exploring various options for the project. Some of the

information also includes funding details, proposals, structures and scenarios that are unique to this project, including the basis of the decision to refuse support until the Circuit has proof of sufficient private funding.

It is important for good governance that officials are able to fully engage with each other and with Ministers and exchange and provide advice away from the public gaze and that there should be no disincentive in doing so. If officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the future provision of advice and exchange of views, leading to less rigorous and in-depth exploration of options and impairment of the quality of decision making. Unless officials are able to provide options and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined. This would not be in the public interest.

The Welsh Government believes the public interest in this project is satisfied by the amount of information being released in relation to this request and is otherwise already in the public domain such as a summary of the Circuit of Wales due diligence reports which have been published on the Welsh Government website at <http://gov.wales/topics/businessandconomy/welsh-economy/circuit-of-wales/?lang=en>. In addition, the Welsh Government has released a lot of information in response to Written Assembly Questions (WAQ's). You can search for responses to these WAQs by entering the search term "Circuit of Wales" (or other suitable term) using the search function on the National Assembly for Wales website at [http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Written%20Question&keyword="Circuit%20of%20Wales"](http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Written%20Question&keyword=).

In this regard, the Welsh Government believes the balance of public interest to withhold some of the information, as redacted at Annex A, and the Cabinet paper, outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(e) of the EIRs.

Regulation 13 – personal data

Regulation 13 of the Environmental Information Regulations 2004 (EIRs) provides for third party personal data to be withheld in circumstances where its disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (DPA) from the right to know if the information requested is personal information protected by the DPA. Personal data is defined in Section 1(1) of the DPA as: *“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller*”.

I have concluded that, in this instance, the names of officials who are not in either senior or public-facing roles amounts to third party personal data. Under Regulation 13 of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -
(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

I consider that the withheld information in relation to names and contact details falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of *Deborah Clark v the Information Commissioner and East Hertfordshire District Council* where it was held:

"The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA" (paragraph 63).

Our analysis of the ICO's key considerations in assessing 'fairness', as set out in the Guidance, are presented below.

The withheld information amounts to the personal data of civil servants who do not have public facing roles and would not expect their names and contact details to be released in this context. There are set procedures in place for members of the public to contact both the Welsh Government and HM Treasury using generic contact mechanisms. Having such systems in place means members of the public do not make direct contact with officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence. In this context, the civil servants were liaising with each other as part of their normal course of business. In doing so, there would be no expectation that their personal details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the named officials need to be contacted directly. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle. Despite withholding information of individual officer details, it

remains clear which body issued or received the correspondence, which is the primary concern of the request.

For that reason, I believe the information should be withheld under Regulation 13 of the EIR.