

# WEST NORTHAMPTONSHIRE COUNCIL CABINET

**12<sup>TH</sup> OCTOBER 2021**

**CABINET MEMBER WITH RESPONSIBILITY FOR ECONOMIC DEVELOPMENT,  
TOWN CENTRE REGENERATION AND GROWTH: COUNCILLOR LIZZY BOWEN**

<b>Report Title</b>	Hardingstone Bike Park
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#### List of Appendices

Appendix 1 – EXEMPT

Appendix 2 – The Northampton Borough Council Cabinet Report (24 March 2021)

Appendix 3 – Sport England grant offer letter (received 15 Sept 2021)

## **1. Purpose of Report**

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- 1.1 The purpose of this report is to update Cabinet and seek the necessary approvals to deliver the Hardingstone Bike Park project.
- 1.2 The report:
  - 1.2.1 seeks authority to grant 25-year lease and operation and maintenance agreement with Northamptonshire Sport;
  - 1.2.2 seeks approval for spend of the identified additional funding to cover the increased cost of delivering the project;
  - 1.2.3 seeks delegation of authority for the operator agreements; and,
  - 1.2.4 confirms other funding sources and budget requirement together with authorisation to proceed with the project.

## **2. Executive Summary**

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- 2.1 The Hardingstone Bike Park is a former Northampton Borough Council (NBC) community-led leisure proposal to develop a new community facility for the area in partnership with various stakeholders including the council, Northamptonshire Sport Charitable Incorporated Organisation (N Sport), local mountain bike enthusiasts, and Sport England (SE).
- 2.2 The bike park would be developed on a disused section of the Delapre Golf Course and consists of several different bike trails that would require varying degrees of skill and ability to ride. Some would favour mountain bikes whilst others could be ridden by almost all cyclists. The bike park will respect and enhance the natural landscape setting of the former golf course.
- 2.3 At the NBC Cabinet meeting on 24 March, approval was given for the grant funding application to be submitted through the Places to Ride Fund, subject to full funding terms being reported back to WNC and the surrender of the land required from Delapre Golf.
- 2.4 NBC Cabinet also delegated authority to the Acting Director of Economy and Assets in consultation with other officers to appoint a contractor following a compliant procurement process for the works required to construct the new bike park (subject to the application for funding being successful) (see Appendix 2).
- 2.5 SE (the Places to Ride Fund) confirmed the application for funding was successful (mid-May 2021) and issued an award letter with associated grant funding conditions. The confirmed funding terms were reported to WNC on the 21 May 2021 and were received by Victoria Rockall, Community & Safety Engagement Manager.
- 2.6 SE has now agreed an extension in the delivery period to September 2022 (see Appendix 3). Delivery can be met (subject to approval requirements and risk matters identified in this report).

- 2.7 Workstreams for design, studies and surveys for planning requirement and construction, planning submission, procurement of main contractor, estates matters (including the surrender and regrant of a new lease to Delapre Golf Club), and bike park operator have all progressed simultaneously.
- 2.8 There is an increased budget requirement and will require additional budget to proceed (which has been identified through public health and section 106 money that has been made available), and authorisation for the project (see Appendix 1).
- 2.9 Delegation of authority is recommended to the officers identified below to complete the project as outlined herein, subject to each officer being satisfied with the completed financial and legal due diligence.

### **3. Recommendations**

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- 3.1 Cabinet is asked to:
  - a) Note the work to date undertaken in the development and delivery of the bike park project
  - b) Approve the revised budget in line with appendix 1 of this report
  - c) Delegate Authority to the Assistant Director Economic Growth and Regeneration to enter the SE (Places to Ride) grant agreement, subject to being satisfied with financial and legal due diligence
  - d) Delegate authority to the Assistant Director Housing and Communities to agree the terms of the operation and maintenance agreement (OMA) with the bike park operator (which shall include back-to-back requirements of the SE Grant condition), subject to being satisfied with financial and legal due diligence
  - e) Delegate Authority to the Assistant Director Assets & Environment to grant a lease to the proposed operator of the bike park for 25 years on terms acceptable to the Council, subject to being satisfied with financial and legal due diligence
  - f) Receive a further report in the event any issues arise with the financial and legal due diligence exercise where the risks listed in paragraphs 5.15.1 to 5.15.6 materially impact on the delivery of the project and/or the grant funding conditions

### **4. Reason for Recommendations**

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- The recommendations establish financial and requisite delegated authorities to proceed with the project. Whilst there are a number of outstanding risks and interdependencies on this project, these approvals are necessary to enable the project to continue.

### **5. Report Background**

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#### **The Project Background**

- 5.1 An area of disused land leased by the Council to Delapre Golf Club was identified as having potential as a bike park, with initial engagement between the former NBC's Community team, local mountain bike riders, elected members and Northamptonshire Sport (N Sport). In essence, the disused section of the Delapre Golf Club was identified as potentially suitable for a bike park.
- 5.2 N Sport is a partnership of local and national organisations working together to provide opportunities for people to participate in sport. N Sport supports district/borough authorities, voluntary sector organisations, charities, HE/FE, health and many others in reducing inactivity and increasing participation. N Sport is focused on reaching the least active, especially those in groups where significant inequalities exist.
- 5.3 These discussions coincided with a grant fund for biking known as "Places to Ride" Fund, which is administered by Sport England (SE). An Initial stage one application was made by NBC to the "Places to Ride" fund based upon a design intent.
- 5.4 NBC Cabinet on the 24 March 2021 (see Appendix 2) gave delegated authority to the Acting Director of Economy and Assets to appoint a contractor, following a compliant procurement process for the works, to construct the new bike park (subject to the application for funding being successful). The budget allocated was £0.5m.
- 5.5 This project is now being taken over and progressed by West Northamptonshire Council.
- 5.6 The project will see the conversion of a disused section of the Delapre Golf Course into a bike park. The park will consist of several different bike trails that would require varying degrees of skill and ability to ride. Some trails are designed to be ridden by mountain bikes whilst others could be ridden by almost all cyclists. The park will respect the existing pedestrian public rights of way footpaths and ensure interfaces with the bike trails are clearly identified for safety notices are to be installed. The trails are positioned in such a way as to minimise the impact on the landscape, trees and vegetation. Enhancement of the habitat and landscape will also be a requirement of the planning application (by way of a biodiversity/ecology enhancement plan).
- 5.7 Pursuant to Cabinet approval in July 2021, the council and Delapre Golf Club have agreed Heads of Terms to facilitate the surrender of the land required for the bike park and grant a new lease to the golf club, and this element of the project is progressing between the parties.

5.8 **Project progress since 1 April 2021**

**SE (Places to Ride) Grant.**

- 5.9 The "Places to Ride" funding application was accepted by SE, subject to the conditions set out in its award letter of the 17 May 2021. The grant funding being offered is £250k, which must be match funded by WNC (approval for which was granted by the former NBC, see Appendix 2) and is provided for in WNC's capital programme.

- 5.10 Dialogue has taken place with SE over the grant funding terms and it has agreed that the deadline for spending the grant funding is extended to end of September 2022 (formerly end March 2022). This is in recognition of the complexities of delivering the project including planning, procurement of a contractor, construction, and undertaking all the financial and legal due diligence.
- 5.11 The Council has now received an updated offer letter from SE, terms and conditions of the grant are standard SE requirements which include provisions such as engagement on the key stages of the project delivery. It is also to be noted that the award obligations include a requirement for the Council at the direction of SE to enter either a restriction or a legal charge in favour of SE on the Council's title for the duration of the award agreement (25 years). These requirements are set out in Appendix 3.

### **Design and Planning**

- 5.12 The Executive Leadership Team (ELT) discussed on 16 June 2021 the release of £50,000 from the approved budget, so that consultants could be appointed to undertake all necessary work to enable design development and a planning application for the bike park to be submitted without delay. This was subsequently agreed by The Executive Director of Place, Economy and Environment on 16 June 2021 through officer delegations (this has included construction design, ecology, arboriculture, flood risk and highways).
- 5.13 Refined and finalised design and costings for both the planning application and the construction procurement have now been completed by consultants who prepared the initial design.
- 5.14 Officers from the Council, the planning consultant and a community bike rider representative attended Hardington Parish Council Planning Committee on 18 August 2021 and gave an update. Attendees of the meeting were given a brief explanation of the proposed bike park and informed that a planning application was being prepared for submission. A further drop-in session is proposed to be during the planning application consideration period to allow local residents to view the proposals in detail and ask questions.
- 5.15 The critical path for this project is established to run through the planning process. Should planning permission be granted, construction of the bike park can begin as soon as practicable thereafter. Revised deadlines for SE grant fit, subject to other interdependent matters (such as the operator and lease agreement) being completed.
- 5.16 Through the planning review, it has been identified that the works will require an archaeologist with a 'watching brief' over certain elements of the construction, and an ecological clerk of works at agreed stages to oversee and advise on elements of construction of the bike park. The latter will ensure it is constructed in accordance with the construction ecology management plan.
- 5.17 A planning application was submitted on 20<sup>th</sup> September 2021. It is anticipated it could be decided by December 2021 (13-week process).

## Construction Matters

- 5.18 Tender Information has now been prepared. It is anticipated that an invitation to tender will be issued during early October. This will be an open tender and is being managed by the WNC Procurement Team.
- 5.19 The tender requires an experienced bike park construction delivery partner in line with the SE grant requirements. This will go out as an open market tender to satisfy the grant condition that at least three competitive quotes must be received.
- 5.20 It should be noted that the construction tender process and appointment of principal contractor will continue to be delegated to officers once costs are known to be affordable and in budget, and other delegated matters are in place or agreed.
- 5.21 Construction is not likely to commence until early 2022.

Programme Milestones	Date
Planning submitted	September 2021
Construction tender issued	October 2021
Construction start on-site	February 2022
Construction completion	July 2022

## Assets Matters

- 5.22 Car parking provision for the bike park is a requirement of both the SE grant, and is expected to be a requirement of the planning permission. The SE agreement also requires access to toilet and café facilities.
- 5.23 The Golf Club have agreed in principle to share facilities with N Sport and are aware that the provisions of the new lease contain an obligation on the Golf Club (at the request of the Council) to consider sharing any one of its facilities, both parties acting reasonably and in good faith at all times. It is proposed to enter into an agreement with the Golf Club establishing the details of this arrangement.
- 5.24 How the shared facilities are to be dealt with going forward will be documented within the Partnership Agreement.
- 5.25 A new lease with the proposed Bike Park Operator (N Sport) is in the process of being negotiated. Given the Bike Park is a non-commercial venture with no prospect of being profitable, it is proposed this lease will be at nil consideration (a 'peppercorn' rent). A business case for the operation of the bike park will be requested from N Sport ahead of granting the lease.

- 5.26 Delegated authority to the Assistant Director Assets & Environment to grant a lease to the proposed operator of the Bike Park for 25 years on terms acceptable to the Council is requested.

### **Operator Matters**

- 5.27 N Sport is identified as the proposed operator of the Bike Park. They developed the original proposal and led on the developed of the stage 1 bid to the SE Places to Ride fund. The offer of funding is dependent on them staying as a delivery partner and have been confirmed as the Council's Partner in the Sport England Grant funding offer.
- 5.28 The basis for the project has always been that there should not be an ongoing Revenue cost to the Council, and it is in principle agreed with N Sport that it will fund arrangements for the operation and maintenance of the Bike Park once completed at its own cost. As part of the lease being agreed all necessary due diligence, including checking that they N Sport have the requisite funds will be undertaken. N Sport is proposed to be the legal entity which will lease the Bike Park from the Council, and they would be the operator and will enter into an operation and maintenance agreement (OMA).
- 5.29 Sport and Leisure Officers from the WNC Healthy Communities Team are drafting an initial OMA for the Bike Park in conjunction with N Sport and together they will develop the OMA and finalise the details prior to completing (by way of the delegated authority referred to).
- 5.30 N Sport will appoint an external contractor (via a competitive tender process) to undertake management of the horticulture.
- 5.31 N Sport have stated that: "The Park will initially be operated by a group of volunteers overseen by N Sport, the lease holder of the facility. This volunteer force will be made up mainly of mountain bike riders. These volunteers will be upskilled in maintenance, organisation, social media, trail rebuilding, wildlife conservation, etc. It is planned that this volunteer group will transition into a formal Mountain Bike Club affiliated to British Cycling. Currently there is no standalone MTB club in Northamptonshire."
- 5.32 N Sport will be subject to the provisions of the SE grant funding under the terms of its lease with the Council and/or the Bike Park OMA (as appropriate), and will be required to comply with the same.
- 5.33 The OMA will place N Sport as the responsible body for the running costs and maintenance of the Bike Park and, pursuant to the provisions of the lease and the OMA with the Council, N Sport will be obliged to comply with the grant conditions set by SE. Under the terms of the lease and/or OMA, N Sport will also have other obligations relating to planning permission, such as the need to incorporate a habitat management plan.
- 5.34 Delegated authority is sought for the Assistant Director Housing and Communities to agree the final terms of the OMA with the Bike Park operator (which shall include 'back to back' obligations to meet the requirements of the SE grant conditions and allow the Council to end the OMA at reasonable intervals).

## 6. Implications (including financial implications)

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### Resources and Financial

#### Funding

- 6.1 Appendix 1 Budget Update confirms the current approved budget of £500,000 and reasons for additional budget of £225,000, which needs approval. The funding of this budget is made up from WNC funding, Sport England, Public Health, and developer contributions (section106). This appendix showing the split between the construction, contingency and professional fee costs is private as the tender process is yet to be undertaken and would potentially influence the tender responses. The table below sets out the funding sources.

Item	Funding, £ 000's
Places to Ride (Sport England grant )	250
NBC Funding (Carried forward)	250
Public Health**	95
Regeneration (In year budget)	62
Strategic Sport and Leisure (Wootton Fields s106)	68
<b>Budget Total</b>	<b>725</b>

- 6.2 Cost increases are broadly the result of additional planning application work, including surveys and studies that are required, and anticipated appointment of ecological specialist(s) to provide oversight during construction. There is also an expectation of cost increases for the supply of materials, especially aggregates affecting the whole construction sector, due partly to HS2. It should furthermore be noted that there will not be a firm price for the works until the tender submissions have been received during November 2021. All the costs noted in this point have been accounted for in the revised budget.
- 6.3 The nature of the SE grant agreement means there is only scope to decrease areas that do not affect the funder's outcomes/conditions, limiting the level of value engineering that will be able to take place should tender responses prices exceed available budget. The project costs have been tested prior to the tender process as well as including an appropriate contingency to mitigate against this.
- 6.4 If the budget is not revised, the project cannot proceed.

#### Disposal

- 6.5 Taking into account the legal considerations below given the non-commercial nature of the use, it may be considered that a lease at a peppercorn is best consideration reasonably



obtainable. The scheme will contribute in particular to the social well-being of residents, through the opportunities for outdoor exercise

## Legal

- 6.6 The Council pursuant to the Local Government Act 1972 (LGA 1972) has the power to dispose of any land in any manner that it would wish, save that pursuant to Section 123 of the LGA 1972 any such disposal must be for the best consideration reasonably obtainable, except in the case of short tenancies (i.e., a lease not exceeding 7 years) or otherwise with the approval of the Secretary of State. It is noted at paragraph 4.25 above that the Council proposes to grant a lease to N Sport at a peppercorn rent.
- 6.7 The Council has a duty in determining whether or not to dispose of its land for less than best consideration reasonably obtainable, to ensure that it complies with normal and prudent commercial practices which can include obtaining a view of a professionally qualified valuer as to the likely amount of the undervalue. In relation to this proposal, it is recommended that the Council obtain an independent valuation to demonstrate that it has complied with its duty under the LGA 1972.
- 6.8 Any disposal at less than best consideration pursuant to the Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 is subject to the condition that the undervalue does not exceed £2 million. It follows that if the proposal has an aggregate undervalue that exceeds the £2million threshold then the disposal will require the consent of the Secretary of State.
- 6.9 In addition to the above, the Council can, when considering the best price that can reasonably be obtained, have regard to policy and ethical as well as commercial considerations, However, whilst such considerations may be a factor in any decision they must be in balance.
- 6.10 The Council will also need to ensure that the scheme complies with the subsidy rules which now apply following the departure of the UK from the EU. This means that the Council must comply with the obligations in the UK-EU Trade and Co-operation Agreement and that the proposed disposal and the amount of subsidy complies with the subsidy rules.
- 6.11 The Council in its capacity as landowner will need to ensure that an appropriate change of use application is made and granted in advance of the Council granting a lease to N Sport as the land is currently under a different use. This will be addressed as part of the overall planning application.
- 6.12 The procurement and appointment of the principal works contractor will need to be undertaken in accordance with the Council's Contract Procedure Rules and the conditions of the SE which also set out detailed requirements in validating the tender process and award of contract.
- 6.13 The SE grant conditions assume specialist appointments and require the project to be overseen by appropriate, experienced and qualified consultants, contractors and

tradespeople and furthermore details are to be provided to SE in respect of any appointments for project management, design, construction or other specialists. Any such appointments made would be included within the budget for the project.

- 6.14 The SE grant conditions contain rigid obligations and strict timeframes. The Council must ensure that the project is deliverable prior to formal acceptance of the grant funding.
- 6.15 The risks identified in paragraphs 5.17.1 to 5.17.7 below are significant in nature and could impact on the delivery of the project, accordingly if any issues arise from the identified risks these should be reported to Cabinet at a future meeting for any further decisions.
- 6.16 It is noted throughout the Cabinet report above, that the above proposal is subject to the completion and consideration of legal and financial due diligence, which is still to be obtained. It is recommended that any delegation provided by Cabinet to officers be subject to the proviso that in considering the proposal that those officers be duly satisfied that NSport is properly constituted and managed and that all appropriate safeguards are in place to both manage and mitigate any identified risks, and to protect the Council's interests.

## **Risks**

- 6.17 The project, with its multiple work streams and interdependencies has a number of risks that have been identified which should be noted.
- 6.18 A risk register for the project has been completed and can be shared with members or officers upon request. The main areas that are outstanding are as follows:
  - 6.18.1 Delapre Golf Club does not complete the surrender of its existing lease or agree with the new lease changes, thus not freeing up the bike park land. The likelihood of this is now reduced, but until the old lease is surrendered and the new lease is completed, the risk remains.
  - 6.18.2 Delapre Golf Club does not allow use of its car park, café and toilet facilities for bike park users, which has been agreed in principle, and is a condition of the SE grant award.
  - 6.18.3 N Sport is in partnership with the council and will be taking a lead role within the project. It is noted nonetheless that the organisation has no experience in running a bike park of this nature and will be dependent on a group of volunteers to support the delivery of the bike park. The level of inexperience is a risk for the council.
  - 6.18.4 In addition, it is noted at paragraph 4.28 that N Sport intends to provide for maintenance costs related to the project, but the organisation has no reported income or expenditure upon which the council can rely. It follows that the reliance on a volunteer organisation and a lack of established financial liability are a risk for the council. Specifically, arrangements around car parking are intended to provide

any income but this arrangement, whilst likely to be reached, may not secure sufficient income to sustain maintenance at the necessary level.

- 6.18.5 Due to the close relationship via the OMA and grant agreement between the Council and N Sport, it is possible that the Council would be legally liable (in civil or criminal terms) if there was a failure by N Sport to adequately maintain the facility and manage risks on it. The nature of the activities proposed means there is a risk of serious injury or death if facilities are not in good order and regularly inspected.
- 6.18.6 The submitted tenders exceed the budget estimate or no bike park specialist contractors submit tenders for the project. As noted in 5.3 above, if this were to happen VE would be explored and if the budget could not be brought in line with funds there will either be a further report to seek funds, or the project will not take place.
- 6.18.7 Construction access through the neighbouring Northamptonshire Police Criminal Justice Centre, which is the optimal access point, is not secured resulting in construction cost increases.

#### 6.19 **Consultation**

- 6.20 As stated previously, an update on the project was given to the Hardingstone Parish Council Planning Committee on 18 August and a further drop-in session is proposed to be held once the application has been submitted to allow local residents to view the proposals and ask questions.
- 6.21 It is proposed to hold a half-day drop-in session in Hardingstone once the planning application has been submitted, to allow residents to look at the proposals in detail and talk to Officers from both the council and N Sport about the project.

#### **Consideration by Overview and Scrutiny**

- 6.22 N/A

#### **Climate Impact**

- 6.23 The final design of the bike park will be informed by an ecology and arboricultural survey and these will also guide and inform the construction of the bike park. There will also be a biodiversity net gain plan which will be implemented as part of the construction of the bike park. All plant and machinery will be required to run on biofuels and lubricants. Any fuel reservoir (if required) will also be bunded.
- 6.24 Use of the Bike Park should be effectively nil carbon, as cycles would be human-powered. However, travel to the site would be, at least in part, by car. Transport impacts will need to be addressed as part of the Council's overall approach to decarbonising transport.

- 6.25 Materials should be sourced from local suppliers where practically possible, but not so as to increase risk on the delivery.

### **Community Impact**

- 6.26 The bike park is seen very much as a community asset. A volunteer team, in conjunction with N Sport, will not only operate and manage the bike park, performing weekly safety inspections, any day-to-day maintenance requirements and general support of the users. The objective is that the volunteer team will transition into a formal club once the facility is established and work with N Sport to promote and organise events and deliver on the objectives of the Cycling Delivery Plan.
- 6.27 Hardingstone Parish Council along with the residents of Hardingstone are seen as very much integral to the future success of the bike park. Non-riders will have access to the park via informal mown paths and it is hoped the community will partake in activities such as tree planting for example (led by the Hard 9 club and supported by the Woodland Trust).
- 6.28 The proposal has received letters of support from four local schools, Northampton Police, Public Health Northamptonshire, the General Practice Alliance, the University of Northampton the Northampton Youth Provision Network, the Northampton School Sports Partnership, Nenescape Landscape Partnership Scheme, Northampton Town Football Club and the local MPs.

## **7. Background Papers**

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N/A