

**WEST NORTHAMPTONSHIRE COUNCIL  
COUNCIL**

**21<sup>st</sup> February 2022**

**Portfolio Holder for Finance – Councillor Malcolm Longley**

<b>Report Title</b>	<b>Disposal of Land at Sixfields, Northampton</b>
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**1. Purpose of Report**

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- 1.1 This report seeks to address the options for the disposal of land at Sixfields currently owned freehold by WNC. The report discusses the proposals put forward by the current long leaseholder, County Developments (Northampton) Limited ('CDNL'), as well as an additional proposal from Cillarda Limited, and provides Council Members with information to support a discussion on this matter in advance of the Cabinet Meeting to be held on the 28<sup>th</sup> February where a decision will be made.

**2. Recommendations**

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- 2.1 It is recommended that Council:
- a) Resolves it has noted the report and the options open to the Council.
  - b) Provides such comment to Cabinet as it sees fit.

### 3. Current Ownerships and Land Status

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- 3.1 The Council holds freehold land at Sixfields, Northampton adjacent to the Northampton Town Football Club Limited ('NTFC') stadium. The stadium itself is owned freehold by the Council and on a long lease to NTFC (referred to as the 'NTFC Lease').
- 3.2 The Council's remaining freehold land extends to approximately 10.01 Ha (24.74 acres). It includes a household waste recycling centre (HWRC), car park and a large area of disused land. It was formerly a waste site, with variable and challenging ground conditions. The freehold was previously held by Northampton Borough Council (NBC). The site does offer redevelopment potential, but the ground condition and contamination issues caused by its previous use pose significant challenges to the viability of any development scheme.
- 3.3 Tenure of the site is complex, but can be summarised as:
- Most of the site is held under a long lease due to end in April 2164 to County Developments (Northampton) Limited ('CDNL'). This is referred to as the 'Main Site Lease'. It has a break clause allowing the Council to terminate the lease from April 2024 if the CDNL has not carried out "all necessary remediation works". The ability of the Council to exercise the break clause and the extent of the remediation works that would be required to avoid the break clause trigger has been, and remains, the subject of serious challenge and risk.
  - A smaller part of the site, adjacent to the stadium, comprising the former athletics track is held by CDNL on a long lease due to end (but with a statutory right to renew) in February 2163. This is referred to as the 'Running Track Lease'. It does not contain a break clause.
  - The HWRC is held by WNC "below" the Main Site lease (so CDNL is now WNC's landlord under this lease) on a further long lease, due to end in February 2119 (but with a statutory right to renew). This is referred to as the 'HWRC lease'. Originally this lease was held by Northamptonshire County Council (NCC). It does not contain a break clause.
  - The Running Track site is also subject to the NTFC Lease, which is due to end (but with a statutory right to renew) in April 2154, but over the Eastern half of the site this lease was transferred to NBC, now WNC (referred to as the 'WNC Leasehold'). The remaining part of the NTFC Lease is referred to as the 'Stadium Lease'. The practical effect of this is that CDNL itself does not have the right to occupy the land demised by the Running Track Lease.
- 3.4 These lease boundaries are shown on Plan 1,
- 3.5 There is also a Clawback Deed in favour of the Homes & Communities Agency (Homes England, HE), under which HE would receive 50% of value above that of a specified housing-led scheme for up to 300 houses. The ability to progress such a scheme is significantly undermined given the variable and challenging ground conditions previously referenced and the level and cost of such work.
- 3.6 CDNL is a subsidiary of NTFC. NTFC is controlled by David Bower and Kelvin Thomas, and others ("Bower and Thomas"), through various legal entities.

- 3.7 These arrangements result from previous agreements between Northampton Borough Council (NBC) and NTFC/CDNL when the latter were in previous ownerships (i.e., prior to Bower and Thomas taking an interest). NBC intended to assist NTFC extend and improve its ground by building the 'East Stand'. It did this by entering into a series of property and loan transactions. Ultimately NTFC defaulted on the loans, and parts of the property agreements were cancelled. These transactions ultimately resulted in the issue of a public interest report by KPMG, NBC's external auditors, which concluded that many of them were unlawful or unwise.
- 3.8 CDNL became insolvent but both it and NTFC were acquired by Bower and Thomas. Under the new ownership, NBC agreed not to pursue NTFC for the missing loan monies and instead acquired the rights in place of NTFC to pursue parties previously connected with NTFC who may have benefited from or held some of those monies.
- 3.9 The land comprised in the original NTFC lease (now the Stadium Lease and the WNC Leasehold), was registered as an asset of community value (ACV) by NBC on 27<sup>th</sup> February 2019. This was on application by the supporters' trust, which is a 'community interest group' for these purposes.
- 3.10 The operation of the ACV regime is governed by the Localism Act 2011. Essentially it provides for a delay (the length of which depends on whether a community interest group wishes to try and bid for the property) before a disposal can take place. This is intended to allow time for a community interest group to raise funds for make its own bid.
- 3.11 In 2016 NBC commissioned a substantial ground investigation report to enable it to better understand the scale of the remediation work needed to satisfy the remediation requirement to develop the site in accordance with the permitted use in the Main Site Lease. This permitted use links with the permitted use in the Clawback Deed. The scale of the required remediation works for housing purposes was considered to be extensive and raised concerns around the viability of the site for development.

#### **4. The negotiations**

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- 4.1 Bower and Thomas engaged in discussions with NBC, shadow WNC and latterly WNC with a view to securing freehold ownership of the Main Site land and Running Track land. WNC engaged in these discussions because of the control Bower and Thomas, via CDNL, had over the land.
- 4.2 Given the site's complexities, the Council commissioned a multi-disciplinary consultant, Lambert Smith Hampton (LSH), following a mini tender process, to consider the value of the site, and later to prepare a formal 'Red Book' valuation prior to agreeing the detailed terms of a disposal. This was to enable the Council to fulfil its duties under Section 123 of the Local Government Act 1972 to only dispose of land for the best (financial) consideration reasonably obtainable. LSH was instructed to:
- Provide specific planning advice on development opportunities having regard to current and emerging planning policies.
  - Assess potential future uses for the site and specifically considering those deemed to be the most viable.

- Review the 2016 ground investigation reports and provide a professional assessment on the remediation costs needed to deliver a scheme in line with the permitted use.
- Prepare viability assessments of various development options.
- Provide WNC with a valuation of the Council freehold interest in the site considering all the due diligence work undertaken by the Council.

4.3 Following negotiations an initial agreement was reached. This provided for CDNL to be granted an option to purchase the land (excluding the HWRC site) for £890,000, conditional on the completion of the East Stand. This met the market value as assessed by LSH. It was later clarified that the area of land subject to the offer excluded certain other marginal areas; the extent of land it was proposed to be subject to the option is edged red on Plan 2. Additionally, the Council would be entitled to receive additional monies if the Homes England clawback was reduced below assumed levels. As part of the transaction, CDNL would surrender the Main Site Lease and Running Track Lease.

4.4 However, the Council then became aware of a rival offer by Cilldara Limited. This was eventually crystallised into a specific offer to pay £1,800,000, subject to the Main Site Lease ceasing, for the land edged red on Plan 3. This is the same site as the CDNL offer but excluding the Running Track land.

4.5 This rival offer resulted in an improved offer from CDNL. This retained the same area of land and price, but rather than being a potential payment at some point in the future it was instead an offer to purchase the land (and surrender the leases) immediately, with an option granted to the Council to repurchase the land for £1 if the East Stand had not been completed within five years. This was clearly a much more attractive proposition than the original CDNL offer.

4.6 In order to try and ensure the Council had the clearest and optimal offers to consider, both CDNL and Cilldara were asked to provide 'best and final offers' by 5pm on Monday 17<sup>th</sup> January. Of course, in the context of a proposed disposal it is not possible to prevent offers being received, but this was intended to bring focus. CDNL responded by reiterating its improved offer. Cilldara raised its offer to £2,050,000. The offers were therefore assessed on that basis.

## **5. Offers as submitted, and other options**

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### Revised CDNL sale proposal

5.1 CDNL more recently revised its proposal for site following concerns raised by the Council regarding the assessment of best consideration on an Option proposal which sought to establish a sale price now for a transaction that may compete several years later and being aware of the proposal from Cilldara Limited. The broad terms of this proposal are set out below.

- Sale of the site to CDNL for £890,000.
- HWRC site to be retained by the Council.
- CDNL agrees to surrender the Running Track Lease and the Main Site lease to the Council.
- The Council will be granted an option to acquire the site for £1 if the East Stand at Sixfields Stadium has not been completed to the reasonable satisfaction of the Council within five years. This would need to meet the agreed specification given at Appendix 1.

- The sale will be subject to an Overage if the amount required to satisfy the provisions of the Clawback Deed is lower than that currently allowed for in the valuation assumptions. If such a situation were to arise, the Council is to receive 80% of any saving up to £770,000.

5.2 In addition, Bower and Thomas have given assurance that the East Stand will be completed before the land is developed. This would be reflected in the legal agreements.

Cilldara Limited proposal – *Excludes the running track site*

5.3 Following media coverage, the Council received an unsolicited offer from Cilddara Limited for the freehold interest, but excluding the land covered by the Running Track Lease.

5.4 The broad terms of this proposal are set out below.

- Contract for Sale with Cilddara Limited.
- Purchase price of £2,050,000.
- Sale is conditional on the Council exercising the April 2024 break option and providing Cilddara with vacant possession of the site.
- The HWRC Site is retained by the Council.

Other options

5.5 The Council has other choices. It could:

- Do nothing.
- Dispose of once the Main Site Lease has been ended.
- Market the site.
- Develop the site under Northampton Partnership Homes (NPH).

5.6 As there is currently no detailed financial assessment of the NPH option, it should at this time be considered a sub-option of the second or third options in 5.6.

**6. Consideration of Offers and Options**

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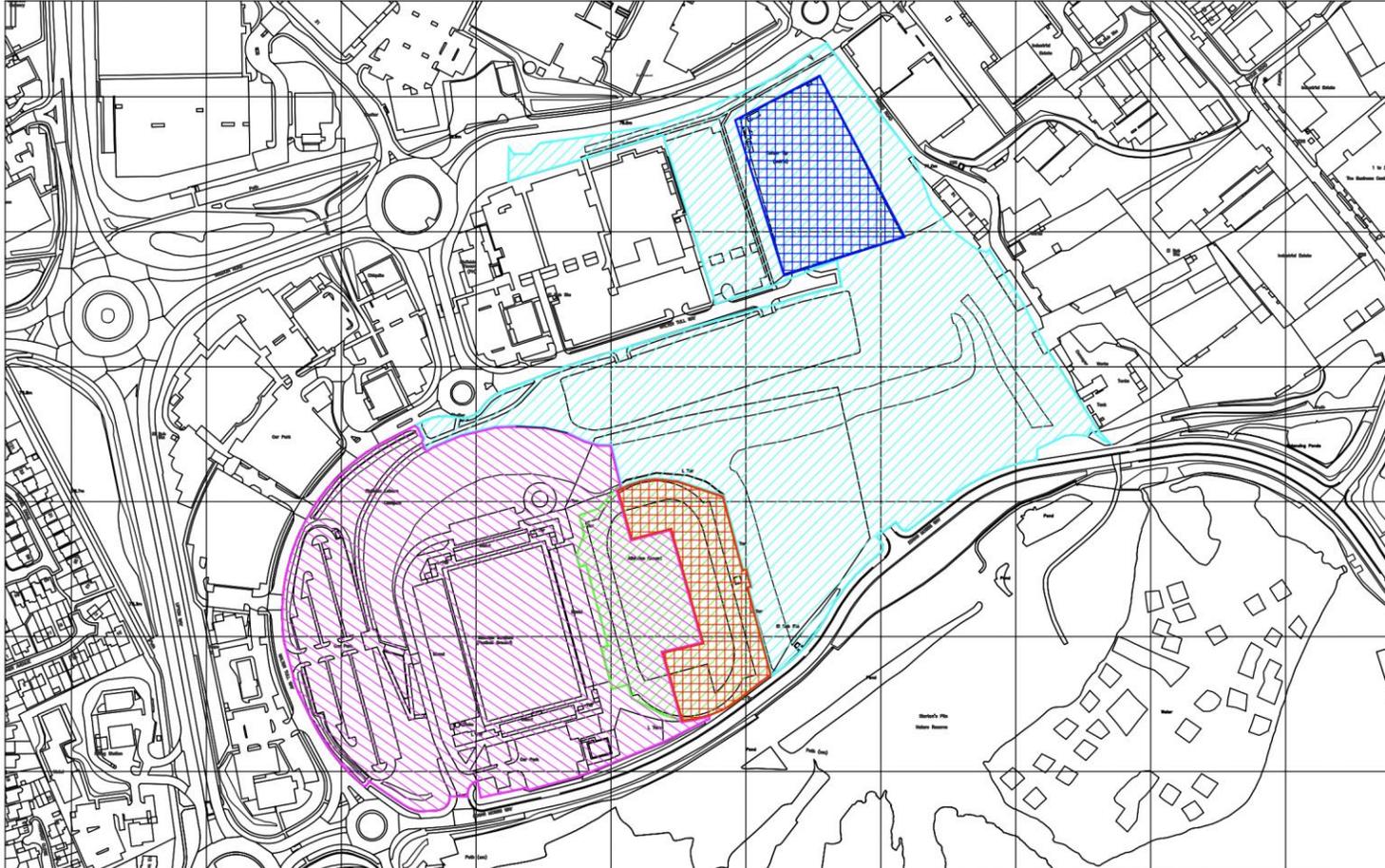
6.1 The offers have been carefully considered. The conclusion is that, on balance, the CDNL offer is to be preferred on financial grounds. This is primarily because whilst it is lower it is not subject to the risk and delay likely to result from an attempt by the Council to break the Main Site Lease (which could not occur earlier than 2024 in any event). It is anticipated that CDNL would robustly challenge any attempt by WNC to terminate the Main Site Lease and might litigate (arguing that the Council was not entitled to break the lease). Litigation is likely to be expensive and time-consuming and of uncertain outcome. So there are risks in seeking to terminate the Main Site Lease in order to progress a deal with Cilddara (or any other party). Accepting the CDNL offer removes those risks, although of course Cilddara may challenge a decision to proceed with CDNL and not with Cilddara, which would be limited to a challenge to the decision-making process. These are less likely to result in significant delay and the range of possible outcomes is more limited and therefore easier to assess

- 6.2 On the basis that the CDNL offer is to be preferred financially, the question is then whether it should be accepted, as opposed to not disposing of the land at this time. The other options (referred to above), apart from doing nothing, are considered to be impracticable. This is critically because they all have the same risk as the Cilldara offer of the Council being unable to break the Main Site Lease. Doing nothing would not resolve any of the issues on the site, promote development or support the East Stand.
- 6.3 Therefore, the conclusion is that it would be worthwhile disposing now, since (a) it would achieve a capital receipt, (b) this makes it likely the land will be developed, in line with the Council's planning policies and the aims of the Northampton Waterside Enterprise Zone, and (c) it makes it more likely that the East Stand will be completed as realistically only CDNL/NTFC would be able to deliver that and also in that in the event that the East Stand is not completed the Council would be entitled to exercise its option to repurchase the land for £1.
- 6.4 If this approach is adopted, there would be a series of legal steps, involving NTFC, CDNL and HE, and also compliance with the assets of community value provisions of the Localism Act 2011 as well as other legal processes. This is likely to mean the transaction would take between three and nine months to complete from the time the Cabinet decision becomes effective.



West  
Northamptonshire  
Council

### Plan 1: Current leasehold interests



Assets & Environment

KEY

-  CDNL
-  NTFC
-  WNC (NCC)
-  WNC (NBC)
-  CDNL

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Title: Leasehold Interests -  
Land at Sixfields, Northampton

Scale: 1:3000 at A3

Date: 20th January 2022

Drg No: 002 v2





## **Appendix 1**

The East Stand would be required to include as a minimum:

- 10 hospitality boxes
- Boardroom area
- Restaurant and bar areas
- Kitchen area
- Viewing area for spectators with disabilities
- At least 300 additional seats
- Classroom areas suitable for educational use for children and young people under the age of 18 on non-matchdays
- Community use areas for non-match day use