

**WEST NORTHAMPTONSHIRE COUNCIL  
CABINET**

**28 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 Cilldara Limited, and provides Members with the information that they will need to make an informed decision on the possible disposal of the site.
- 1.2 The report therefore seeks instruction from Cabinet on how, and indeed if, it wishes to progress the disposal of the site, having regard to the benefits and issues relating to each proposal.

**2. Executive Summary**

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- 2.1 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').

- 2.2 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.
- 2.3 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.
- 2.4 These lease boundaries are shown on Plan 1.
- 2.5 There is also a Clawback Deed in favour of the Homes & Communities Agency (Homes England, HE), under which HE is entitled to receive 50% of value above that of a specified housing-led scheme for up to 300 dwellings and up to 85,000 square feet of retail floorspace. 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.
- 2.6 CDNL is a subsidiary of NTFC. NTFC is controlled by David Bower and Kelvin Thomas, and others ("Bower and Thomas"), through various legal entities.
- 2.7 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.

- 2.8 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.
- 2.9 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. West Northamptonshire Council commissioned a multi-disciplinary expert company, Lambert Smith Hampton (LSH) following a mini tender process to consider the value of the site given its complexities, to establish what level of offer would meet this requirement, 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.
- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 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 as leasehold would robustly challenge any decision to sell the land to another party and to terminate the Main

Site Lease, if necessary through litigation. Litigation is likely to be expensive and time-consuming and of uncertain outcome. Accepting the CDNL offer removes those risks, although of course Cilldara may challenge a decision to proceed with CDNL and not with Cilldara, 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.

- 2.15 Following the publication of the Council report a further change has been proposed by Cilldara. This has been considered but given its lateness against the Council's published decision-making timetable it has not been assessed in detail, and therefore is not recommended.
- 2.16 On the basis that the CDNL offer is to be preferred financially, the question is now whether it should be accepted, as opposed to not disposing of the land at this time. The other options (referred at 6.26 of this report), apart from doing nothing, are considered to be impracticable. 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.
- 2.17 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 the Running Track site is within the asset of community value listing of the stadium, 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.

### **3. Recommendations**

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- 3.1 It is recommended that the Cabinet directs that:
- a) The Council should trigger the process under Chapter 3 of Part 5 of the Localism Act 2011 relating to the disposal of an asset of community value (the Running Track site).
  - b) Once the applicable moratorium period has expired enter an agreement with County Developments (Northampton) Limited and Northampton Town Football Club Limited for the disposal of the site for £890,000 as outlined in Appendix A and seek the necessary agreement from Homes England for this purpose.

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

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- 4.1 To ensure that the Council complies with its legal obligations under the Localism Act 2011.
- 4.2 To meet the Council's obligations to seek best consideration in relation to land disposals, as set out in the report.
- 4.3 In addition to achieve a number of wider benefits considered to be in the interests of the Council and the community in its area:

- Generate a substantial capital receipt in the short to medium term (anticipated before the end of 2022).
- Greatly assist in regularising the complex ownership position that exists on site:
  - Most immediately in relation to the HWRC site (which would be held by the Council free from any lease to CDNL) and the other retained land.
  - Also (at a later stage) in relation to the running track land and the main site if these are repurchased by WNC (as the relevant leases of these areas would be surrendered as part of the deal with CDNL).
- Remove the risks of legal challenges from CDNL to the Council's ability to break the Main Site Lease and the potential costs to the Council associated with that.
- Increase the likelihood that the East Stand would be completed.
- In the event that the East Stand was not completed, secure the return of the land to the Council's freehold ownership with very little further cost (a price of £1 with associated legal and other transactional costs).
- It 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.

## 5. Report Background

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### Overview

- 5.1 The land shown on Plan 1 was previously owned freehold by NBC. As a result of local government reform in Northamptonshire, from the 1st of April 2021, NBC was abolished, along with Northamptonshire County Council, Daventry District Council and South Northamptonshire District Council, and West Northamptonshire Council (WNC) was created. As statutory successor, WNC is the freehold owner of the land.
- 5.2 In this report:
- David Bower and Kelvin Thomas are referred to jointly as 'Bower and Thomas' and treated as a single controlling entity, although some other individuals are at least formally involved alongside them.
  - 'NTFC' is Northampton Town Football Club Limited (The) (no. 00183917)
  - 'CDNL' is County Developments (Northampton) Limited (no. 08589683).
  - 'NTVL' is Northampton Town Ventures Limited (no. 09858599).
- 5.3 NTFC is identified at Companies House as having significant control over CDNL, as owner of 75% or more of the shares in the company; CDNL is therefore its subsidiary. CDNL's directors are listed as Kelvin Brian Thomas and David John Gellie Bower. NTFC's Directors include Bower and Thomas but there are further directors. NTFC is controlled by another company, NTVL which according to Companies House is controlled by David John Gellie Bower and Jane Bower (both resident in the United Arab Emirates). Although Kelvin Brian Thomas is not listed as a person with significant control both Thomas and Bower are Directors of NTVL.
- 5.4 The legal documentation and arrangements surrounding this site are complex and have changed over time. The summary chronology is:

1. 1994 – NBC grants a 125-year lease of the HWRC (the ‘HWRC Lease’) to NCC.
2. 2004 – NBC grants a 150-year lease of the stadium and running track (the ‘NTFC Lease’) to Northampton Town Football Club.
3. 2013 – NBC enters the Contract for Sale with CDNL, conditional on a number of conditions including the grant of satisfactory planning permission and upon NBC becoming the owner of all of the land (at that stage NBC did not own the main site).
4. 2013 – NBC enters the Running Track Lease with CDNL for 150 years.
5. 2013 – NBC acquires part of the NTFC Lease covering the Eastern part of the Running Track site. (The residual NTFC Lease is referred to as the ‘Stadium Lease’ and the part transferred to NBC as the ‘WNC Leasehold’.)
6. 2013-14 – NBC enters into a series of loan agreements with NTFC for the East Stand and hotel development.
7. 2014 – NBC acquires the freehold of part of the site (land latterly covered by the Main Site Lease) from the Homes and Communities Agency (HCA) and enters into the Clawback Deed and an allied Legal Charge with HCA.
8. 2014 – NBC enters the Main Site Lease with CDNL for 150 years and a supplemental agreement with CDNL to vary the financial and other commercial terms of the Contract for Sale referred to at 3 above.
9. 2015 – NTFC ceases making payments on the NTFC loans. It is also threatened with liquidation initiated by HM Revenue & Customs.
10. 2015 – CDNL becomes insolvent. NBC exercises its right to terminate the Contract for Sale. (Neither the Main Site Lease nor the Running Track leases contain provisions allowing the landlord to break then in the event of the tenant becoming involvement, so remained in place).
11. 2015 – NTFC acquired by Northampton Town Ventures Limited (itself controlled by Bower and Thomas). NBC, Bower and Thomas, and NTFC agree arrangements to prevent NTFC being liquidated.
12. 2016 – NBC commissions a detailed study of the ground conditions, stability of the ground and likely remediations that would be required to progress a development of the site.
13. 2017 – CDNL acquired by the Bower and Thomas and taken out of insolvency.
14. 2019 – Ownership of CDNL passed to NTFC.
15. 2021 – External auditor public interest report into NBC’s dealings with NTFC and CDNL published. This principally concerned the loans given by NBC but also addressed the land transactions.

5.5 Between 2014 and 2019 there were several discussions between Bower and Thomas and officers at NBC to address the legal position on site and ultimately seek agreement for the acquisition of the site by CDNL. While terms were discussed, none were ultimately agreed. While there were several factors impacting on those discussions, the principal points of debate surrounded the extent of the remediation and Investigatory works required and the impact that this has on the 2024 break clause within the Main Site Lease.

5.6 In late 2020, the Shadow West Northamptonshire Council was approached by Bower and Thomas with a view to restarting discussions about a possible acquisition of the land to enable them (in their capacity as owners of NTFC) to commit to completing the East Stand at Sixfields Stadium. These discussions have continued with WNC since vesting day.

5.7 Given the complex issue affecting the site, it was appreciated that the Council would need to undertake extensive due diligence, and take independent external advice, to ensure that any agreement reached met best value objectives, took due consideration of both the complex leasehold interests that exist and challenging site conditions. In late 2020, Lambert Smith Hampton (LSH) were appointed to provide advice to the Council following a mini tender. As a respected multi-disciplinary firm, they were well placed to provide the Council with robust, reasoned, and independent advice.

### **Current Freehold and Leasehold Position**

5.8 The legal documentation relating to the subject site is complex and to enable Cabinet to make an informed decision, a summary of the pertinent documentation has been provided below.

5.9 The documentation includes:

- Contract for Sale dated 13<sup>th</sup> September 2013 (and supplemental agreement dated 11<sup>th</sup> April 2014 (as referred to above and below)).
- The Running Track Lease dated 17<sup>th</sup> September 2013.
- The Main Site Lease dated 11<sup>th</sup> April 2014.
- The Clawback Deed dated 11<sup>th</sup> April 2014.
- The Household Waste Recycling Lease dated.
- The NTFC Stadium Lease and the assignment of part to the Council.

### Contract for Sale – Now Terminated

5.10 On the 13th of September 2013, NBC entered a Contract for Sale with CDNL covering the land included in the Running Track Lease and the Main Site Lease. This agreement placed various obligations on CDNL but essentially afforded it, subject to those conditions being met, the ability to acquire the freehold from NBC.

5.11 The Contract for Sale, Running Track Lease, and the Main Site Lease were intended to work together. While the leases in themselves (discussed below) place obligations on CDNL to undertake works, the leases refer to clauses and definitions within the Contract for Sale (such as Permitted Use). The original construct was designed to enable CDNL to acquire the freehold if the condition in the respective leases were met. Following the termination of the Contract for Sale, CDNL has retained the obligations to undertake works contained in the Leases but no longer has the legal right to acquire the freehold once those works are complete.

5.12 The Contract for Sale was varied by the Supplemental Agreement dated 11<sup>th</sup> April 2019. This agreement significantly altered a number of key financial and other commercial terms of the Contract for Sale.

5.13 While the Contract for Sale was terminated by NBC in 2015 when CDNL went into administration, it has been included in the summary as it will assist Cabinet to understand the legal documentation entered into at that time in context.

Running Track Lease (shown edged and hatched green on Plan 1 (this also includes the land hatched and cross hatched in red on that plan))

5.14 The basic provisions of this agreement are as follows:

Date: 17<sup>th</sup> September 2013  
Landlord: Northampton Borough Council (now WNC)  
Tenant: County Developments (Northampton) Limited  
Term: 150 Years  
Rent: Peppercorn (if demanded)  
Permitted use: Sports use including athletics (the “Existing Use”) and “Investigatory Works” although a mortgagee in possession or its successors may also use for retail, commercial and housing purposes as well as for the Existing Use and Investigatory Works.  
Option to break: None

5.15 The lease does not contain an option to break and does not require any remediation or investigatory works to be undertaken. This is an important consideration as it means that CDNL has (subject to comments at 5.16 below) effective control over this element of the site and is under no obligation to bring this site forward for development during the 150-year lease term. The lease is not excluded from the security of tenure provisions of the Landlord and Tenant Act 1954. This means that unless WNC met certain conditions it could be renewed, at a commercial rent, at the end of its term.

5.16 The lease is subject to a restrictive user clause which limits CDNL’s use of the site to sports use including athletics. While this was relevant to its previous use as Running Track, if CDNL wished to develop the site or use it for an alternative use, this would require the consent of the Council. However, it should be noted that a mortgagee in possession can as stated in 5.14 use for a wider variety of uses. As at the date of this report CDNL does not appear to have mortgaged the Running Track Lease, but CDNL could enter into such a mortgage with Council’s consent (please see 5.15 below).

5.17 It is also important to note that the Running Track Lease is burdened by two additional leasehold interests. Having previously been leased exclusively to NTFC, the Eastern half was assigned to NBC in 2015. NTFC and NBC (now WNC) therefore also have a leasehold interest in the site. This is an important factor when considering the value of respective interests in this element of the site (discussed later).

5.18 The Running Track Lease is non-assignable except by a mortgagee in possession (with the Council’s consent).

Main Site Lease (shown edged and hatched light blue on Plan 1)

5.19 The basic provisions of this agreement are as follows:

Date: 11<sup>th</sup> April 2014  
Landlord: Northampton Borough Council (now WNC)



Tenant:	County Developments (Northampton) Limited
Term:	150 Years
Rent:	Peppercorn (if demanded)
Permitted use:	A Household Waste Recycling Centre, Study Centre, Funfair, and car parking facilities for Sixfields together with “Investigatory Works and Remediation Works ...”
Option to break:	From 10 <sup>th</sup> April 2024 (Landlord only)

5.20 The lease includes a Landlord option to terminate at any time after a “Termination Date” of 10th April 2024. This option can be exercised if the remediation works as set out in the Lease had not been completed. The Lease defines this obligation as:

“...shall carry out all necessary remediation works required to ensure that risks from land contamination are minimised and that the Development can be carried out safely without unacceptable risks to human health and the environment having regard to Policy BN9 of the West Northamptonshire Joint Core Strategy and in full satisfaction of any conditions relating to remediation in any planning permissions for the Development by no later than the Termination Date.”

“Development” was defined by reference to the Contract for Sale as “the construction on the Property of approximately 300 houses with an approximate total area of 300,000 square feet, retail unit of a total maximum internal area of 85,000 square feet that may include a supermarket some neighbourhood shops and other retail units.” The 2014 Supplemental Agreement increased the 85,000 square feet to 150,000 square feet.

The “Termination Date” 10<sup>th</sup> April 2024. This is just over two years’ time from this report.

5.21 The extent of the works required to satisfy such a provision has historically been a matter of contention and is likely to remain so.

5.22 As highlighted earlier in this report, following the termination of the Contract for Sale, CDNL has no right to acquire the freehold interest in the site even if the remediation works are completed to the required standard. This could only be achieved via negotiation between the parties.

5.23 The Main Site Lease is non-assignable (with no dispensation for a mortgagee in possession).

#### The Clawback Deed (and Legal Charge)

5.24 On 11<sup>th</sup> April 2014, NBC entered a Clawback Deed with the Homes and Community Agency (HCA, now known as Homes England, HE). The Clawback Deed is secured by means of a Legal Charge in favour of the Council. This agreement covered the land contained in the Main Site Lease and, for a period of 21 years, entitles the HCA to receive 50% of any uplift in value where the deemed value of a planning consent (payable on implementation) exceeds the value of the site under its permitted use. The permitted use is defined as:

*a) Up to 300 dwellings for open market sale (use Class C3), and*

*b) Up to 85,000 sq ft net lettable area of retail floorspace within Use Classes A1 to A5 as defined in the Town and Country Planning Act Use Classes Order 1987 as amended*

- 5.25 The Clawback Deed ceases to apply on 11<sup>th</sup> April 2035 (i.e. 13 years' time). After that time, any disposal would not be subject to payment to the HCA.
- 5.26 Ideally the Council will negotiate with HCA for a release of the land to be retained (primarily the HWRC) from the Clawback Deed and the Legal Charge. The consent of the HCA would be required to enable the land to be sold free from the Legal Charge.

The Household Waste Recycling Centre (HWRC) Lease (shown edged and hatched dark blue on Plan 1)

5.27 The basis provisions of this agreement are as follows:

Date:	25 <sup>th</sup> February 1994
Landlord:	Northampton Borough Council (now CDNL)
Tenant:	Northamptonshire County Council (now WNC)
Term:	125 Years
Rent:	Peppercorn (if demanded)
Permitted Use:	Civic amenity site where household refuse may be deposited in pursuance of the provisions of the Refuse Disposal Amenity Act 1978 and for no other purpose whatsoever
Option to Break:	None

5.28 Following LGR, the HWRC lease is now vested with WNC. Given the various leases described WNC is the freeholder of the land, CDNL is the Head Long Leaseholder and WNC is the Sub Long Leaseholder. This can be shown as follows:



5.29 Under the terms of the Main Site Lease, CDNL is required to remediate the HWRC site (as it forms part of the Main Site) to satisfy the remediation requirement. As NCC was not a party to the 2013 and 2014 lease agreements in relation to the Main Site and Running Track Leases, the HWRC lease places no obligations on WNC (as NCC's successor) to surrender or assign the HWRC Lease or allow access for remediation nor would the Council be required to give up its rights and as such CDNL may not be able to meet the remediation works requirement under the Main Site

Lease. There are also no plans or a desire on the part of the Council to relocate the HWRC. NCC was not consulted by NBC when it entered the Main Site Lease.

The NTFC Stadium Lease and assignment of part to the Council (shown edged and hatched purple and red, respectively, on Plan 1)

- 5.30 In April 2004 NBC granted a 150-year lease (the 'NTFC Lease') to NTFC on the adjacent Sixfields Stadium. The lease is not excluded from the security of tenure provisions of the Landlord and Tenant Act 1954. This means that unless WNC met certain conditions it could be renewed, at a commercial rent, at the end of its term. WNC is now the freeholder of this site and the landlord to NTFC. This lease originally included all the land now included in the Running Track Lease.
- 5.31 In September 2013 NBC took an assignment of part of the NTFC Lease, more specifically the Eastern half of the land covered by the Running Track Lease. This is now held by WNC (referred to as the 'WNC Leasehold'). For ease of reference, the remaining NTFC lease is referred to as the 'Stadium Lease'.
- 5.32 In terms of legal structure specifically relating to the running track site, WNC is the freeholder, CDNL has the residue of the 150 Running Track Lease and WNC (Eastern half) and NTFC (Western half) have the residue of the 150-year term originally granted under the NTFC Lease. It's understood that it was initially intended that NTFC would assign the whole of its interest in the running track land to NBC (effectively intended to operate as a surrender of NTFC's interest in the running track land) but in fact only the Eastern half was assigned. This can be shown as follows:



Asset of community value

- 5.33 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 27th February 2019. This was on application by the supporters' trust, which is a 'community interest group' for these purposes.
- 5.34 The operation of the ACV regime is set out in legal implications, below. Essentially it provides for a delay (moratorium), 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.

## Due Diligence

- 5.35 In 2016 NBC commissioned Hydrock and Ian Farmer Associates to complete 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 as stated at 5.24 above. The scale of the required remediation works was considered to be extensive and raised concerns around the viability of the site for development.
- 5.36 For any proposal to be considered, robust and independent professional advice would be needed. In 2020, NCC, on behalf of the Shadow WNC appointed Lambert Smith Hampton (LSH) to provide external multi-disciplinary consultancy advice and, when required, a ‘Red Book’ valuation to enable WNC to evaluate relevant proposals and ensure best value obligations are met.
- 5.37 LSH was instructed to:
- Provide specific planning advice on development opportunities having regard to current and emerging planning policies. This ensured that the Council could evaluate (the value of) various development options based on the prevailing planning landscape.
  - Utilise their internal agency teams to provide robust market position statements / assessments to consider potential future uses for the site and specifically considering those deemed to be the most viable, and those which would deliver the highest financial return to the Council.
  - Utilise their internal cost consultancy team, to 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. This would provide the Council with a robust understanding of one of the key variables effecting a residual development appraisal, allow it to apportion costs more accurately against alternative development options and also evaluate its impact against the assumptions in the Clawback Deed.
  - Provide advice to the Council by carrying out viability assessments on various development options, building on the planning advice, and utilising the cost consultancy outputs to robustly assess the options against best consideration objectives (see below).
  - Provide WNC with a formal “Red Book” valuation of the Council freehold interest in the site considering all the due diligence work undertaken by the Council.
- 5.38 Following receipt of LSH’s viability advice, WNC held initial discussions with Bower and Thomas on potential disposal options. Any proposal would need to address best consideration objectives. It was also considered important that any disposal to CDNL rationalised the site tenure, and also supported the completion of the East Stand at Sixfields Stadium.
- 5.39 For the avoidance of doubt, the LSH viability assessments make no allowance or deduction for the cost of completing the stand. The approach taken was that this proposal is first and foremost

a property transaction that needed to address the Council's best consideration objectives. However, through its landholdings WNC was keen to ensure, if possible, that the East Stand would be completed for the benefit of its residents.

- 5.40 For the avoidance of doubt, it is confirmed that LSH has given its consent for its valuation report to be published with this Cabinet Report.
- 5.41 The LSH viability outputs (please refer to Appendix E) highlighted that the residential led scheme proposed under the Clawback Deed would not be viable given the remediation costs (estimated to be c£12.65m). LSH considered various alternative development options which have been summarised below.
- **Option 1** – Assumes the HWRC is retained with 80,500 sq ft of industrial/trade counter accommodation and an apartment development extending to 309 units.
  - **Option 2** – Assumes that the HWRC is retained with 80,500 sq ft of trade counter/industrial development and an additional 132,925 sq ft of industrial/trade counter development.
  - **Option 3** – Retains the HWRC with 80,500 sq ft of trade counter/industrial development and two distribution warehouse units extending to 114,690 sq ft and 53,110 sq ft respectively.
  - **Option 4** – Assumes wholesale redevelopment with the HWRC moved with 146,000 sq ft of retail/leisure accommodation and two distribution warehouse units.
- 5.42 All these options produced negative land values. Such 'residual' viability assessments unavoidably use inputs which involve professional judgement but are nonetheless useful. In this case the assessment helped illustrate the significant challenges faced with this site and the impact that the required remediation works, and the ground conditions have on viability and value.
- 5.43 LSH, utilising its cost consultancy team, made relevant allowance for the scale of remediation costs required to deliver each option (industrial would be lower than residential, for example). It was, however, felt that a more comprehensive assessment would be required to refine the assessment parameters for each development option. Axiom Structures was therefore appointed to undertake a structural engineering feasibility report to provide a robust foundation solution for various options, building on the 2016 Ground Investigation surveys. The outputs were then considered by LSH's cost consultancy team and included within their viability assessments.
- 5.44 As the viability outputs for the 4 options produced negative land values, LSH also carried out a viability assessment having regard to land comparables. This assessment, based on the professional opinion of their agency team, suggested that pertinent industrial land values were in the range of £700,000 to £900,000 per acre. By adopting a rate of £900,000 per acre, and making allowances for reasonable abnormal costs, the potential value of the unencumbered freehold (assuming the freehold and various leasehold interests have been merged) would be approximately £2 million. This did not consider any payment required to the HCA to satisfy the provisions of the Clawback Deed or the division of value between the relevant freehold and leasehold interests. Once these deductions have been made, LSH indicated that their assessment of the value of the Council's freehold interest, excluding the HWRC site, was £865,000.

## **The Proposals**

5.45 The Council has two proposals before it, as well as the options identified in Section 6. Below are listed the current and also a superseded proposal. Both the current offers were subject to an invitation to make 'best and final offers' by 5pm on 17<sup>th</sup> January 2022. The details below reflect the results of that process. A recent communication from Cillardara is also addressed below.

### Conditional 5-year option to CDNL – This proposal has been superseded (see below)

5.46 The Council previously agreed provisional terms with CDNL for the disposal of the site. The broad terms of this agreement are set out below. This is the proposal that was discussed at the All Members Briefing and was included in a press release.

- A 5-year option of to purchase the Council's freehold interest.
- The HWRC land is excluded from the Option.
- CDNL agrees to surrender the Running Track Lease and the Main Site Lease to the Council.
- That the exercise of the Option agreement is conditional on the completion of the East Stand at Sixfields Stadium to the reasonable satisfaction of the Council.
- Subject to the conditions being met, CDNL will be able to acquire the freehold interest in the site for £890,000.
- 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, WNC is to receive 100% of any saving.

5.47 This offer is no longer under consideration but is included for completeness.

### The Cillardara Limited proposal (Appendix B) – Excludes the running track site

5.48 Following media coverage, the Council received an unsolicited offer from Cillardara Limited for the freehold interest, but excluding the land covered by the Running Track Lease. The offer was originally for £1,800,000 but following the request for 'best and final offers' the offer was increased to £2,050,000.

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

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

### Revised CDNL sale proposal (Appendix A)

5.50 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 proposal was confirmed and not varied in response to the request for 'best and final offers'.

5.51 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.
- 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.

5.52 It should be noted that the reduction in Overage proportion from 100% to 80% was proposed by the Council because it is more likely to produce a benefit to the Council if the new owner has an incentive to minimise the payment due to the HCA.

5.53 In addition, Bower and Thomas have given two assurances, that would be reflected in the legal agreements. These are:

- The East Stand will be completed before the land is developed.
- Following completion of the East Stand CDNL would transfer the freehold of the part of the Running Track site reasonably needed for the effective operation of the East Stand (such as car parking for the football club) to NTFC.

#### Cilldara further proposal

5.54 Following publication of the Council report on these matters Cilldara made a further proposal. This was to modify its offer such that it was no longer a commitment to acquire the land when the Main Site Lease had been ended, but rather to purchase it immediately.

5.55 Such a proposal has the attraction of a payment in the relatively short term, but it is problematic having arrived so late. The Council had already set up the Council and Cabinet meetings in order to take an informed decision, the Council report published, and the Cabinet report prepared.

5.56 The revised Cilldara proposal would also mean the main site lease would have two landlords. This is a complication which would need to be managed. The landlords would need to agree on matters relating to the lease, such as whether to exercise the break option, and each could also be liable for actions of the other. Thus, some form of agreement between them would be necessary. Whilst Cilldara has made proposals for the basis of such an agreement negotiating it would still take time and might not be possible to resolve.

5.57 In these circumstances there is a risk of losing the ability to secure the firm offer from CDNL, and a lack of certainty about reaching satisfactory agreement on the management issues with Cilldara. It could continue a cycle of revised offers resulting in no decision and thus no resolution

of the site ownership or capital receipt. There is a real benefit in having the confidence that a consistent offer from CDNL is likely to run to conclusion. Such a benefit is one which the Council is entitled to take into consideration.

- 5.58 In any event, if it was to fully explore the revised Cilldara offer it would be necessary to delay the decision currently planned to be taken at Cabinet on 28<sup>th</sup> February.
- 5.59 For these reasons having considered the revised Cilldara proposal, it is not further explored in this report (except in legal implications, below). References to the Cilldara proposal below are thus to its form following the ‘best and final offers’ process.

## **6. Issues and Choices**

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### Best consideration

- 6.1 The two proposals vary in the structure but also their deliverables. On the face of it, the Cilldara proposal offers the greatest financial return and exceeds the residual market value of the site as assessed by LSH.
- 6.2 When evaluating best consideration, it is important that both financial proposals are evaluated in context and taking account of the ways the proposals differ, including if they can ultimately be delivered. For the current proposals, there are five key differentials:
- Extent of site (the Cilldara offer does not include the running track site).
  - Timing of capital receipt (under the Cilldara Proposal, the Council would not receive the sale proceeds until April 2024 at the earliest, and may receive nothing unless the Main Site Lease can be terminated).
  - Homes England overage potential upside.
  - Certainty of ending the Main Site Lease (also see above).
  - Litigation risk.

### Extent of Site

- 6.3 As highlighted earlier in this report, the CDNL proposal of £890,000 includes the running track whereas the Cilldara offer of £2,050,000 excludes the running track site. The exclusion of the running track site from the Cilldara Limited proposal is logical as the Council does not have the potential ability to break the Running Track Lease in the same way that it does with the Main Site Lease.
- 6.4 In terms of assessing the proposals on a “like for like” basis, the Cilldara Offer covers the main site only. The valuation report prepared by LSH indicated that the Market Value of the Council’s freehold interest in the running track is £200,000. While this is not an exact science and is subject to several variables, if we consider this on a straight-line basis, this will mean that the CDNL offer from the main site is £690,000 compared to £2,050,000 from Cilldara, a potential “undervalue” (subject to the factors below) of £1,360,000.



### Timing of Capital Receipt

- 6.5 The Cilldara proposal would not generate a capital receipt to the Council until April 2024 at the earliest. In practice, given the likelihood of litigation with CDNL over the Council's ability to break the Main Site Lease, the receipt is likely to be received later than that (assuming it was able to be received). The transfer of land to Cilldara would be most unlikely to complete until all litigation was concluded.

### Certainty of ending the Main Site Lease

- 6.6 If the Main Site Lease remained in place, the Council would be unable to realise any value from the site, including the Cilldara offer. If the Council was unable to break the Main Site Lease then it may be possible that at some point in the future the Council and CDNL would reach an agreement to allow each of them to share in the value of the site. However, it cannot be known when this would be or the terms on which a settlement would be reached.
- 6.7 It is unknown if the Council would be able to break the lease from April 2024. Its ability to do so could be removed by two factors (a) CDNL carrying out remediation sufficient to fulfil the requirements of the lease, or (b) some other legal factor; whilst these other factors currently appear unlikely the nature of these factors is that they are often not seen in advance.
- 6.8 In terms of CDNL carrying out remediation works, Bower and Thomas have affirmed that they would do so if an agreement with the Council was not reached. The scale of remediation required is very hard to resolve without a detailed development scheme. This must therefore be considered a material risk.

### Litigation cost, delay, and risk

- 6.9 CDNL is significantly invested in the site and the associated activities. If the Council proceeded with an alternative bid there would be a strong incentive for CDNL to challenge that decision. There are a number of ways in which the decision could be challenged. The complexity of the lease arrangements and the interaction of the provisions within the leases makes this situation very particular to these circumstances and makes it very difficult to be clear what the outcome would be if CDNL did bring a challenge. It is very unlikely that a challenge could be quickly and easily dismissed because of the complexities.
- 6.10 The opportunities for Cilldara, given they have no existing rights over the land, would be limited to a challenge of the decision. This risk is easier to manage particularly in relation to the length of any delay associated with a challenge.

### Financial considerations summary

- 6.11 The two offers may be compared in cash terms as follows:

Offer	Area		Offered price	Price per acre
	m2	Acres	£	£
CDNL	84,566	20.90	890,000	42,590
Cilldara	69,966	17.29	2,050,000	118,573

6.12 Alternatively, if the LSH figure of a value of £200,000 for the Running Track Site is used, the figures for the Main Site only appear as follows:

Offer	Area		Offered price	Price per acre
	m2	Acres	£	£
CDNL	69,966	17.29	690,000	39,910
Cilldara	69,966	17.29	2,050,000	118,573

6.13 Additionally, the following financial factors should be considered:

CDNL		Cilldara	
Pros	Cons	Pros	Cons
Cash received immediately	Not highest cash offer.	Highest cash offer.	Dependant on achieving break of Main Site Lease. If the Council proceeds with Cilddara and it is not possible to terminate the Main Site Lease no capital receipt will be received, and the opportunity of a deal with CDNL might be lost.
No risk involved in securing end of the Main Site Lease (as deal would require CDNL to surrender this).	Litigation with Cilddara is possible. This may be expensive and protracted.	Some limited potential to profit from the eastern part of the Running Track site.	Cash received later, probably 2-3 years delay.
Some potential for additional income from arrangements with HE clawback (the Council would be entitled to 80%			There is a significant risk of litigation from CDNL which may be protracted and expensive, and the outcome is

CDNL		Cilldara	
Pros	Cons	Pros	Cons
of any saving from £770,000 in the clawback).			uncertain. The Council is not obliged to expose itself to that risk.
Council has the ability to repurchase the land for £1 if the East Stand is not completed within five years. (This is considered unlikely.)			

6.14 Both arrangements, if successful, would leave the Council with unfettered control of the HWRC site and adjacent land. With the CDNL deal the Council would also part with its interest in the running track site. The Cilldara deal would leave the Council with its freehold and leasehold interests in the running track site.

6.15 Overall, this suggests that the CDNL offer is to be preferred, on purely financial considerations. Whilst the Cilldara offer is theoretically higher, the substantial risk attached to receiving it mean it is likely to be in the Council's financial interests to proceed with the CDNL offer.

Local Government Act 1972: General Disposal Consent (England) 2003

6.16 Given the analysis above and the recommendation to proceed with the CDNL offer, it is not strictly necessary to consider the situation where the Council chooses to accept an offer below the best consideration reasonably obtainable, an 'undervalue'. However, this explanation is provided for completeness. For these purposes it is important to understand that the 'value' is a strictly financial or commercial value, not one concerning policy benefits the Council might seek.

6.17 Disposal of land at undervalues are controlled under Section 123 of the Local Government Act 1972. This requires that freehold disposals and all leasehold disposals of seven or more years in length must be on the best consideration reasonably obtainable, except where the Secretary of State consents otherwise. Under the General Disposal Consent (England) 2003, the Secretary of State has given consent to a disposal by a local authority at less than best consideration where the Council considers that the disposal will contribute to any one or more of the following objectives:

- i) The promotion or improvement of economic well-being.
- ii) The promotion of improvement of social well-being.
- iii) The promotion or improvement of environmental well-being.

6.18 This is on the basis that the difference between the unrestricted value of the land to be disposed and the proposed disposal consideration does not exceed £2 million.

- 6.19 If the Council's decision was to constitute an undervalue, the Council would need to have reasonably satisfied itself that the undervalue would be less than or equal to the economic, social, and environmental wellbeing benefits offered by that proposal over and above those offered by the alternative.
- 6.20 Consideration has been given to the potential benefits of increased Council Tax and business rates that could be generated through the development of the site. While this is often a quantifiable assessment, there is no defined development scheme for with proposal and as such it is not possible to apportion and weight to one offer over the other. While it is possible to argue that a sale to CDNL would bring forward the additional development of the running track site, there are no contractual guarantees that this would happen, and conversely there is nothing to suggest that a possible sale to Cilldara would restrict or hinder CDNL from developing this site in isolation (subject to satisfying the terms of their lease) or in partnership with the Council.
- 6.21 Consideration has also been given to development timings and whether these would provide benefit. As the owners of CDNL are the same as NTFC, it is within their reasonable gift to bring forward the completion of the east stand. Once complete, CDNL would be able to bring forward the wider site for development. As Cilldara would need to wait for the lease to be broken in April 2024, it is reasonable to consider that CDNL would be best placed to bring the site forward for development sooner to enable the economic, social and environment benefits to be realised sooner. There is, of course, currently no guarantees on when the site will be bought forward for development under either offer.
- 6.22 Being in mind the Public Interest Report, the Cabinet should also note that:
- Even without the agreement over the land discussed in this report, NTFC may still decide to complete the East Stand. Thus, it cannot be assumed that the benefits of completion are dependent on acceptance of the CDNL offer.
  - The Council does not have information from NTFC (or elsewhere) to quantify the likely economic or social benefits flowing from completion of the East Stand.
  - Some, potentially much, of the employment and economic benefits of activity in the East Stand would be displacement from elsewhere in Northampton / West Northamptonshire rather than net additional benefit.
  - NTFC runs at a significant annual loss, only sustained by funding from its owners, resulting in increasing debt. There is therefore no guarantee that any benefits which did arise from completion of the East Stand would be sustained. It would, however, appear to make it more likely.
- 6.23 However, these issues are not particularly significant in the context of the financial benefits of the CDNL offer at least matching those of the Cilldara offer. Essentially, from a decision-making perspective, the non-financial benefits are an added benefit to a decision which, although fairly marginal, is recommended on financial grounds alone.
- 6.24 The non-financial benefits and disbenefits can be summarised as follows:

CDNL		Cilldara	
Pros	Cons	Pros	Cons
Should make it highly likely the East Stand would be completed.	No guarantee that East Stand would be completed. (Although non-completion is considered unlikely.)		Reputational damage from having been seen to walk away from a deal which was more likely to secure the East Stand completion.
It should make it easier to deliver a cohesive development of the land to the east of the stadium.	Risk of adverse perception due to previous issues relating to previous deals relating to the land.		

6.25 In the table above no significance is given to either the development proposals from CDNL and Cilldara, or the identity of the owners (individual or corporate). This is because neither would be secured in the proposed agreement, and they could easily change.

#### Alternative options

6.26 Consideration has been given to the following alternative options.

- **Do nothing** – The Council could decide not to dispose of the site to either party at this time and not take action to end the Main Site Lease. This would be likely to result in the site remaining in no or low value uses, and would not rectify the complex legal position.
- **Dispose once the Main Site Lease has been ended** – The Council could decide not to dispose of the site to either party at this time. The site would remain burdened by the Running Track Lease and the Main Site Lease which would remain with CDNL. Any future development of the Main Site Lease area would be reliant on the Council exercising its option to break the Main Site Lease in April 2024 (or subject to a negotiation between the parties) and disposal of the property at that time. It is suggested that this would deliver an outcome like the Cilldara Limited proposal but may lead to a lower capital receipt being achieved if future offers are in line with the valuation rather than more, as the case is at present. Development of the Running Track Lease area would be likely to require agreement between the Council as freeholder, CDNL as leaseholder and NTFC and the Council as sub-leaseholders of their respective parts.
- **Market the site** – The Council could decide to market the site rather than seek to agree a disposal to either party. While this is an option, any such disposal would be subject to the Running Track Lease and, the Main Site Lease, and the Clawback Deed. As such it is likely to be of limited demand to the market or face similar challenges when assessing development options or reliance on Council action in relation to the break clause. The value in this site is maximised through an arrangement which would see the freehold and

leasehold interest merged, however this occurs. Again, this would require the Council to be able to terminate the Main Site Lease (and if required the Running Track Lease).

- **Develop the site under Northampton Partnership Homes (NPH)** – NPH has provided a high level proposal for a housing-led development of the site. This has not been subject to financial analysis at this stage. It is therefore treated as a potential future decision flowing from the ‘do nothing’ option.

### Assessment of options

6.27 It is helpful to consider each of these options in summary form.

6.28 Financial consideration are as follows:

Option	Pros	Cons
Do nothing	<ul style="list-style-type: none"> <li>• No further investment required.</li> <li>• HE overage deed would come closer to expiring, meaning the Council could benefit from more of the development value when a decision to act was taken in the future.</li> </ul>	<ul style="list-style-type: none"> <li>• No receipt or income (except potential low income from WNC Leasehold of part of Running Track site).</li> <li>• The land would remain subject to a complex set of legal ownerships and restrictions.</li> </ul>
Dispose following end of Main Site Lease	<ul style="list-style-type: none"> <li>• Provide as clear as possible a position for WNC to secure the best overall value from the site.</li> <li>• Could allow the Council to pursue CDNL for the remediation costs (this might result in winding-up of CDNL and the Council thus also securing the unfettered freehold of the eastern part of the Running Track site).</li> </ul>	<ul style="list-style-type: none"> <li>• Current Cillardara offer may not be replicated, resulting in lower value.</li> <li>• Delay in receipt compared to CDNL offer.</li> <li>• Likely to face litigation costs and delay regarding the Main Site break clause.</li> <li>• May not be possible to break the Main Site Lease at all.</li> </ul>
Market now		<ul style="list-style-type: none"> <li>• Current Cillardara offer may not be replicated, resulting in lower value.</li> <li>• Delay in receipt compared to CDNL offer.</li> <li>• Likely to face litigation costs and delay regarding the Main Site break clause.</li> <li>• May not be possible to break the Main Site Lease at all.</li> </ul>

6.29 Non-financial considerations are as follows:

Option	Pros	Cons
Do nothing	<ul style="list-style-type: none"> <li>• No further action required.</li> <li>• Would retain the option of an NPH housing-led scheme in the future.</li> </ul>	<ul style="list-style-type: none"> <li>• The land is likely to remain unused or in low value uses; local plan and Enterprise Zone objectives not met.</li> </ul>
Dispose following end of Main Site Lease	<ul style="list-style-type: none"> <li>• Reduced potential for audit concern whether about the Council not having received the best consideration reasonably obtainable.</li> <li>• Reduced potential for reputational harm from it being perceived that a third party has profited at taxpayers' expense.</li> </ul>	<ul style="list-style-type: none"> <li>• Delay in securing development of the site.</li> </ul>
Market now	<ul style="list-style-type: none"> <li>• Reduced potential for audit concern whether about the Council not having received the best consideration reasonably obtainable.</li> <li>• Reduced potential for reputational harm from it being perceived that a third party has profited at taxpayers' expense.</li> </ul>	

6.30 In the table of non-financial considerations, the 'reduced potential' items are included for completeness, but for the reasons given above it is considered a decision to dispose to CDNL on the proposed terms can be fully justified. Thus, the reduction would be from a low risk to an even lower one.

6.31 None of these alternative options appear preferable, whether on purely financial or on wider policy terms, to accepting the CDNL offer.

Further issues

6.32 The structure of ownerships are such that the following would be necessary to give effect to a decision to proceed with the CDNL offer:

- CDNL would give up the Main Site Lease and Running Track Lease.
- NTFC would give up the part of the Stadium Lease which overlapped with the Running Track Lease.
- The Council would give up the WNC Leasehold.

- The Council would transfer the freehold of the land edged red on Plan 2 to CDNL.
- CDNL would grant the Council the option to repurchase the land for £1 if the East Stand was not completed in time. A restriction would be entered at the Land Registry protecting this.

- 6.33 A range of legal mechanisms may be used to achieve these outcomes.
- 6.34 It is also possible some minor modifications to the western boundary of the Running Track site might be needed to ensure the whole stadium (as completed) remained within WNC freehold and NTFC leasehold (the Stadium Lease).
- 6.35 If the Council decided to proceed with the CDNL offer it would be necessary to trigger the ACV process. It seems unlikely any community interest group would be likely to raise sufficient funds to secure interest of the parties (NTFC, CDNL and WNC) in parting with their interests in the Running Track site, and the complex nature of the site and the legal interests in it mean it would also be impracticable. Therefore, it is unlikely any real decision about considering a community offer will arise. Should it do so it would be considered in the normal way.
- 6.36 The more practical effect of the ACV legislation is that there will need to be a delay of at least six weeks, and potentially around eight months, before it was possible to complete a legal agreement with CDNL and NTFC.
- 6.37 If the Council was to proceed with the CDNL or Cillarda offer, it would be necessary to obtain consent from HE under the Clawback Deed and Legal Charge (and ideally a release of the retained land from these). Whilst consent is expected to be forthcoming, it would doubtless take some time and would involve a number of legal processes.
- 6.38 The net effect of the issues, and the other legal processes required, is that it is likely to take between three and nine months to complete the transaction from the time the Cabinet decision becomes effective, provided all parties co-operate effectively and no unexpected issues arise.

## **7. Implications (including financial implications)**

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### **Resources and Financial**

- 7.1 As stated above, WNC has conducted a significant amount of due diligence to ensure that the proposal put forward represents best value for WNC. As with any development site, determining value in the absence of a development scheme is particularly difficult and this supports the desire to robustly test not only the development potential of the site having regard to the expert market advice of LSH, but also to robustly test the valuation parameters that for a constituent part of the development appraisal.
- 7.2 In completing this transaction, each party would be responsible for meeting its own legal and surveyors' fees.



## Legal

### Disposal of land

- 7.3 The Council would need to dispose of the land under the powers provided by Section 123 of the Local Government Act 1972. These require, in sub-section 2, that a disposal such as those contemplated here are made on the best consideration reasonably obtainable, except with the consent of the Secretary State. Case law has established that this means the best financial consideration so, for example, wider public benefits cannot be considered.
- 7.4 The Council is also bound by the provisions in the existing leases which give CDNL interests in the land. In assessing the value of each offer, the recommendation reflects the risks associated with termination of those rights. The assessment of the respective bids and the independent valuation is available as part the report.
- 7.5 A public authority does not have to use a tender or open marketing process in every case provided that it achieves a price that is consistent with its duties. This is often achieved (as in this case) by means of an independent valuation of the land.
- 7.6 The Council must also comply with the subsidy control provisions of Chapter 3 of the EU-UK Trade and Cooperation Agreement, as applied in UK law by Section 29 of the European Union (Future Relationship) Act 2020. (This provision is expected to be replaced in due course by the specific requirements of the Subsidy Control Bill currently being considered by Parliament.) Disposal of land at less the best consideration is a form of subsidy. Generally, subsidy is prohibited if it is likely to materially affect trade or investment between the UK and EU.

### Public law considerations

- 7.7 In addition to the specific matters arising in relation to the land transaction every Council decision is subject to public law principles and the governance requirements of local government legislation.
- 7.8 In particular, the decision maker needs to follow the statutory requirements (including in relation to Section 123), follow other applicable procedural requirements and ensure that amongst other things the members of Cabinet consider all relevant considerations, no irrelevant considerations, provide reasons for the decision and do not make a decision which is unreasonable. It is also important that individual Members are clear that they approach the decision with an open mind and reach their decision based on the information presented to them.

### Assets of community value

- 7.9 Chapter 3 of Part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 define ACVs and the processes for dealing with them. In essence, if the owner of an ACV proposes to dispose of it, they are required to notify the local authority which in turn makes this known. If a community interest group notifies the local authority within six weeks (the 'initial moratorium period') that it wishes to be considered as a potential bidder for the land than a further six-month period (the 'full moratorium period') starts. During the initial and, if

applicable, full moratorium period the owner cannot sell the land except to a community interest group.

- 7.10 The ACV legislation does not place any other restrictions on disposal of ACVs, or require owners to consider bids from community interest groups. Once the moratorium period(s) have expired owners are free to dispose to whoever they wish.
- 7.11 There are a range of exemptions from the ACV regime, none of which appear to apply in this case.
- 7.12 In this case, it is complex to establish which leasehold and freehold interests are covered by the ACV moratoriums. It is therefore proposed that the Council itself gives notice and that CDNL and NTFC are also asked to do so. That way all interests in the Running Track site will have been declared and any concerned community interest group will have full information on what is proposed.

#### Recent Cilldara offer

- 7.13 As noted in the body of the report, Cilldara has recently updated its offer to make it unconditional. Whilst this has the potential to resolve some of the legal risks highlighted it also raises new complications which are detailed in the report and require time to consider. There is case law which deals with the consideration of late offers and based on that case law the Council is entitled to recognise the benefits of what is known as 'a bird in the hand' and the risks of preferring a higher offer, the detail of which is yet to be fully resolved. This is particularly the case when the Council has set out and made public its decision-making timetable. The Council must consider later offers but is entitled to take these matters into consideration in doing so and to reach a conclusion that the best offer for the Council is one which can confidently be taken to completion.
- 7.14 The risk of challenge, as summarised in paragraph 2.14, from either party persists and the outcome remains uncertain.

#### **Risk**

- 7.15 Risks have been considered throughout this process, as they affect each option in both positive and negative ways. The site, the legal arrangements and the options are all highly complex and require a balanced consideration of positive and negative risk factors.
- 7.16 In the absence of a defined development scheme, it is not possible to definitively determine value. To mitigate this risk, WNC has undertaken significant due diligence via its appointed consultant, LSH and as set out previously in this report. Based on these assessments, we can demonstrate that the proposal represents best consideration for WNC.
- 7.17 Consideration has also been given to the risk to best consideration posed by the presence of the Clawback Deed. As there is no defined development scheme, it is not possible to definitively determine the level of clawback (if any) that may be payable to the HCA. It is important to acknowledge that as part of their valuation advice LSH has made allowance for a potential

payment to the HCA. If this payment were to come in lower, this would have a positive impact on value. In the case of the CDNL scheme, to mitigate this risk, the agreement would contain a provision where CDNL would be required to pass 80% of any saving to WNC. This would be further supported by a positive obligation on CDNL to actively negotiate a settlement with the HCA. (This does not apply to the Cilldara offer.)

### **Consultation**

- 7.18 The Council has remained in contact with the NTFC Supporters Trust and has been open about the discussions for a potential sale of land to CDNL. The Trust has been given the previous extensive land condition report to help explain the challenges and complexity of the land. The Trust has also presented to members on its concerns with NTFC and any arrangements. While many of the points raised did not relate directly to the proposed terms set out here, this report and appendices do provide a response to the directly related questions about the risks and how the Council seeks to mitigate this.
- 7.19 NTFC has also, of its own volition, published and presented its plans for the stand development and opened this to public consultation and comment. It should, however, be noted that these may not fully represent the eventual outcomes.

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

- 7.20 The report has not been considered by the Overview and Scrutiny committee.

### **Climate Impact**

- 7.21 Any of the options should be expected, over time, to result in development of the land. This development, including its climate impacts, would be managed through the planning system in the usual way. That said, development of urban brownfield land is likely to result in denser development in more accessible locations, and reduce the need for use of greenfield land, so on balance securing its development is likely to be beneficial in terms of the carbon emissions.

### **Community Impact**

- 7.22 Either the CDNL or Cilldara proposal would, subject to various conditions being met, see the site sold for proposed future development. The site provides current benefit to the community through the provision of match day parking and housing a fun fair at various times.
- 7.23 Other than the aforementioned uses, the site does not provide any material community benefit and as such neither proposal is considered likely to have any significant adverse impact on the local community.

### **Communications**

- 7.24 The proposals have been the subject of considerable media and public interest. Where possible the Council has been open about the issues involved and how it is dealing with them. That includes this report being presented for open discussion rather than in a closed session.

7.25 Going forward, it is likely that there will remain considerable interest in both the transaction itself and the things which flow, or are perceived to flow, from it. This would include works on the East Stand and development of the land proposed for disposal.

## **8. Background Papers**

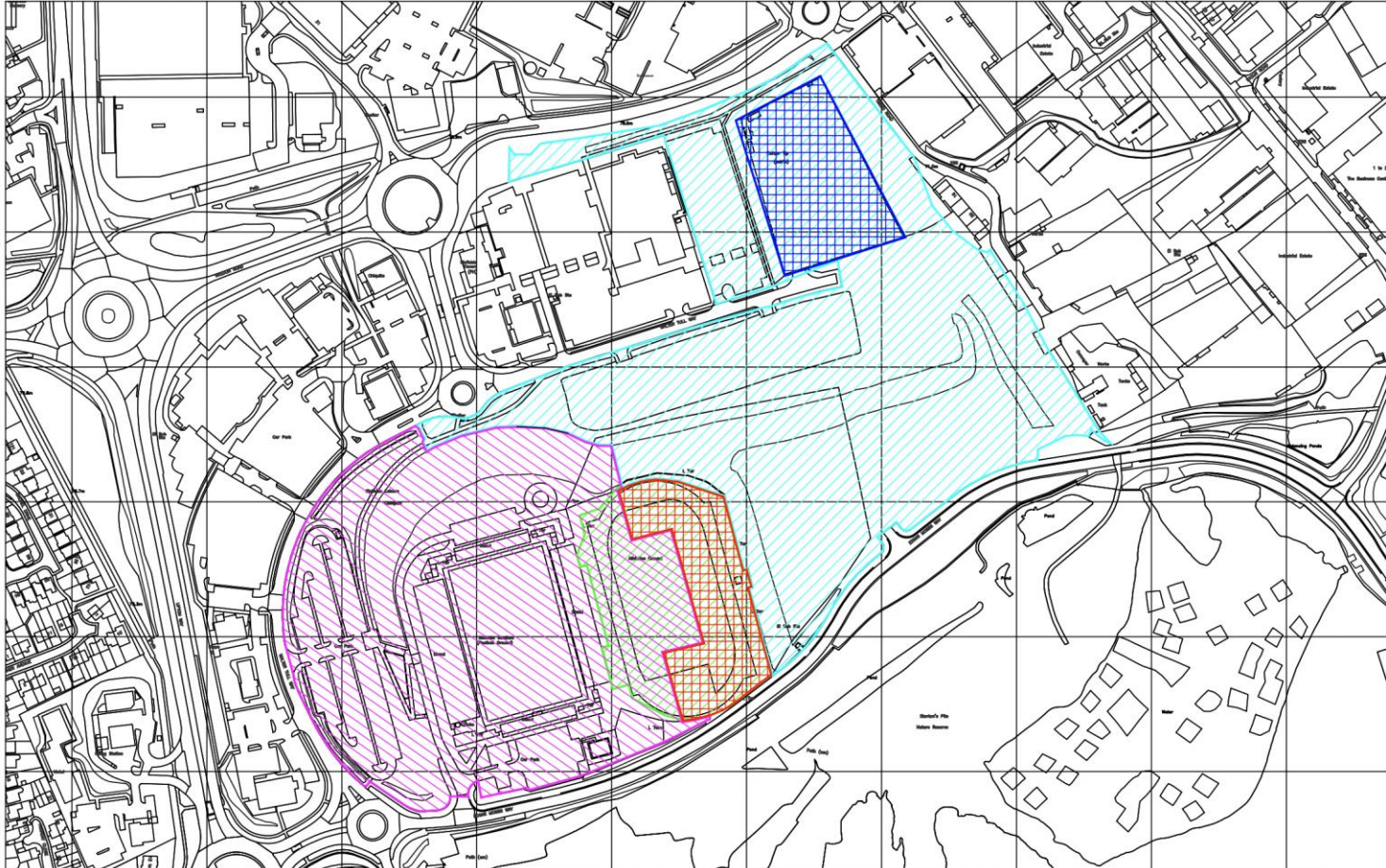
---

8.1 None








**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**

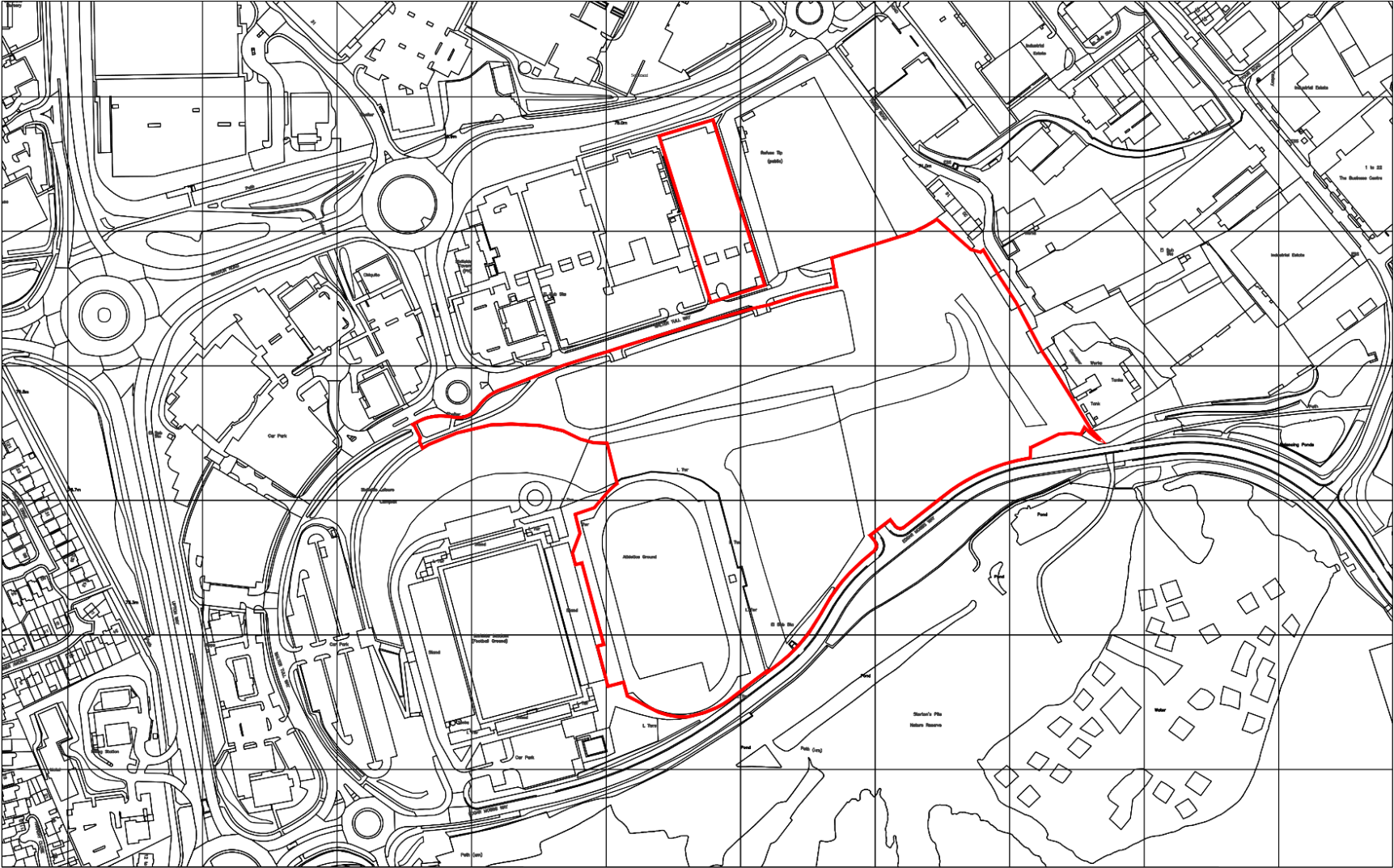
**Scale: 1:3000 at A3**

**Date: 20th January 2022**

**Drg No: 002 v2**



**Plan 2: Proposed disposal boundary for CDNL offer**



Assets & Environment

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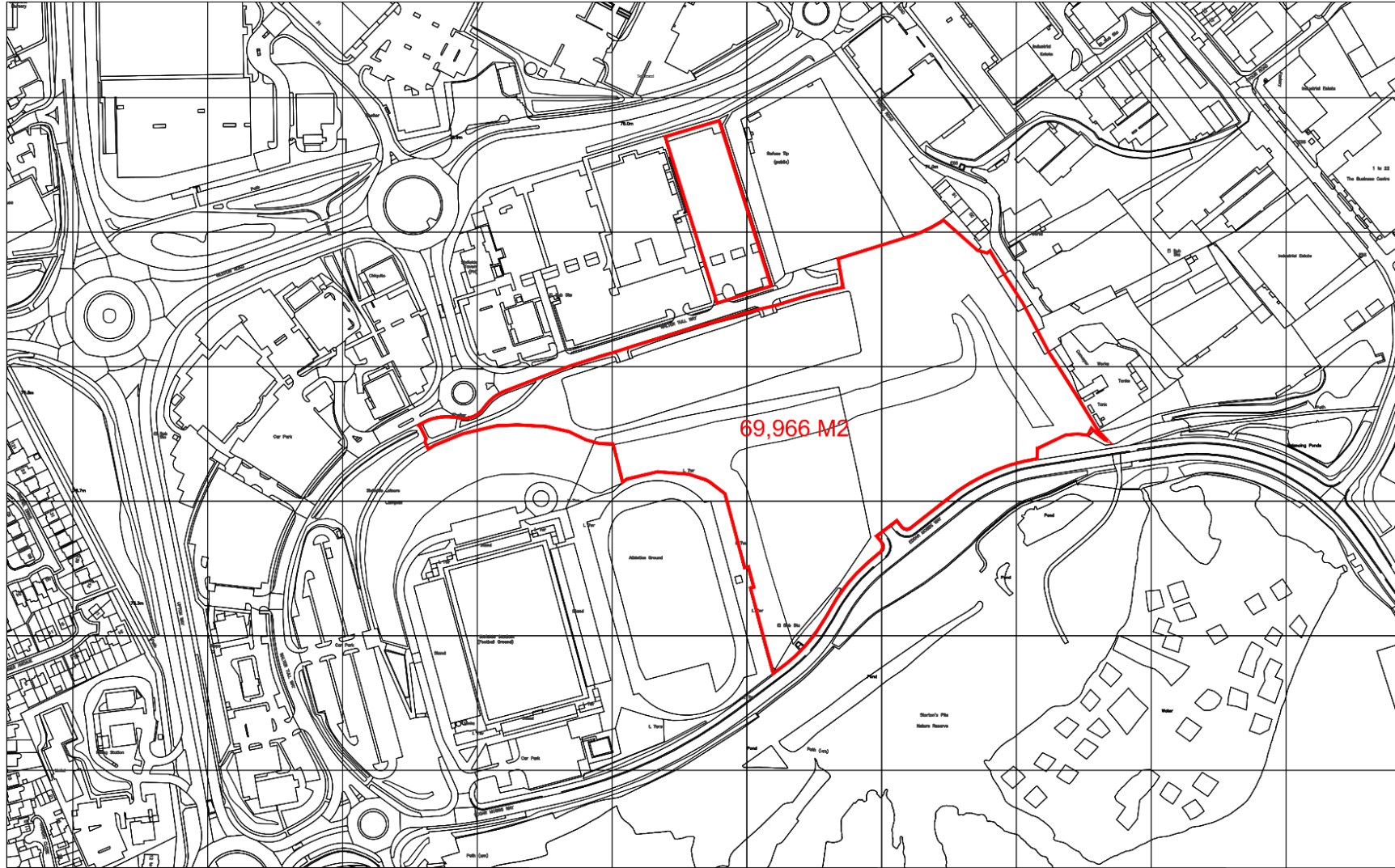
Title: Sixfields Proposal  
Northampton

Scale: 1:3000 at A3

Date: 26th November 2021

Drg No: 012

### Plan 3: Proposed disposal boundary for Cillarda offer



Assets & Environment

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Title: Sixfields Proposal  
Northampton  
Area of all red lined land 69,966 M2

Scale: 1:3000 at A3

Date: 26th November 2021

Drg No: 013

**Appendix A – Heads of Terms for proposed sale to CDNL**

<b>Section 1 – The Property</b>	
Property	<p>Land at Sixfields Northampton Northamptonshire</p> <p>The extent of The Property is shown edged Red on the attached plan. The parties agree to complete a more detailed assessment as the matter progresses.</p>
<b>Section 2 – The Parties</b>	
Seller	West Northamptonshire Council
Seller Address	<p>One Angel Square 4 Angel Street Northampton NN1 1ED</p>
Seller Contact	<p>Assets &amp; Environment West Northamptonshire Council One Angel Square 4 Angel Street Northampton NN1 1ED</p>
Purchaser	<p>County Developments (Northampton) Limited.</p> <p>Registered office: Willow House 2 Heynes Place Station Lane Witney OX28 4YN</p> <p>Company registration number: 08589683</p>
Purchaser Address	<p>Sixfields Stadium Edgar Mobbs Way Northampton NN5 5QA</p>
Purchaser Contact	<p>County Developments (Northampton) Limited Sixfields Stadium Edgar Mobbs Way Northampton NN5 5QA</p>
Football Company	Northampton Town Football Club Limited



	Registered office: Sixfields Stadium Northampton NN5 5QA Company registration number: 00183917
Football Company Address	Sixfields Stadium Edgar Mobbs Way Northampton NN5 5QA
Football Company Contact	Northampton Town Football Club Limited Sixfields Stadium Edgar Mobbs Way Northampton NN5 5QA
<b>Section 3 – General Definitions</b>	
West Northamptonshire Council	The Statutory successor to Northampton Borough Council and the Property registered proprietor of the freehold estate in the Property and the registered proprietor of a leasehold interest in part of the Property, which part is registered under Title No NN320714
Running Track Lease	Lease dated 17th September 2013 made between Northampton Borough Council (1) and County Developments (Northampton) Limited (2) of that part of the Property shown on the plan attached to that lease, which lease is registered under Title No NN342005
Main Site Lease	Lease dated 11th April 2014 made between Northampton Borough Council (1) and County Developments (Northampton) Limited (2) of that part of the Property shown on the plan attached to that lease, which lease is registered under Title No NN329042
NTFC Lease	Lease dated 13th April 2004 made between Northampton Borough Council (1) and Northampton Town Football Club Limited (2) of Sixfields Stadium and part of the Property (originally comprising the whole of the running track. The NTFC Lease is registered with Title No NN248516.
Seller's Leasehold	The leasehold estate held by the Seller of part of the Property registered under Title No NN320714
HCA (Homes England) Clawback	Clawback Deed relating to land at Sixfields, Northampton dated 11 <sup>th</sup> April 2014 and made between Homes and Communities Agency (1) and Northampton Borough Council (2)
East Stand	Means the East Stand of the Sixfields Stadium, Edgar Mobbs Way, Northampton, to as a minimum include: <ul style="list-style-type: none"> <li>• 10 hospitality boxes</li> </ul>

	<ul style="list-style-type: none"> <li>• Boardroom area</li> <li>• Restaurant and bar areas</li> <li>• Kitchen area</li> <li>• Viewing area for spectators with disabilities</li> <li>• At least 300 additional seats</li> <li>• Classroom areas suitable for educational use for children and young people under the age of 18 on non-matchdays</li> <li>• Community use areas for non-match day use</li> </ul>
Completed	Completed in accordance with all planning, building regulations and other statutory requirements and safety requirements and in accordance with the plans and specifications approved by the Seller (such approval not to be unreasonably withheld or delayed).
<b>Section 4 – The Transaction</b>	
Summary	<p>The disposal of the Seller’s freehold estate in the Property and the Seller’s Leasehold in part of the Property by the Seller to the Purchaser for the Purchase Price. The sale shall be with vacant possession on completion.</p> <p>The simultaneous surrender of the Main Site Lease and the Running Track Lease by the Purchaser.</p> <p>The simultaneous surrender by the Football Company of that part of the Property as is still included in the NTFC Lease.</p> <p>The simultaneous grant by the Purchaser to the Seller of the Option to Purchase and the Legal Charge as set out below.</p>
Purchase Price	£890,000 plus VAT (if applicable).
Option to Purchase	<p>The Purchaser agrees in return for payment of an option sum of £1 to grant the Seller an option to acquire the Freehold interest in the Property for an option price of £1.</p> <p>This option can be exercised at any time after the expiry of a period of 60 months from and including the date of the transfer of the Property unless it is agreed or determined that the East Stand has been Completed.</p> <p>The Purchaser shall notify the Seller as soon as possible that it considers that the East Stand has been Completed. Any dispute as to whether or not the East Stand has been completed may be referred to an independent expert for determination.</p>

	<p>The Option to Purchase will also be protected by a restriction on title and shall be binding on the Purchaser and their successors in title.</p> <p>Within 20 working days of the date upon which it is agreed or determined that the East Stand has been completed the Seller will make an application to Land Registry to remove the restriction.</p>
Existing Leases	<p>The Purchaser and the Football Company agree with the Seller that the following will be surrendered simultaneously with the Purchase of the Property:</p> <ul style="list-style-type: none"> <li>• Running Track Lease</li> <li>• Main Site Lease.</li> <li>• The NTFC Lease (in relation to the part comprised in the Property only)</li> </ul> <p>The Purchaser shall be required to apply to Land Registry following completion of the disposal to merge the Seller's Leasehold into the freehold estate in the Property.</p>
HCA (Homes England) Clawback and Other Conditions	<ol style="list-style-type: none"> <li>1. The Purchaser and the Seller agree that the Seller will need to satisfy the engagement obligations because of part of the site being listed as an Asset of Community Value (ACV) registration under the provisions of the Localism Act 2011.</li> <li>2. The disposal of the Property shall be subject to the Homes England Clawback and all its terms in so far as such terms relate to the Property.</li> <li>3. On completion the Purchaser shall enter a direct covenant and legal charge with Homes England in relation to the Property as required by the terms of the Homes England Clawback.</li> <li>4. From and including the date of disposal of the Property the Purchaser shall be responsible for satisfying all obligations pursuant to the Clawback Deed in relation to the Property and the Purchaser shall indemnify the Seller against all liability in relation to such obligations.</li> <li>5. The Purchaser and the Seller agree to seek to resolve any issues with the Clawback Deed (which may require a deed of variation) and the HCA's existing legal charge over part of the Property to ensure that the Seller is able to obtain HCA consent to dispose of the property and has no liability for any</li> </ol>

	<p>clawback due under the Clawback Deed in relation to the Property.</p> <p>6. The Seller, the Purchaser and the Football Company agree that the NTFC Lease will be varied so as to ensure that, post-sale, the NTFC Lease only demises land retained by the Seller. The detailed process is to be agreed between the parties.</p> <p>7. The Football Company will enter into such deeds and documents as may be necessary to enable the Seller's Leasehold to be merged into the Purchaser's freehold estate in the Property following completion of the disposal of the Property to the Purchaser</p> <p>8. The Seller is to grant the Purchaser a right of way across those parts of Walter Tull Way that do not currently form part of the Highway maintained at public expense (the adopted highway) and that are required to provide access to the Property and subject to the Purchaser paying a fair and reasonable contribution to the maintenance of the road (where applicable)</p>
Seller Legal Charge	The Seller is to be granted a First Legal Charge over the Property to secure the Clawback Overage obligations (see below) of the Purchaser (see note * below)
Clawback Overage	<p>It has been agreed between the parties that if, following negotiations the sum payable in satisfying the Homes England) Clawback is less than £770,000 (plus VAT where applicable), the Purchaser or their successor in Title is to pay 80% of this saving to the Seller.</p> <p>This above provision shall only apply if the amount to settle the Homes England Clawback has been triggered prior to the Option to Purchase referred to above being exercised by the Seller.</p> <p>The Purchaser or their successors in Title will be required to use all reasonable endeavours to minimise the sum payable in satisfying the HCA (Homes England) Clawback and provide evidence of those discussions to the Seller on request.</p>
Legal Costs	Each party is to bear their own legal costs incurred in this transaction.
<b>Section 5 – Other Conditions</b>	
Seller Conditions	Subject to Contract

	<p>Subject to Cabinet, Cabinet Member, Delegated Authority (as appropriate) or any other statutory process that may be required to complete the transaction</p> <p>Subject to the Seller complying with the requirement of the HCA (Homes England) Clawback Deed and Legal Charge.</p> <p>Subject to the Seller taking advice in relation to the SDLT / VAT implication of this transaction (and its component parts)</p>
Purchaser Conditions	Subject to the Purchaser taking advice in relation to the SDLT / VAT implication of this transaction (and its component parts)
<b>Section 6 – Legal Advisors</b>	
Seller Solicitors	<p>Browne Jacobson LLP  Mowbray House  Castle Meadow Road  Nottingham  NG2 1BJ</p>
Purchaser Solicitors	<p>Bower Bailey  Anchor House  269 Banbury Road  Summertown  Oxford  OX2 7JF</p>

(Personal information has not been included in this copy.)

Note \*: Whilst a first (i.e. highest priority) legal charge is proposed, the existing Homes England charge would outrank it unless Homes England agreed otherwise (which is unlikely), meaning that it would actually be a second legal charge. This is not a particular concern given the context.

## Appendix B – Heads of Terms for proposed sale to Cillarda

<b>Section 1 – The Property</b>	
Property	<p>Land at Sixfields Northampton Northamptonshire</p> <p>The extent of The Property is shown edged Red on the attached plan. The parties agree to complete a more detailed assessment as the matter progresses.</p>
<b>Section 2 – The Parties</b>	
Seller	West Northamptonshire Council
Seller Address	<p>One Angel Square 4 Angel Street Northampton NN1 1ED</p>
Seller Contact	<p>Assets &amp; Environment West Northamptonshire Council One Angel Square 4 Angel Street Northampton NN1 1ED</p>
Purchaser	Cill Dara Group Holdings Limited
Purchaser Address	<p>The Mill 1 High Street Henley in Arden B95 5AA</p>
Purchaser Contact	<p>The Mill 1 High Street Henley in Arden B95 5AA</p>
<b>Section 3 – General Definitions</b>	
West Northamptonshire Council	The Statutory successor to Northampton Borough Council and the Property registered proprietor of the freehold estate in the Property.
Main Site Lease	Lease dated 11 <sup>th</sup> April 2014 made between Northampton Borough Council (1) and County Developments (Northampton) Limited (2) of that part of the Property shown on the plan attached to that lease.

HCA (Homes England) Clawback	Clawback Deed relating to land at Sixfields, Northampton dated 11 <sup>th</sup> April 2014 and made between Homes and Communities Agency (1) and Northampton Borough Council (2)
<b>Section 4 – The Transaction</b>	
Summary	<p>The disposal of the Seller’s freehold estate in the Property by the Seller to the Purchaser for the Purchase Price.</p> <p>The purchase is conditional on the Seller breaking the Main Site Lease in April 2024</p>
Purchase Price	£2,050,000 plus VAT (if applicable).
Deposit	The Purchaser is to pay a non-refundable deposit equating to 5% of the Purchase Price on agreement of the Heads of terms and the respective solicitors being instructed. This deposit is only repayable to the Purchaser if the Seller withdraws from the sale through no fault of the Purchaser.
Completion Date	<p>The later of</p> <ul style="list-style-type: none"> <li>• 20 Days after the vacant possession of the site has been obtained (if earlier than the break date)</li> <li>• 20 days from the break date (April 2024) stated within the Main Site Lease</li> <li>• 20 days after the date at which any legal challenge to the Sellers break notice has been satisfied.</li> </ul>
HCA (Homes England) Clawback and Other Conditions	<ol style="list-style-type: none"> <li>1. The lease Seller agrees with the Purchaser that prior to completion of the purchase of the Property, the break clause with effect from April 2024 contained in the Main Site Lease will be exercised and will be free from legal challenge (where applicable)</li> <li>2. The disposal of the Property shall be subject to the Homes England Clawback and all its terms in so far as such terms relate to the Property.</li> <li>3. On completion the Purchaser shall enter a direct covenant and legal charge with Homes England in relation to the Property as required by the terms of the Homes England Clawback.</li> <li>4. From and including the date of disposal of the Property the Purchaser shall be responsible for satisfying all obligations pursuant to the Clawback Deed in relation to the Property and the Purchaser shall indemnify the Seller against all liability in relation to such obligations.</li> </ol>

	<p>5. The Purchaser and the Seller agree to seek to resolve any issues with the Clawback Deed (which may require a deed of variation) and the HCA's existing legal charge over part of the Property to ensure that the Seller is able to obtain HCA consent to dispose of the property and has no liability for any clawback due under the Clawback Deed in relation to the Property.</p> <p>6. The Seller is to grant the Purchaser a right of way across those parts of Walter Tull Way that do not currently form part of the Highway maintained at public expense (the adopted highway) and that are required to provide access to the Property and subject to the Purchaser paying a fair and reasonable contribution to the maintenance of the road (where applicable)</p>
Legal Costs	Each party is to bear their own legal costs incurred in this transaction.
<b>Section 5 – Other Conditions</b>	
Seller Conditions	<p>Subject to Contract</p> <p>Subject to Cabinet, Cabinet Member, Delegated Authority (as appropriate) or any other statutory process that may be required to complete the transaction</p> <p>Subject to the Seller complying with the requirement of the HCA (Homes England) Clawback Deed and Legal Charge.</p> <p>Subject to the Seller taking advice in relation to the SDLT / VAT implication of this transaction (and its component parts)</p>
Purchaser Conditions	Subject to the Purchaser taking advice in relation to the SDLT / VAT implication of this transaction (and its component parts)
<b>Section 6 – Legal Advisors</b>	
Seller Solicitors	<p>Browne Jacobson LLP  Mowbray House  Castle Meadow Road  Nottingham  NG2 1BJ</p>
Purchaser Solicitors	<p>Lodders Solicitors  Elm Court  Number Ten  Arden Street  Stratford Upon Avon</p>



	CV37 6PA
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(Personal information has not been included in this copy.)

**Appendix C – Lambert Smith Hampton Initial Viability Assessment Report**

**Appendix D – Lambert Smith Hampton Red Book Valuation Report**