

Consideration of detailed business case for the development of a new community stadium for Workington

The Reason for the Decision

To consider the detailed business case for the development of a new community stadium in Workington including consideration of options for the delivery of the project.

Summary of options considered

The detailed business case considers options for funding the development of the proposed stadium by either:

- Council borrowing
- Investor/Developer funding

Alternative procurement options are considered for both the construction and funding of the development including:

- Framework
- Regulated Procurement
- Unregulated Procurement

Alternative options are considered for the future management of the proposed community stadium including:

- Allerdale Borough Council manages and operates the Community Stadium directly.
- Management and operation by one or both of the sports clubs.
- Management and operation by a private sector operator.
- Management and operation by a specially created Stadium Management Company

Consideration is also given to the impact of not proceeding with the development.

Recommendations

It is **recommended** that:

1. That Executive approves the business case for the development of a new community stadium for Allerdale.
-

-
2. The Council undertakes a regulated procurement route to select an investor/developer to develop the new community stadium.
 3. That a business plan is developed for the establishment of a stadium management company. Approval of the business plan including the precise nature and form of the company is delegated to the Corporate Director.
 4. The procurement of a contract for the demolition of Borough Park is delegated to the Head of Place Development.
 5. Council authorise a guarantee of the head lease to the investor, the final details of which will be delegated to the Corporate Director in conjunction with the Statutory Officers.

Financial / Resource Implications

The financial implications are set out in the report and associated detailed business case.

Legal / Governance Implications

The Council has the power to support the development of a community stadium under section 145 Local Government Act 1972 (entertainment power), section 144 (power to encourage visitors) and the power to do anything that is calculated to facilitate or is conducive or incidental to the development in section 111 Local Government Act 1972, along with the general power of competence in the Localism Act 2011 to do anything an individual could do. The Council must also exercise its powers properly taking into account all relevant considerations, including having regard to the funding available to the Council and the impact on residents and taxpayers of the cost of the development and the short and long term returns, both financial and in the wider economy (e.g. jobs, business rate income and other benefits).

In making decisions on the project the Council must take into account all relevant considerations and ignore irrelevant considerations and not make a decision that is so unreasonable (i.e.

perverse) that no reasonable authority could make it.

Community Safety Implications

Community safety implications arising from the proposed development will be addressed through the planning process, further detailed design work, management of the construction project and the future operational management of the stadium. It will be necessary for the stadium to have a General Safety Certificate which is issued by the County Council following advice and inspection by the Safety Advisory Group to ensure the safety of spectators.

Health and Safety and Risk Management Implications

In relation to the design work currently being undertaken the appointed Architect is undertaking the role of Principal designer under the CDM Regulations.

A comprehensive risk register for the project has been developed and is regularly reviewed by the project steering group. A copy of the current risk register is appended to this report.

Equality Duty considered / Impact Assessment completed

Yes

Wards Affected

Workington, St Michaels

The contribution this decision would make to the Council's priorities

Tackling Inequality – creation of additional employment opportunities

Strengthening our economy – creation of additional employment opportunities, support additional economic activity and attract new visitors to Allerdale.

Enhancing our towns – regeneration of a key site, stimulate increased footfall and activity that will support town centre business.

Improving health and wellbeing – provision of first class healthcare facilities and encourage increased participation in sport and recreation.

Creating a sustainable business – delivery of improved services to the community and create potential new income streams for the Council.

Is this a Key Decision

Yes

Portfolio Holder

Councillor Mark Fryer

Lead Officer

Andrew Seekings - Corporate Director
Andrew.Seekings@allderdale.gov.uk

Report Implications (Please delete where applicable).

| | | | |
|------------------|---|--------------------------------------|---|
| Community Safety | Y | Employment (external to the Council) | Y |
| Financial | Y | Employment (internal) | Y |
| Legal | Y | Partnership | Y |
| Social Inclusion | Y | Asset Management | Y |
| Equality Duty | Y | Health and Safety | Y |

Background papers: Equality Impact Assessment

1.0 Introduction and Background

- 1.1 In early 2018 the Council was approached by Workington Town Rugby League Club and Workington Reds AFC to seek the Council's support in the consideration of proposals to develop a new community stadium that would provide new facilities for the clubs as well as the wider community. The clubs recognised that the age and deteriorating condition of the existing stadia at Borough Park and Derwent Park provided significant ongoing challenges in terms of maintaining these facilities to the standard required to comply with legislation relating to safety at sports grounds as well as meeting the future ambitions of the clubs. The Council owns the freehold of both sites and therefore has a key role to play in any redevelopment scheme both as a landowner and the potential contribution that such a development can make to the delivery of a number of key Council priorities.
- 1.2 As members will be aware from previous reports relating to this project, following the initial approach a Project Board was established, including representatives from the Council, Workington Reds and Workington Town. An officer steering group chaired by the Corporate Director was established, project management support was procured and a design team appointed to identify a preferred site and develop proposals for the development of a new stadium.
- 1.3 From an early stage, informed by research and consideration of similar proposals elsewhere, it was clear that the development of a new stadium simply providing match day facilities for the sporting clubs would be unlikely to be financially sustainable. The aim of the project board and steering group was therefore to develop proposals that would incorporate related development and alternative uses into the stadium to ensure the long term viability and financial sustainability of the proposal. Hospitality and conference

facilities were considered to be a key component of the offer that could be provided by a new stadium facility. Discussions with the NHS identified an opportunity to incorporate healthcare facilities into the development which is a form of development that has been successfully incorporated into the development of community stadiums elsewhere and will make a significant contribution to delivering the Council's priorities in relation to health and well-being. Subsequent discussion with Sellafield Ltd identified an opportunity to accommodate up to 300 office staff within the development in this key location close to the town centre with the potential to make a significant contribution to the long term viability of the project and support the vitality and viability of Allerdale's principal service centre of Workington. Design development work was therefore progressed on the basis of including provision for both the NHS and Sellafield within the scheme design.

- 1.4 On 16 January 2019 Executive considered an outline business case for the development of a new community stadium in Workington. Executive agreed to proceed with the proposals on the site of Borough Park and the former Lonsdale Park, based on the following main components forming part of the scheme design.
 - 8000 capacity stadium with a mix of seating and standing
 - Hybrid grass playing pitch
 - Separate 3G synthetic pitch for community use with related changing rooms
 - Hospitality and conference facilities
 - 2,600m² floorspace for NHS
 - Pharmacy
 - 2,700m² office floorspace
- 1.5 The exact floorspace requirement for the NHS and office uses will be refined through the ongoing design development.
- 1.6 The approval to proceed with the scheme development was subject to the subsequent approval of the full business case including the financial business case, operating arrangements, funding arrangements and the grant of planning permission. It was also agreed that further work be undertaken in relation to the delivery of the project including further design work, ground investigations and negotiations with key tenants.
- 1.7 In taking the decision to proceed with the project it was acknowledged that there was a strong strategic and economic case for the development of a new community stadium and that this would make a significant contribution to the delivery of the Council's priorities in particular those relating to strengthening our economy, enhancing our towns and improving health and well-being. The proposed development would offer significant benefits not only for Workington but Allerdale and West Cumbria as a whole, provide first class facilities for Workington Town and Workington Town and the opportunity for Allerdale to host international sporting events such as the Rugby League World Cup in 2021.

- 1.8 This report provides an update in relation to further work undertaken by the project team and is accompanied by a detailed business case which builds on the outline business case previously considered and provides additional information in relation to the development cost and funding options for the development, the operating costs and expenditure associated with the operation of the stadium, and the procurement options associated with the delivery of the development.

2.0 Project Update

Planning Application

- 2.1 A planning application was submitted for consideration and registered as a valid application on 31 January 2019 (Planning application reference FUL/2019/0018) and is currently being assessed by the planning team. The planning application has been the subject of extensive consultation with a range of statutory consultees and interested parties. As with any planning application the consultation has raised a number of queries and requests for further information and the stadium project team is working with planning officers to ensure these queries are answered. The project team is confident that all of the issues raised to date can be satisfactorily addressed. It is currently anticipated that the planning application will be considered by the Development Panel in April 2019.

Rugby League World Cup 2021

- 2.2 As members will be aware on 29 January 2019 Workington was announced as venue for the 2021 Rugby League World Cup (RLWC) and has been allocated three group matches. The bid to host the RLWC was predicated on the development of a new stadium. The Council will be required to enter into a hosting agreement with the RLWC and this will be the subject of a separate report to Executive which will include details of hosting a team.
- 2.3 Hosting three games as part of the RLWC in 2021 will bring significant economic benefits to Workington and the wider area and will raise the profile of Allerdale nationally and internationally. The business case for the development of the proposed stadium is not dependant on the RLWC but being able to host these games will bring additional economic benefits to the area and illustrates the type of event that the stadium can attract in the future.

Design Development and Site Investigations

- 2.4 As agreed by Executive on 16 January a programme of site investigations have been commissioned including intrusive ground investigations and an asbestos survey of the existing football ground at Borough Park. As members may be aware from recent activity at the site this work has been ongoing and final reports are expected to be received in early April. These reports will inform the ongoing design work as well as proposals for the demolition of the existing buildings and structures at Borough Park.

- 2.5 In continuing to develop the design work in accordance with the requirements of RIBA Stage 3 meetings have taken place with the NHS and Sellafield to understand their design requirements. Further development of the cost plan has been undertaken and the current development cost is estimated at £26.8 million.

Transitional Arrangements

- 2.6 As a consequence of the selection of the preferred site the existing football ground at Borough Park will have to be demolished in advance of the construction of the new stadium. This means that Workington Reds will require an alternative venue to be able to fulfil their fixture commitments for the 2019/20 season and until the new stadium is complete in 2021.
- 2.7 Supported by the Council's project team, and in particular the Sports, Arts and Leisure officer, representatives of Workington Town and Workington Reds are working closely together to develop proposals to share the facilities at Derwent Park for the duration of the construction project. To satisfy the requirements of the Northern Premier League and enable Workington Reds to play their home fixtures at Derwent Park will require improvements to the dressing room facilities as well as the widening and improvement of the playing surface. A specification for the works required to upgrade the pitch at Derwent Park as well as an enhanced maintenance regime that will enable the pitch to support the playing requirements of both clubs has been provided by an experienced pitch consultant. Workington Reds are required to seek the approval of the Northern Premier League for the proposed ground sharing arrangements and it is understood that this is being progressed by the football club.
- 2.8 Agreement of the proposed transitional arrangement along with the agreement of Heads of Terms for the use of the proposed new stadium is subject to the clubs own internal governance requirements being satisfied. It is understood that both clubs are currently planning to hold Extraordinary General Meetings.

3.0 Detailed Business Case

- 3.1 A detailed business case for the development of the proposed community stadium in Workington is included in full at Appendix A. This is a development of the outline business case considered by Executive on 16 January but does include further detail, particularly in relation to the financial business case, proposed funding arrangements and consideration of the procurement processes associated with the proposed development.
- 3.2 The detailed business case is structured as follows:
- **Project vision:** This section sets out the vision for the development of a new community stadium in Workington which was agreed by Council representatives, Workington Reds AFC and Workington Town RFLC.

- **Strategic business case (SBC):** This section sets out the strategic, spatial, health context for the proposed stadium and outlines the potential benefits that would be associated with the proposed development. In developing the strategic business case we have now developed the following outputs.

Sports participation increase from stadium

- 20% increase in women and girls playing football and rugby
- 20% increase in disabled people of all ages playing football and rugby
- 10% increase in over 55's through walking football and rugby
- 10% increase in men and boys playing football and rugby
- 100 students or apprentices in Sport development /Physiotherapy

All of these increases will have a positive impact on childhood and adult obesity.

Visitor growth

- 2% increase in visits (tourists and business) to Allerdale - £9,480,000 additional spend (158,000 visits @£60)

Conferencing and Events

- 4 major conferences attracting 1600 visitors
- 4 major events attracting 25,000 visitors and a range of other events

Further regeneration as part of Derwent Valley Masterplan

- Estimated £36m in Gross Development Value in new office, retail and housing.

Improved health provision

- Working in partnership with the NHS to provide improved primary care provision with the intended outcome to improve access and resilience.
- **Economic appraisal:** This section considers the economic benefits associated with the proposed stadium and the benefits for local people, businesses, visitors and the wider economy. Consideration is given to both the direct and indirect benefits arising from the development as

well as the temporary employment opportunities that will be created as a result of the construction project. Consideration is also given to the economic benefits of the new stadium hosting the Rugby League World Cup in 2021. Over the next 50 years we believe the economic impact will be in excess of £145 million.

- **Comparator study:** This section sets out a review of a number similar stadium developments elsewhere which were visited by the clubs and project teams and how lessons learnt from these developments have informed the development of the proposals for the new community stadium.
- **Site options:** This sections sets out the alternative site options considered, the criteria taken into account and the reasons for identifying Borough Park along with the adjacent land at the former Lonsdale Park as the preferred location for the proposed new community stadium.
- **Planning issues:** This section outlines the main planning issues to be taken into account in relation to the proposed development and outlines the current position in relation to the planning approval process.
- **Capital costs and financial model:** This section considers both the construction costs associated with the delivery of the proposed community stadium, the gross development costs likely to be associated with each of the funding options considered and the operating costs of the stadium.

Consideration is given to two options for the funding of the proposed development these being:

- Option 1 – Council Borrowing
- Option 2 – Investor/Developer route

The borrowing or lease payment costs relating to each of these options is considered

Financial modelling has been undertaken based on detailed evidence assumptions based on scenarios of how the stadium will operate and the funding model which is agreed.

Consideration is given to the income generation potential of the stadium as well as the cost of operating and running the facility. This includes rental income based the clubs paying the stadium company a percentage of gate receipts as well as receipts from naming rights and events. Running costs considered include staffing, cleaning, insurance and NNDR.

- **Stadium governance, management and operation:** This section sets out the current landholding and property arrangements and proposed arrangements with the clubs required to facilitate the development. It also outlines the proposed commercial arrangements with the NHS, Sellafield Ltd and the sporting clubs along with the proposed operational arrangements for the new community stadium.

Options for the management of the stadium are considered and a recommended approach put forward including consideration of the legal powers and governance issues to be considered in the establishment of a stadium management company.

Consideration is given to state aid and procurement issues relating to the establishment of a stadium management company

- **Procurement Strategy for the Community Stadium:** This section sets out the procurement options and requirements for each of the funding options considered for the delivery of the proposed stadium development.
- **Impact of not proceeding with the development:** This section highlights the implications of not proceeding with the development of the proposed community stadium in terms of the impact on delivering the Council's priorities, the loss of the opportunity to host the RLWC2021 and the potential impact on the sporting clubs.

4.0 Options Appraisal

- 4.1 The detailed business case (DBC) sets out a range of detailed information about financing, development, procurement and the proposed operating model. The options set out below take into account a range of inter-related factors that cross over a number of these areas to recommend a route that the Council believes will provide an optimum mix of managing risk and deliverability.

Financing and Development Option

- 4.2 As the DBC sets out, the Executive can see that there are two routes available for the Council. Route one requires the Council to borrow the money, finance the build of the stadium, and pay the financing costs for two years until the leases start to generate income from the NHS, Sellafield, Workington Town, Workington Reds and the pharmacy. This route relies on the Council being prepared and having the appetite to borrow the money from the PWLB and having all the skills in house (or appoint interims/consultants) to ensure this route is successful in terms of both managing the process and managing the extra costs through additional savings across the Council or using balances to fund the initial costs. The key financial advantage of this model is that total costs are lower than the investor developer route - development profit is not required nor investor profit nor the costs of a lease and lease back (including SDLT) so the initial capital outlay is less. Therefore

the gross development cost with fees comes to £28.6 million taking into account year one fit out costs and grants receivable the total borrowing requirement will be £27.6 million.

- 4.3 As set out in the DBC, this route as currently modelled, means the Council (through the wholly owned Stadco) would need to pay those upfront costs plus the cost of borrowing. This would mean that the stadium would not break even until year 8 and not make a cumulative surplus until year 17.

30 year borrowing

| | Construction | | Operational Year | | | | |
|------------------------------|--------------|----------------|------------------|--------------|--------------|--------------|--------------|
| | C1 | 1 to 5 | 6 to 10 | 11 to 15 | 16 to 20 | 21 to 25 | 26 to 30 |
| | £000 | £000 | £000 | £000 | £000 | £000 | £000 |
| Income | 0 | 9,035 | 13,382 | 15,893 | 18,351 | 21,194 | 24,479 |
| Expenditure | 652 | 15,279 | 15,131 | 14,874 | 14,683 | 14,565 | 14,533 |
| Profit/loss (pre-tax) | (652) | (6,243) | (1,749) | 1,019 | 3,668 | 6,629 | 9,945 |
| Fit out | 0 | 0 | | | | | |
| (Deficit)/ Surplus | (652) | (6,243) | (1,749) | 1,019 | 3,668 | 6,629 | 9,945 |

- 4.4 The bullets points below set out the financial implications if the Council Borrows £27.6 million over 30 year term.

- Total repayment of loan plus interest of £42.4m
- Need to finance borrowing costs over construction phase and before Stadium company operational at a cost of £652k
- Borrowing charges from Year 1 of £1.863m pa which reduce to £926k in the final year (year 30).

- Stadium Company Years 0 to 7 would have a cash shortfall of £5.026m before making a surplus from Year 8 onwards which would need to be supported by the Council.
- Cumulative position would report a loss until year 16
- From Year 17 Stadium Company forecasts healthy surplus
- Sports Club assumed sustain positions and retain crowd numbers
- Tenants continue to occupy with 5 yearly rent reviews (15%)

- 4.5 The second option is one where the Council uses an investor/developer (I/D) model to both finance and develop the stadium, the I/D route will mean that the Council will need to guarantee the income to the investor, as set out in the DBC, through the Stadium Operating Company (Stadco). This model could be funded over a 40/45/50 year agreement and the longer the agreement the lower the annual cost (similar to a mortgage) based on period to pay back as well as the indicative yield. However, the Council has to pay the rent on its

| | | | | | | | | | | | |
|-------------------------------|----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|
| (Deficit)/ Surplus | 0 | (360) | 3,120 | 4,269 | 5,176 | 6,257 | 7,536 | 9,047 | 10,090 | 11,343 | 12,612 |
|-------------------------------|----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|

- Starting lease rent of £937,865 pa inflating annually
- Final Year 50 lease rent of £3,299,291
- Total lease payment over term of 50 years would be £95,210,685
- Lease rentals would only be due once the stadium has been built, the Stadium Company is operational and the tenants are paying rents.

- Stadium Company estimates a small deficit for Years 1 to Year 4 of £7,963
- From year 5 model estimates healthy surplus
- Stadium Company would need an additional £500k in Year 1 for fit-out costs
- Sports Club assumed sustain positions and retain crowd numbers
- Tenants continue to occupy with 5 yearly rent reviews (15%)

4.8 Crucially, the business case demonstrates that if we model the Investor/Developer Option with GDV £33m, again over 50 year lease back with commercial tenants on 5 yearly annual reviews, but assumes a worst case scenario that after 30 years the NHS and Sellafield walk away, the Council still has a cumulative profit at the end of 50 years:

- Tenants continue to occupy with 5 yearly rent reviews (15%) until Year 30 – from Year 31 NO Commercial Income
- Up to this point Cumulative surplus of £26m
- Year 31 to Year 50 losses of £17.6 million
- At end of 50 year period still report a cumulative profit
- No net cost to ABC

4.8 We have also set out the scenario for a 40 year agreement modelled using the Investor/Developer route:

**40 year I/D
model**

| | Construction | | Operational Year | | | | | | |
|----------------------------------|--------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | C1 £000 | 1 to 5 £000 | 6 to 10 £000 | 11 to 15 £000 | 16 to 20 £000 | 21 to 25 £000 | 26 to 30 £000 | 31 to 35 £000 | 36 to 40 £000 |
| Income | | 9,035 | 13,382 | 15,893 | 18,351 | 21,194 | 24,479 | 28,272 | 31,913 |
| Expenditure | | 9,381 | 10,820 | 12,267 | 13,913 | 15,786 | 17,919 | 20,348 | 23,115 |
| Profit/loss (pre-tax) | 0 | (345) | 2,562 | 3,626 | 4,438 | 5,408 | 6,559 | 7,924 | 8,798 |
| Fit out | | (500) | | | | | | | |

| | | | | | | | | | |
|-------------------------------|----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| (Deficit)/ Surplus | 0 | (845) | 2,562 | 3,626 | 4,438 | 5,408 | 6,559 | 7,924 | 8,798 |
|-------------------------------|----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|

- Starting lease rent of £1,035,000 pa inflating annually
- Final Year 40 lease rent of £2,753,121
- Total lease payment over term of 40 years would be £71,036,289
- Lease rentals would only be due once the stadium has been built, the Stadium Company is operational and the tenants are paying rents.

- Equates to a Year 1 Profit Rent of £19,214
- Stadium Company estimates a loss for Years 1 to Year 4 of £396,505
- Stadium Company would need an additional £500k in Year 1 for fit-out costs
- From Year 5 the company forecast healthy surplus.
- Sports Club assumed sustain positions and retain crowd numbers
- Tenants continue to occupy with 5 yearly rent reviews (15%)

4.10 Based on the technical information in the DBC and the advantages see out above, it is recommended to Executive that the Investor/Developer route be used. The advantages of utilising the skills of an experienced developer and construction partners; and break-even costs provide reasons why this is a compelling route to follow. The Council would not need to borrow the £6m already in the MTFP and therefore, make a revenue saving of £400,000 per year from 2021/22 which would be available to fund the fit out required in year one.

Procurement of Investor/Developer

4.11 As set out in the DBC, there are two options available to the Council to procure the I/D, a regulated route and an unregulated route, both routes provide the Council with legal routes, but with differing levels of risk and deliverability. The Council considered that the unregulated procurement option was not suitable for this project as it did not provide the appropriate amount of risk mitigation, control and competition.

4.12 The regulated route allows the Council to issue an OJEU notice to a number of potential I/D entities with an accelerated process to submit detailed solutions and to enter into dialogue. This would then proceed to preferred developer stage, who would then progress design from RIBA stage 3 to stage 4. It is estimated that using this process would mean that the Council would have a preferred bidder and fully designed scheme to RIBA 4 ready for work to commence on site by January 2020.

4.13 The advantages of a regulated procurement include:

- Lower risk of challenge to any procurement.
- Known procurement route with less scope for negotiation (but the Council would need to invest in consultants/interims to support in managing the process).
- Council control over the design and operation of the Stadium and commercial facilities and provide more guarantee to the partners on issues relating to start and end dates.
- Certainty over the sub-leases to the commercial tenants rather than being unable to enter into binding leases for the I/D route that relies on the Council not being committed to take the lease-back.

Operating Model

- 4.14 The DBC sets out the options for operating the new Stadium, it is considered there are 4 options:
- a) Option 1: Allerdale Borough Council manages and operates the Community Stadium directly.
 - b) Option 2: Management and operation by one or both of the sports clubs.
 - c) Option 3: Management and operation by a private sector operator.
 - d) Option 4: Management and operation by a specially created Stadium Management Company
- 4.15 The DBC sets out a detailed technical appraisal of these options. The DBC concludes that the Council creates a stadium management company (Stadco) to manage and operate the community stadium. This approach ensures that the Council retains a degree of control of the stadium asset while simultaneously balancing its risk exposure. Establishing a separate company will ensure that the stadium is run as a business enterprise with the ability to react to commercial opportunities as they arise and with a constant focus on the long-term economic sustainability of the facility and the clubs. If the clubs take an active role on the stadium joint management board then this would not only represent a sharing of operational and financial risk but would further demonstrate the parties' commitment to collaboration and a long-term fruitful working relationship. It is, however, key for the Council to ensure that it retains a controlling interest in the stadium management company to protect its interests in the asset.
- 4.16 The precise nature and structure of the company will be shaped by the relationship between the Council, the investor, the developer, the users and tenants of the stadium as well as regulatory and commercial requirements. This will, in turn, be driven by the overall structure of the development proposal and can, therefore, be finalised only following a decision on the preferred development model and/or following procurement of the investor-developer.
- 4.17 It is therefore recommended that a Stadco is created and that the precise nature and form of this entity is delegated to the Corporate Director.

5.0 Demolition Contract

- 5.10 As set out in the consideration of the procurement route set out in the detailed business case, to ensure that the construction programme can be delivered within the timescales provided by ecological constraints it will be necessary progress with the demolition of Borough Park in advance of the main contract award. This will require the award of a separate demolition contract and it is recommended that the identification of a suitable procurement route and

6.0 Finance/Resource Implications

The financial implications are set out in the report and associated detailed business case.

7.0 Legal Implications and Risks

- 7.1 The Council has the power to support the development of a community stadium under section 145 Local Government Act 1972 (entertainment power), section 144 (power to encourage visitors) and the power to do anything that is calculated to facilitate or is conducive or incidental to the development in section 111 Local Government Act 1972, along with the general power of competence in the Localism Act 2011 to do anything an individual could do. The Council must also exercise its powers properly taking into account all relevant considerations, including having regard to the funding available to the Council and the impact on residents and taxpayers of the cost of the development and the short and long term returns, both financial and in the wider economy (e.g. jobs, business rate income and other benefits).
- 7.2 In making decisions on the project the Council must take into account all relevant considerations and ignore irrelevant considerations and not make a decision that is so unreasonable (i.e. perverse) that no reasonable authority could make it.
- 7.3 The Council has a range of powers to pursue the stadium project as reported to Cabinet on 16 January 2019, including leisure and entertainment powers, incidental powers and ultimately the general power of competence. However, there are two limbs to the ultra vires doctrine - as well as finding the power, the Council must exercise its powers properly. Local authorities must act for proper purposes, in good faith and must exercise their powers following proper procedures in a "Wednesbury reasonable" manner.
- 7.4 In other words Council must act for proper motives, taking into account all relevant considerations, ignoring irrelevant matters, not acting irrationally and balancing the risks against the potential rewards. Additionally, local authorities must consider the usual fiduciary, best value, crime and disorder reduction, equalities, health and wellbeing and other relevant overarching duties to take into account when making decisions, as well as any explicit requirements placed on a power.

- 7.5 The design should take into account the public sector equality duty and ensure access for everyone as well as ensuring the design minimises the likelihood of crime and disorder occurring. Flood risk management may also be key to the design.
- 7.6 **Best Consideration:** The Council in the forward funding (lease and lease back) arrangement will be disposing of a legal interest in land to the investor/developer. Section 123 Local Government Act 1972 allows local authorities to dispose of land "in any manner they wish" provided that best consideration is obtained, for any interest for a term exceeding 7 years. Disposals of land for more than 7 years for less than best consideration require the consent of the Secretary of State. There is a general consent for up to £2m where land is disposed of for wellbeing purposes, but that could give rise to state aid and is unlikely to be of relevance here.
- 7.7 The advice of a valuer is being sought to determine whether in the lease and leaseback arrangements, the Council will meet its duty to secure best consideration. Consideration must be valued in money or money's worth and may not take into account jobs and the benefits to the local economy. Consideration would include the development of the stadium and commercial facilities and the fact the Council gets the full title back in the longer term with the stadium and buildings. Valuers advice on alternative potential uses of the commercial and other premises in the event that any of the tenants fail to renew their leases or worse go out of business would also be advised, consistent with MHCLG Investment Guidance updated in 2018.
- 7.8 A comprehensive risk register for the project has been developed and is regularly reviewed by the project steering group. A copy of the current risk register is appended to this report.

8.0 Community Safety Implications

- 8.1 Community safety implications arising from the proposed development will be addressed through the planning process, further detailed design work, management of the construction project and the future operational management of the stadium. It will be necessary for the stadium to have a General Safety Certificate which is issued by the County Council following advice and inspection by the Safety Advisory Group to ensure the safety of spectators.

9.0 Recommendations

It is recommended that:

1. That Executive approves the business case for the development of a new community stadium for Allerdale.
2. The Council undertakes a regulated procurement route to select an investor/developer to develop the new community stadium.

3. That a business plan is developed for the establishment of a stadium management company. Approval of the business plan including the precise nature and form of the company is delegated to the Corporate Director.
4. The procurement of a contract for the demolition of Borough Park is delegated to the Head of Place Development.
5. Council authorise a guarantee of the head lease to the investor, the final details of which will be delegated to the Corporate Director in conjunction with the Statutory Officers.