

Paragraphs 3 of Part 1  
Schedule 12A of the Local Government Act 1972

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**This is a private report as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it refers to the identity, financial and business affairs of an organisation and the amount of expenditure/income proposed to be incurred/received by the Council under a particular contract for the supply of goods or services.**

**Cabinet  
Council**

**7 October 2014  
7 October 2014**

**Name of Cabinet Member:**  
Councillor Lucas

**Director Approving Submission of the report:**  
Chief Executive

**Ward(s) affected:**  
All

**Title:**  
Asset Review

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**Is this a key decision?**

Yes

Sale of shares held by the City Council, via North Coventry Holdings Ltd, in Arena Coventry Limited to London Wasps Holding Limited and the subsequent sale of a lease extension to ACL to 250 years.

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**Executive Summary:**

This reports sets out the proposal that the City Council (through North Coventry Holdings Ltd) sells 100% of its shares in Arena Coventry Ltd to London Wasps Holdings Ltd. This represents 50% of the total shares of Arena Coventry Ltd. There is a further proposal to extend the lease to ACL 2006 to a period of 250 years. The effect of these commercial transactions is that the City

Council would no longer be involved in the management or operational running of the Ricoh Arena. It is proposed that the £14m existing loan provision would remain in place so that the City Council would maintain its position as banker for this commercial loan facility. The City Council will also retain its fixed and floating charge over all the assets of ACL under the terms of this loan facility and will also remain as freeholder of the Arena site.

**Recommendations:**

Cabinet

- 1 To delegate authority to the Assistant Director Finance and the Council Solicitor to execute all necessary agreements to give effect to the proposals in the report; and
- 2 To delegate authority to the Assistant Director Finance and the Council Solicitor as appropriate, in consultation with the Leader and Deputy Leader of the Council, to make any variations or new requirements to give effect to the proposals that are deemed necessary.

Cabinet to recommend to Council

- 1 To approve the sale of 100% of the shares in Arena Coventry Limited currently held by the the Council via North Coventry Holdings Limited (50% of the total shares in ACL) for £2.77m to London Wasps Holdings Limited.
- 2 To approve the sale of a lease extension to Arena Coventry Limited of 211 years for £1m giving a total lease duration of 250 years subject to the acquisition by London Wasps Holdings Limited of the other 50% shareholding in ACL.

Council is also recommended to

- 3 Delegate authority to the Chief Executive in consultation with the Leader of the City Council to determine whether or not to appoint a [observer or Non-Executive Director to the Board of ACL] following the sale of the Council's shares and if so to nominate the NED and terms of that appointment and any subsequent replacement
- 4 Endorse the delegation of authority to the Assistant Director Finance and the Council Solicitor as appropriate, in consultation with the Leader and Deputy Leader of the Council, to make any variations or new requirements to give effect to the proposals that are deemed necessary.

**List of Appendices included:**

None

**Other useful background papers:**

ACL Valuation Opinion Report – KPMG, October 2014  
ACL Independent Business Review – KPMG, July 2014

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

Yes

ACL Shareholders Panel

**Will this report go to Council?**

Yes

7 October 2014

**Report title:**

**1. Context (or background)**

**1.1 Background to the Arena Project**

1.1.1 The Coventry Arena project was approved by the City Council in October 2003. Its aim was to regenerate a derelict former gasworks site and to provide a modern multi use Arena which would achieve the following objectives:

- Regeneration and inward investment
- Job creation
- Promotion of the city
- To provide a sporting and cultural venue

The Arena opened in August 2006 and, following the award of a contract for naming rights, became known as the Ricoh Arena. The construction of the Arena was part of a much larger regeneration project which also saw the development of a large retail park on an adjoining part of the site.

1.1.2 The Arena is managed by Arena Coventry Limited (ACL), a company which is owned 50% by the City Council (via North Coventry Holdings Ltd [NCHL]) and 50% by the Alan Edward Higgs Charity (AEHC) (via Football Investors Ltd [FIL]). ACL 2006 is a wholly owned subsidiary of ACL and for the purposes of this report where ACL is referred to unless otherwise stated this comprises ACL and its subsidiary ACL 2006. ACL 2006 holds a lease to operate the Arena site dated 19<sup>th</sup> December 2003 and for a term of 50 years. The term of existing lease expires in 39 years time on 16<sup>th</sup> December 2053.

1.1.3 Since it opened in August 2006 the Arena has been a significant success. In that time it has created in excess of 3,500 jobs, including the associated retail park, and has become a high profile venue for concerts, conferences, exhibitions and sporting events. In the summer of 2012 Coventry became an Olympic city as the Ricoh Arena played host to Olympic football matches. The Arena has also hosted European Cup rugby matches, under 21 football internationals and professional darts, tennis and snooker competitions. It has also played host to some major music concerts including Take That, Oasis, Coldplay and Bruce Springsteen. In addition it was the home venue for Coventry City Football Club from 2006 until the end of the 2012/13 season.

1.1.4 After some initial losses while the business became established, ACL has been profitable throughout this period, up until the point at which Coventry City Football Club ceased to be a tenant under its original lease and licence agreement. Profits in the last 5 financial years are as follows:

|         |   |        |
|---------|---|--------|
| 2008/09 | - | £3.22m |
| 2009/10 | - | £0.55m |
| 2010/11 | - | £0.47m |
| 2011/12 | - | £1.09m |
| 2012/13 | - | £0.78m |

1.1.5 ACL's accounts for the financial year 2013/14 are yet to be published. This was the first full year in which no income arising from football activities will have been generated and it is expected that a loss will be reported for this year.

## 1.2 Coventry City Football Club

- 1.2.1 The Ricoh Arena was always intended to be the home ground for Coventry City Football Club. Indeed at the conception of the project it was envisaged that the Football Club would be the City Council's other 50% partner in the Arena project. However before the project was completed CCFC, due to their ongoing financial difficulties, sold their 50% stake in the project to AEHC. The Football Club however did continue to have the Ricoh Arena as their home ground and had use of stadium bowl and various other premises within the Arena which they occupied under a lease and licence agreement with ACL at a charge of approximately £1.3m per annum.
- 1.2.2 The current owners of the Football Club, Otium Entertainment Group Limited (a SISU related company), inherited those lease and licence agreements when they purchased the Football Club in 2008. Despite the additional investment made by SISU the club continued to face significant ongoing financial challenges off the field. At the same time on field performances also began to deteriorate to the extent that in May 2012 CCFC were relegated to League One of the Football League, effectively the third tier of English professional football.
- 1.2.3 As financial pressures mounted at the football club, and with the prospect of relegation looming, the club began an unlawful rent strike whereby it withheld all lease and license payments to ACL with effect from April 2012. It was the clubs view that they needed to be able to secure an ownership stake in the stadium with the associated access to revenues that that would bring in order to sustain the club financially going forward. Directors and owners of the club threatened that CCFC would be liquidated if this was not achieved.
- 1.2.4 Despite the unlawful nature of the rent strike and the legal action which ACL subsequently pursued in order to recover monies owed, the Council and AEHC, as the two shareholders in ACL, did enter into negotiations with SISU with a view to CCFC purchasing AEHC's 50% stake in the Arena. Heads of Terms were signed between the Council and SISU in August 2012 which set out the conditions precedent which would be required to be met in order for this transaction to proceed. These conditions precedent included:
- the football club agreeing a purchase deal with AEHC for their shares;
  - agreement to a rent deal going forward and settlement of all outstanding rent arrears;
  - the club presenting a sustainable business plan for both the football club and ACL; and
  - SISU discharging the outstanding bank loan with the Yorkshire Bank which they believed they could achieve at a significant discount.
- 1.2.5 By September 2012 it was clear that none of the conditions precedent for a sale transaction had been met and in reality there was no prospect they were going to be met. In particular, there had been no agreement with AEHC over the purchase of their shares and discussions had clearly broken down terminally, a view confirmed by Justice Leggatt in a subsequent legal action between AEHC and companies in the SISU group.

### 1.3 Financial Impact on ACL

- 1.3.1 The financial impact on ACL of the unlawful rent strike was significant. CCFC was ACL's anchor tenant and the lease and licence payments one of its main income streams. The immediate financial impact was mitigated to some extent by ACL's ability to call on an escrow account in which the football club had to lodge a £500,000 rent bond. However by August 2012 this had been exhausted and ACL's cashflow position worsened significantly to the extent that cashflow projection showed that in the first few months of 2013 ACL would not be able to meet its loan repayment obligations on an outstanding Yorkshire Bank loan in excess of £15m if no action was taken.
- 1.3.2 In December 2012, despite all loan repayments being up to date but in view of ACL's increasingly perilous financial position, the Yorkshire Bank wrote to ACL informing them that they now considered them in default under the terms of the loan. The bank was seeking significant additional security otherwise they would look to enforce their rights under the loan agreement which gave them fixed and floating charge overall ACL assets. The likelihood was that this would enforce a sale or administration process and the bank would seek to sell on those assets and realise as much value against the loan as possible.
- 1.3.3 If the bank had called in its security under the loan arrangement, there was a significant risk that the City Council would lose all of its financial interest in the Arena and the ongoing achievement of the wider project objectives could be put in jeopardy.

### 1.4 Refinancing the ACL Loan

- 1.4.1 On the basis that a sale agreement with the football club's owners looked extremely doubtful and given the worsening cashflow position in ACL, the City Council as shareholder had been discussing an alternative strategy to safeguard the future of ACL whereby the Council would look to refinance the ACL loan. The advantages of doing this were that the City Council could buy out the Yorkshire Bank loan at a discount and restructure the loan on commercial terms but ones which would reduce the annual repayment costs to ACL. This would mean that the City Council would replace the Yorkshire Bank as lender to ACL and take on the security held by the bank. It would also ensure that ACL would not be forced into administration and avoid the risk that the bank debt may be sold to a third party which would then effectively have control over ACL.
- 1.4.2 The City Council and ACL held detailed negotiations with Yorkshire Bank during the last three months of 2012 in order to negotiate the purchase of the bank debt. Taking into account a complex hedging arrangement that was in place to fix the interest rate in the existing loan, the overall level of liability to Yorkshire Bank was approximately £19m. After long and detailed negotiations the Bank agreed to accept the sum of £14m in full and final settlement of that liability. This represented a significant discount on the level of the existing loan which ACL benefited from and which contributed to the reduced level of repayments.
- 1.4.3 On January 15<sup>th</sup> 2013 the City Council unanimously approved a recommendation to refinance the Yorkshire Bank loan with a new loan of £14.4m from the City Council. The additional £400k over and above was for working capital to assist with the transition to the new loan arrangement. The term of the loan was extended to 41 years to align with the existing lease which ACL had on the property at an interest rate of 5% fixed for the first five years and then reviewable. The loan was structured to ensure that there was always a margin of up to 2% above its borrowing cost to the City Council and provides a significant income stream for the City Council.

- 1.4.4 This refinancing arrangement, and a parallel cost cutting exercise, transformed the financial position of ACL. The new loan meant that the ACL loan repayments roughly halved going from approximately £1.6m per annum under the Yorkshire Bank loan to approximately £800,000 per annum under the City Council loan on the basis of a reduced amount owed, a longer loan term and a slightly lower interest rate. This helped to ensure that ACL was less reliant on the football club and meant that ACL would focus instead on the developing other areas of their business. Indeed, the revised underlying business plan for ACL did not assume any future income stream from the football club. Given the high risk associated with the football clubs financial position and the weakness of their financial covenant this made good business sense for ACL to refocus in this way.
- 1.4.5 At the same time, the significant benefit which a sports franchise would bring to both the Arena and the city more generally was recognised. Accordingly, ACL made every effort to reach an agreement with the football club to find commercial terms on which they could continue to have the Ricoh Arena as their home via a licence agreement. Indeed the reduced annual loan repayments gave ACL significant financial headroom in which it was able to offer the football club significantly improved terms to enable it to continue to play there. In the days following the Councils loan decision on the 15<sup>th</sup> January, Directors of both ACL and CCFC shook hands on a rent deal which would have seen headline rental payments reduced from £1.3m per annum to £400,000 per annum. However the proposed agreement was never formalised due to the owners of CCFC renegeing on the deal that had been verbally agreed.

## 1.5 CCFC Ltd in Administration

- 1.5.1 Despite several more attempts, no revised rental agreement was reached with the football club in the weeks following the Council's loan decision. Whilst CCFC continued to play their home games at the Ricoh Arena during that period they continued to unlawfully withhold rental payments. ACL was finally forced to take further legal action to recover these payments and applied through the courts again in March 2013.
- 1.5.2 In response to this the Football Club directors voluntarily put the club into administration and as the largest secured creditor, ARVO, a SISU related company, controlled the process of appointing the administrator. Throughout a long and complex administration process it was never clarified which assets resided in which company within the overall SISU structure. However, the Administrator proceeded on the basis that the company in administration (Coventry City Football Club Ltd) held only the lease and license agreement with ACL, the Football League Golden Share which enabled them to compete in the football league and a rates rebate owed by the City Council. All other assets and activities associated with the club were deemed to be in CCFC Holdings Ltd, a parent company, which had not been placed in administration. This was contrary to what was stated in the latest published accounts of both these companies at the end of 2011 which clearly showed that all football related activities, revenues and expenditure went through CCFC Ltd. This, along with Directors conduct, was the subject of an investigation by the administrator during the administration process the conclusions of which have been submitted to the Department for Business, Innovation and Skills (BIS). The administrators report is not available publically and has not been seen by officers of the City Council or Directors of ACL.
- 1.5.3 With the lease and license with ACL effectively ended through the administration process, the remaining assets of the Coventry City Football Club Ltd, primarily the Football League Golden Share and a rates rebate owed by the City Council, were sold to Otium Entertainment Group, another company in the SISU group structure.

1.5.4 During the administration process, CCFC continued to play their remaining home matches in the 2012/13 season at the Ricoh Arena on a pay-and-play basis. After the end of the 2012/13 season Otium Entertainment Group, with the agreement of the Football League, took Coventry City out of Coventry to play their home matches at Sixfields Stadium in Northampton.

## 1.6 Judicial Review

1.6.1 On 15 April 2013, three companies in the SISU Group structure applied to the High Court for a Judicial Review into the decision the Council took on 15 January 2013 to refinance the loan to ACL (“the Decision”). The grounds on which this application was made were:-

- 1 The loan represented unlawful State Aid
- 2 The Council had improper purpose in making the Decision
- 3 The Decision was ultra vires
- 4 The Decision was irrational

1.6.2 The application was considered by Justice Males in June 2013 and was dismissed. However the Claimants renewed their application at an oral hearing which was heard in the High Court in London in November 2013. At this Hearing Dame Justice Thirlwall granted permission for the application to proceed to a Judicial Review.

1.6.3 The Judicial Review itself was heard in the High Court in Birmingham in June 2014. At the commencement of the Hearing, the Claimants dropped two of the grounds on which they had originally sought permission for the Judicial Review. The grounds that were dropped were that the Council had made the Decision with improper purpose and that it was ultra vires. The remaining grounds submitted at the review Hearing were that the loan represented unlawful State Aid and that the Decision was irrational. The review lasted three days from 10 – 12 June 2014 and was heard by the Hon Mr Justice Hickinbottom who delivered his judgement on 26 June 2014. He dismissed the Claimants case on all grounds.

1.6.4 Justice Hickinbottom also awarded the Council its costs incurred in defending the action which totalled in excess of £500,000. He made an order essentially that £250,000 should be paid over within 14 days and that the remaining costs be subject to agreement between the parties or, if they could not be agreed, further detailed assessment. The initial costs payment of £250,000 was received by the City Council within the timescale stipulated.

1.6.5 The Claimants subsequently applied for permission to Mr Justice Hickinbottom for leave to appeal to the Court of Appeal but was refused. The Claimants have subsequently now lodged an appeal direct with the Court of Appeal and the outcome of this application is awaited.

## 1.7 CCFC Return on Interim Rent Deal

1.7.1 On 21 August 2014, ACL reached an agreement with Otium Entertainment Group, the current SISU company that directly owns the CCFC, to enable the football club to return to the Ricoh Arena under a licence for a four year period with an option for ACL to terminate after two years. Commercial details of the licence agreement are subject to a confidentiality agreement between ACL and OEG.



## 1.8 ACL – Current Financial Position

- 1.8.1 The business plan which underpinned the City Council's decision to refinance ACL's Yorkshire Bank loan with a loan of £14.4m from the City Council demonstrated that loan repayments were affordable based on a number of reasonable assumptions. These assumptions included ACL achieving a significant reduction in overheads, achieving growth in other areas of the business – conferencing, exhibitions and other events – and maintaining significant revenue streams from sponsorship and naming rights. Crucially the business plan assumed no income from Coventry City Football Club or a replacement sports franchise operating from the stadium bowl.
- 1.8.2 To date all loan repayments due to the City Council have been met in full and on time. ACL have also made significant progress towards meeting the key financial targets set out in its 2013 business plan. However, during this period managing the company's cash flow has been challenging. Whilst this is not unusual for a company of ACL's size, from the City Council's perspective as lender, it is clearly something that it would want to see stabilized over the medium term in order to gain assurance over the security of loan repayments.
- 1.8.3 The Assistant Director Finance regularly monitors the financial performance of ACL in accordance with the terms set out in the January 2013 Loan Agreement. On the basis of the figures presented in the proposed 2014/15 budget, which was shared with the City Council in June 2014, the City Council, as lender, commissioned an Independent Business Review (IBR) of ACL in order to test the strength of its Business Plan and assess the key financial risks which may have led to ACL being unable to continue to meet loan repayments in the short to medium term. This review was commissioned from KPMG.
- 1.8.4 The IBR highlighted four key areas of risk which had the potential to jeopardise ACL's ability to meet loan repayments in the short to medium term should the financial assumptions made in the Business Plan not be met. These key areas of risk were:-
- (i) Growth in sales required to meet the profit assumptions included in the Business Plan that ACL would derive from its subsidiary IECE Ltd, a joint venture enterprise with Compass Catering;
  - (ii) The need for the IECE Ltd joint venture agreement with Compass to be restructured so that it was more financially beneficial to ACL;
  - (iii) The assumed receipt of £590,000 from the Otium Entertainment Group which was a condition imposed by the Football League in order for Otium to secure the Football League golden share – an amount based on the sum ACL would have received under the Creditors Voluntary Agreement proposed as part of the CCFC Ltd administration process even though the CVA was ultimately rejected; and
  - (iv) The continuation of the stadium naming rights contract which meant the existing sponsors Ricoh not exercising their option to exit the contract in August 2015.
- 1.8.5 The Football League subsequently ruled that the £590,000 it had determined was owed to ACL should be reduced to £471,000. This amount was paid to ACL as a condition of entering in to the August 2014 licence agreement.

1.8.6 The IBR modelled various different scenarios based on the achievement or non-achievement of these risks which demonstrated that there was potential for ACL not to be able to meet its cash flow requirements in the short to medium term in the worst case scenario. If at any point ACL was not able to afford its loan repayments and other outgoings it would require additional financing either in the form of further loans, injections of equity from the existing shareholders or some form of payment holiday under the terms of the existing loan agreement.

## 1.9 Publicity on the Council's Position

1.9.1 The City Council has made it clear both in its actions to refinance the ACL loan and in several public statements made in full Council that it will seek to protect and promote its commercial interests in ACL. It has also been made clear that the City Council will listen to all sensible and sustainable offers to acquire an ownership stake in the Arena whether in full or in part and also in relation to the AEHC shares should they wish to sell. Under the terms of the agreements that underpin ACL, the City Council and AEHC hold a veto over the sale of each others shares.

1.9.2 The City Council has clearly stated that any offer would need to be right commercially for the City Council as shareholder and also offer the prospect of the ACL business continuing to grow and consolidate the original project objectives of bringing regeneration and jobs to the area through the provision of a high profile, multi-use sports and entertainment venue.

1.9.3 The challenging financial context for ACL described here means that the City Council, in its position as both lender to and shareholder in ACL, needs to consider the best way forward for the Company in order to protect both its existing loan finance and equity value of its shareholding in ACL. It is also consistent with its publically stated position that it will consider commercially robust proposals from investors seeking to acquire an ownership stake.

## **2. Options considered and recommended proposal**

### 2.1 Do nothing

2.1.1 One option for the Council would be to do nothing and to remain with AEHC as 50% shareholders in ACL. There are however risks with this approach not only to the City Council's equity stake in the Company but also in relation to its position as lender.

2.1.2 The current financial position of ACL as described above is clearly challenging. In particular the business will find it difficult to manage cash flow in the short to medium term and will certainly rely on restructuring the Joint Venture Agreement with Compass, which will need to be negotiated. In addition, there is a risk that this position is exacerbated if the current stadium naming rights agreement is not extended beyond next year when the incumbent sponsor has a break option.

2.1.3 The long term viability and success of ACL is likely to depend in part on a long term arrangement being made with a sports franchise to utilise the stadium bowl. Until this is secured it is likely that ACL will continue to find this cash flow position challenging and is unlikely to significantly improve financial performance to the extent, for example, where the Company could look to pay dividends to shareholders. Inevitably within this context repayment of the City Council's £14.4m loan will remain at some degree of risk.

2.1.4 This option is not likely to be in the City Council or ACL's best interests commercially, and the extent to which the financial sustainability in the longer term is not achieved increases the risk of failing to secure the wider original project objectives around regeneration, economic growth and job creation into the future. Furthermore, the current and projected budget constraints on the City Council would make any future revenue and/or capital injection into the Ricoh Arena virtually impossible.

2.1.5 This option is not recommended.

## 2.2 Market ACL for Sale

2.2.1 A further option would be for the City Council and the Alan Edward Higgs Charity to market ACL for sale. This may also help the City Council demonstrating that best consideration / fair value is achieved for any sale that's ownership stake. However this option is also not without risk.

2.2.2 Given the likely desirability of securing a sports franchise as an anchor tenant for the stadium bowl, there is inevitably a very limited market for a purchase of this type of asset. Realistically only either a professional football or rugby franchise would be able to attract the size of crowds that would make playing at the Arena financially viable both for them and ACL in terms of the level of rent that could be generated from this income stream. Rugby and football sports franchises do not tend to relocate very often at all and, indeed, both sports have rules in place which significantly restrict the ability of teams to move locations which is generally only allowed under extenuating circumstances. This means that there is likely to be very limited opportunities to secure a long term anchor tenant sports franchise at the Arena.

2.2.3 It should also be noted that the ongoing litigation with SISU may well make a sale process difficult and may potentially have an adverse impact on value.

2.2.4 This option is not recommended.

## 2.3 Further explore ownership options with Coventry City Football Club

2.3.1 Clearly the original intention of the Arena project was that CCFC would have an ownership stake in the Arena. Since selling their original 50% stake before the Arena opened, the club has never been in a position to reacquire that stake. The recent history of the club makes the prospect of it now owning a stake in the Arena very difficult to envisage.

2.3.2 Since leaving the Arena May 2013, the club has made it absolutely clear that they have no intention of returning to the Ricoh Arena other than potentially on an interim rental basis. This is further demonstrated by the terms of the recent licence agreement between CCFC and ACL which the club insisted would only be an interim arrangement. Their stated intention now is to build their own stadium within the Coventry area and claim to be at advanced stages of negotiation with land owners, with a view to acquiring a site. The Football Club also claim to have carried out initial design work and have published artists' impressions of their new stadium in the local media.

- 2.3.3 Any potential ownership transaction with the Football Club is made even more unlikely given their view of the value of the equity currently in ACL. In the recent Judicial Review hearing, SISU's case for State Aid was based on the premise that no private investor would have advanced a £14.4m loan to the Company because the Company was not worth as much as that. The types of enterprise value quoted by SISU throughout this litigation was a value somewhere in the order of £5m-£6m, which after taking account of the City Council loan of £14.4m would put the Company in significant negative equity. It has always been the City Council's view that the equity was worth significantly more than this and clearly would not consider any proposal whereby the City Council would likely receive nothing for its shares and have to write-off a significant part of the outstanding loan.
- 2.3.4 In separate litigation between the Higgs Charity and a SISU related company just prior to the Judicial Review hearing it became clear that SISU were not prepared to pay a sum quoted at £2m to acquire the Higgs Charity 50% stake in ACL and even if they were prepared to do so would only be on the basis that the Yorkshire Bank debt was discharged at an unrealistically large discount.
- 2.3.5 Notwithstanding SISU's perception of value, the Leader of the City Council did enter initial discussions with Joy Seppala of SISU in order to explore whether they would be interested in acquiring part or all of ACL. It became clear very quickly that the only terms on which SISU would consider even making an offer for ACL were on the basis that the sale of the Arena was on an unencumbered freehold basis. This is not something that is completely in the gift of the City Council and clearly the Arena is currently encumbered with the existing 39 year lease to ACL of which the City Council is only one of two 50% shareholders. The cost and complexity of unpicking existing legal and contractual arrangements with ACL in order to unencumber the Arena, particularly the Joint Venture arrangements with AEHC and Compass via IECE Ltd, would be extremely complex and no doubt costly and would further erode any potential value in the transaction for the existing shareholders.
- 2.3.6 The Leader of the City Council has, on several occasions, made it very clear publically that the City Council is willing to consider any reasonable and realistic offer for its stake in ACL. Indeed, both ACL and the shareholders have been approached numerous times over the past two years or so by investors showing an interest in acquiring the Arena. However none of this interest has hitherto manifested itself in a formal offer. It has been clear in many of those discussions that the absence of the sports franchise is a major factor in the lack of progress.
- 2.3.7 Otium Entertainment Group (the company that now owns CCFC) has not published accounts since it acquired CCFC. It is likely to be heavily indebted to other companies in the SISU chain. It must be deemed unlikely that CCFC would directly own the stadium in any event and that if any attempt to purchase the stadium was to be made it would likely come from another company in the SISU structure. To date no such approach has been made and instead SISU related companies continue to litigate against ACL and the City Council. It should also be noted that SISU's previous commercial tactics particularly in unlawfully withholding payments under their original lease and licence agreement with ACL were described by Justice Hickinbottom in his Judicial Review judgement as being "...deliberately to distress ACL's financial position, with a view to driving down the value of ACL and thus the price of a share in it, which they coveted."
- 2.3.8 For all of these reasons any deal on commercial terms with CCFC is highly unlikely and so this option is not recommended.

## 2.4 Sale to London Wasps Holdings Limited

### Approach from Wasps

- 2.4.1 In late 2013 Directors of ACL were approached by representatives of London Wasps Holdings Ltd (LWHL) which is the majority shareholder in Wasps Rugby Club with a view to them acquiring a majority shareholding in ACL. Both the City Council and AEHC as shareholders agreed to explore whether an agreement might be possible and informal discussions with City Council officers acting on behalf of the City Council as shareholder have taken place over the past few months.
- 2.4.2 Originally formed in 1867, Wasps is one of the oldest and most prestigious clubs in English rugby. It has won two English Premiership titles and the European Cup within the last 10 years and counts a large number of internationals amongst its current and former players. Off the field the Club has had a rather nomadic existence over the past few years. After leaving its traditional Sudbury home Wasps have played at Loftus Road which it shared with Queen Park Rangers Football Club and currently plays at Adams Park in High Wycombe which is also shared with Wycombe Wanderers Football Club. Wasps are currently a tenant at Adams Park, but want to establish a permanent home where they own their own stadium in a location where they can grow their fan base and provide first class facilities for both fans and players and realise their ambition to become the premier rugby franchise in Europe. The club has successfully played a Heineken Cup rugby match at the Ricoh Arena previously.
- 2.4.3 During 2014 Wasps provided Council officers with a draft Heads of Terms which proposed structure of an agreement whereby Wasps would acquire a 90% shareholding in ACL. The Agreement as originally proposed by Wasps also included some additional elements including reaching commercial arrangements on additional pieces of land adjacent to the Arena and the purchase of a lease extension on ACL's remaining 39 year lease of the Arena.

### Independent Valuation

- 2.4.4 In order to evaluate the proposed offer made by Wasps, the City Council commissioned KPMG to undertake an independent valuation of ACL. This was first drafted in August 2014 and provided the City Council with an up to date and independent view of the value of the existing equity within the business. The draft KPMG valuation placed an enterprise value of ACL at between £16m and £18m. After taking account of the approximately £14m loan outstanding to the City Council, this valued the existing equity stake of both City Council and the Alan Edward Higgs Charity at between £2m and £4m.
- 2.4.5 It should be noted that this value assumed that ACL was able to implement a turnaround business plan being actioned by the ACL Board. This included managing the risks outlined previously in this report and identified by KPMG in the IBR to grow the business, restructure the Joint Venture Agreement with Compass Catering and secure the £590,000 owed by Otium Entertainment Group. In this sense, the KPMG valuation was based on the best case scenario for ACL.
- 2.4.6 KPMG also undertook sensitivity analysis on this valuation which demonstrated that if ACL were to do nothing the true value of the equity at the current time would be significantly negative after taking account the outstanding loan and as result of impending cash flow difficulties identified the risk that ACL would either require additional borrowing, shareholder funding or may become insolvent in the short to medium term.

2.4.7 The draft KPMG valuation report was updated in September 2014 following the agreement reached between ACL and CCFC to return to play matches at the Arena on a short term licence arrangement. This saw the enterprise value being slightly revised to between £17m and £19m although the other risks highlighted and in particular the perceived lack of robustness in some of the new ACL business plan assumptions remained the same.

#### Heads of Terms

2.4.8 Through ongoing dialogue and negotiation with Wasps, a revised Heads of Terms was signed between the City Council and Wasps in August 2014. These new Heads of Terms proposed a different and much simplified deal structure and attributed values to the different constituting elements of the proposed deal. Broadly the proposal contained within those Heads of Terms:-

- The City Council to acquire the AEHC 50% stake in ACL. The City Council to then sell 90% of the total shares in ACL to London Wasps Holdings Ltd for £5m (with the City Council remaining as the other 10% shareholder).
- ACL to purchase a lease extension to take the remaining lease period to 250 years from the City Council for a consideration of £1m.
- ACL to pay £1m of the existing loan owed to the City Council.
- The term of the remaining loan to ACL to be reduced to 20 years.

#### Alan Edward Higgs Charity

2.4.9 ACL Directors appointed by AEHC were aware from the outset about the interest shown in acquiring their shares by LWHL. The Charity had made it clear that it was keen to pursue this opportunity with LWHL and that it was at this stage unlikely to consider any transaction with any other potential purchaser.

2.4.10 Once the City Council felt that it had reached a position whereby the proposed deal represented the best commercial way forward for the City Council, Council officers began talks with AEHC to discuss whether the offer made was one which AEHC was prepared to accept. AEHC subsequently agreed that they were prepared to sell their shares for the appropriate proportion of the price offered, ie. 5/9s of £5m (or £2.77m). The City Council would effectively retain £2.23m of the sale proceeds which represents 4/9s of the overall price on the basis the City Council retains a 10% stake in the company post transaction.

2.4.11 As discussions between the three parties developed the substance of an option agreement which AEHC had entered into with CCFC Ltd as part of the Joint Venture Agreement became clear. This option effectively gave CCFC Ltd pre-emption rights to acquire AEHC's shares in Football Investors Ltd (FIL) (the company through which AEHC held its shares in ACL).

2.4.12 The proposed transaction with Wasps did not involve AEHC selling its shares in FIL, but rather FIL selling its shares in ACL, so the main option agreement would not come into effect. However the option agreement does include a further clause that should FIL seek to sell its shares in ACL then the Trustees of AEHC would make reasonable endeavour to ensure that CCFC Ltd has an opportunity to make an offer for those shares.

#### 2.4.13

Trustees will need to determine with legal advice what reasonable endeavour means in this context and, for example, how long the liquidator should be given to respond to this opportunity. This 'reasonable' process of notification to CCFC Ltd despite it being in liquidation in all except a final technicality, is supported and respected by the City Council.

#### Revised transaction structure

2.4.14 There is a significant risk that going through this process may significantly delay the progress of the proposed transaction with Wasps. For example, it is not known how long the liquidator may seek to explore this opportunity or whether any other action, for example the threat of litigation, may be made against the Trustees of the Charity as this progresses. At the same time, given recent press coverage and the fact that Wasps are currently unable to lock down significant long-term player and sponsorship deals due to the uncertainty over their future location, has led to Wasps making it clear that if there is any further delay in them being able to acquire a stake in ACL they will walk away from the transaction in order to ensure there is no further detriment to the Club either financially or reputationally. This risk to the overall transaction also means that there is a risk that none of the commercial or wider benefits that the City Council are seeking to achieve will be realised.

2.4.15 The facts are that as there are only an extremely limited number of sports franchises willing and able to build a long term sustainable future for a facility such as the Ricoh Arena, there is significant risk if Wasps decide to walk away from the proposed transaction as a result of excessive delay. In simple terms, such opportunities to deliver sporting and community uplift across the city, alongside significant business advantage to the Ricoh Arena, are neither plentiful nor limitlessly patient. They will depart as rapidly as they arrive. This has to be a critical, driving consideration in expediting what remains a complicated process.

2.4.16 As a result of this complication, a revised transaction structure is proposed in which the City Council will first sell all of its 50% stake in ACL to Wasps. This will be at the price previous agreed in the transaction, plus a proportion uplift to represent the fact that the original amount agreed was for only 80% of the Council's holding in ACL. Subsequent to this transaction AEHC will then offer the opportunity to the liquidator of CCFC Ltd who will need to determine whether indeed CCFC Ltd or another party to whom the opportunity can be sold is prepared to make such an offer. Assuming no acceptable offer is received Wasps will exercise a call option to then purchase the ACL shares held by AEHC, again for the price agreed as part of the revised Heads of Terms. At the point the second stage of the transaction is completed, ACL will then enter into the other two parts of the proposed transaction whereby they will purchase a lease extension from Coventry City Council and repay £1m of the outstanding City Council loan to ACL.

2.4.17 Compared with the revised Heads of Terms described above, the new proposed transaction structure is as follows:

- The City Council sells 100% of the shares it holds in ACL (via NCHL) to LWHC for £2.77m
- Wasps and AEHC will enter an agreement to allow Wasps a call option on 100% of their shares in ACL (held via FIL) which can be exercised after AEHC has fulfilled its legal obligations under its option agreement with CCFC Ltd

- At the conclusion of this process, if there is no third party offer that is acceptable both to AEHC and Wasps (who will have a right of veto over the sale of AEHC shares), Wasps will exercise their call option to purchase the AEHC shares
- At this point, ACL will purchase a lease extension of 211 years for £1m and make a further £1m payment against the amount outstanding on the City Council loan.

2.4.18 The commercial value in this transaction is the same as was proposed within the revised Heads of Terms. The main difference is the sequencing of the transaction and the fact that the City Council will not retain a 10% holding under this proposal. The original intention for the Council to retain 10% was always intended to be a short term arrangement with the City Council exiting completely in the short to medium term. It was viewed as desirable for the City Council to have a seat on the Board particularly while the Council loan is outstanding. In order for the transaction to be structured in the way now proposed, Wasps will not proceed without being able to secure an initial 50% stake so they have agreed that the City Council will have the right to appoint a Non-Executive Director to the Board for at least as long as the loan is outstanding. At least initially and until a transaction for the AEHC shares is completed, the Council appointed Director will have observer status.

2.4.19 This revised transaction structure is simply to enable the transaction to proceed when otherwise it might fail. Other than the proposed transaction now involving 100% of the City Council shares in ACL rather than the 80% originally proposed, and for which the City Council will receive a proportionate uplift in the sums already agreed, this structure delivers exactly the same commercial and wider benefits as proposed under the original transaction.

2.4.20 This option is recommended.

## 2.5 Recommended Option

2.5.1 It is proposed that the revised transaction structure outlined above forms the basis on which the City Council sells 100% of its shareholding in ACL to LWHL.

2.5.2 As part of the transaction, the City Council will also receive a payment of £2m of which £1m is in consideration for a lease extension of 211 years and £1m to be paid off the existing ACL loan which currently has £14m outstanding but subject to completion of the onward sale and purchase of the AEHC shares.

2.5.3 The final Valuation Opinion Report commissioned from KPMG highlighted the potential best case valuation of ACL as being between £3m and £5m net of the £14m outstanding loan. In order to achieve this value ACL would need to implement a turnaround business plan which included financial assumptions such as the receipt of monies owed from Otium Entertainment Group and the renegotiation of the Compass contract, which were not entirely in its control. The IBR highlights the risks to the business should this business plan not be achievable and demonstrates that ACL has potential to face significant cash flow difficulties in the short to medium term. There is therefore an ongoing risk that ACL will at some point be in a position where if it does not have sufficient cash flow to meet its loan repayments and will therefore require further funding to avoid being in a position of insolvency.



- 2.5.4 Given the nature of the venue it is evident that optimum financial performance will require the occupation of the stadium bowl by a sports franchise that can, from a financial point of view, make it viable to play in a 32,000 capacity all seater stadium. It is also clear that opportunities to secure a sports franchise to play in the stadium bowl are extremely limited and there is a risk that if such an opportunity does arise and is not seized, it is likely to be a long time before another such opportunity comes along.
- 2.5.5 The agreement reached with Coventry City Football Club to return to the Arena on a temporary basis is welcome. This provides some additional and much needed revenue and does help to stabilise the position over the medium term. However this is clearly not a long term arrangement and the Football Club's continued stated intention to build their own stadium means that in reality ACL will need to seek a sports franchise that seeks to be there for the longer term.
- 2.5.6 The opportunity to secure a sports franchise in Wasps is something that the City Council and AEHC as shareholders should seriously consider in order to protect ACL and their investment in it. In addition the City Council must consider the security of loan repayments against the £14m loan that it advanced ACL in January 2013.
- 2.5.7 The offer from WASPS would see the City Council receive an amount for its equity shares which exceeds even the best case valuation of the Arena continuing to exist without a sports franchise. This means that the offer of the table is very likely to represent the best commercial option for the City Council.
- 2.5.8 In addition to helping to secure a sustainable and prosperous way forward for ACL and providing greater certainty over the security of the City Council's existing loan, the proposed transaction with LWHL brings significant additional benefits. A transaction will also see the injection of much needed working capital into the business, which will be required to address areas of required updating refurbishment required to maintain the profile and quality of the venue. The impact of this investment will be strengthened by the creation of a strengthened management team which will incorporate the existing WASPS management structure, which brings significant commercial expertise. Part of this additional investment is intended to underpin an extensive marketing campaign to launch the arrival of Wasps in Coventry. As part of the agreement, Wasps will enter into a 50 year licence agreement which demonstrates their commitment to be in Coventry for the long term.
- 2.5.9 The existence of a Premiership Rugby franchise in the City is likely to attract significant crowds to the venue, particularly for key matches such as local derbies with teams such as Leicester and Northampton and high profile European matches. This level of increased activity in football both at the Arena and within the City more widely inevitably brings significant economic benefits to the wider business community.
- 2.5.10 Wasps have also outlined their commitment to developing their fan base and building support at the grassroots level. They would intend to work closely with Coventry Rugby Club to foster a mutually beneficial relationship which could see the operation of player development arrangements which benefit both Clubs. The club has a very strong community ethos and work closely with the Dallaglio Foundation headed by former Wasps and England captain Lawrence Dallaglio, which seeks to use the inspiration and values of sport to help young people tackle life's challenges. The Foundation in particular seeks to work with marginalised young people to provide opportunity and self-belief through in school activity.

2.5.11 The City Council remains committed to try to ensure that CCFC is able to continue to play its home matches at the Ricoh Arena. It will include a requirement in agreements underpinning the sale that this option must exist for CCFC subject to it reaching a commercial agreement with ACL. The terms of this transaction do not impact in any way on the terms of the August 2014 licence agreement with CCFC which will be fully honoured. Wasps have scheduled all of their home matches on Sunday's during this season to ensure there is no fixture clash.

2.5.12 Securing the future of ACL, and the Arena more generally, ensures that the City Council will continue to receive a revenue stream from the business rates payable on the property. The same is true for any additional training facility which Wasps ultimately build within the City which is their aim.

2.5.13 Similarly securing the financial future of ACL and the Arena helps to safeguard the original project objectives around regeneration, job creation and raising the City's profile. Indeed a thriving Arena should help to strengthen and increase the benefits that have already been realised in these areas through the project.

### **3. Results of consultation undertaken**

3.1 Not applicable.

### **4. Timetable for implementing this decision**

4.1 If the Council supports the recommendation, the transaction with LWHL will be completed as soon as practically possible following the Council decision on 7 October 2014. The timescale for implementing the second stage of the transaction will be as soon as practically possible following resolution of the purchase opportunity which must be notified to the person responsible for the CCFC Ltd liquidation for the AEHC shares.

### **5. Comments from Director of Finance and Legal Services**

5.1 Financial implications

#### Commercial basis of the transaction

5.1.1 In considering a transaction of this type, the City Council needs to ensure that it receives an appropriate commercial return for the sale of this asset in order to test whether indeed the proposed price and overall deal structure represented a good commercial outcome for the City Council. KPMG were commissioned to produce an independent valuation opinion which both gave an up to date company evaluation and an opinion on whether the proposed transaction was a commercial one for the City Council.

5.1.2 The enterprise values calculated within this report are discussed in Section 2 of this report. The price offered by Wasps for both the Council's and the Charity's shares in ACL is in excess of the upper threshold calculated by KPMG with all its attendant risks and assumptions. KPMG's opinion concludes "the proposed transaction price is consistent with the estimated price at which we consider that Wasps and the Council has identified knowledgeable and willing parties acting commercially would be expected to transfer the relevant transaction assets and liabilities".

#### Receipts from the transaction

5.1.3 The £2.77m the City Council will receive as part of this transaction will effectively represent an unplanned receipt which the City Council will be able to use for other investment

purposes or for additional service provision. The value of the City Council's shares in ACL held in its balance sheet as at the end of the last financial year was zero. Therefore no impairment will be required to the value of the City Council's shareholding and hence no reduction in the value of the City Council's equity.

- 5.1.4 Within the independent KPMG valuation report the value that should be attributed to a lease extension to 250 years was also calculated. KPMG calculated the value of this extension to be between £0.6m and £1m. Therefore the £1m which will be paid for the lease extension at the conclusion of the second stage of the proposed transaction represents value at the upper threshold of the valuation range. This will also represent an unplanned receipt for which the City Council will forego future lease payments on the Arena in its position as freeholder. The City Council will need to consider whether it uses this receipt for long-term or other investment purposes or to provide services.
- 5.1.5 It is proposed that the use of receipts arising from this transaction are considered as part of the City Council's budget setting process at the appropriate time.

#### Loan Facility Agreement

- 5.1.6 As part of the proposed transaction the current loan facility which the City Council has granted to ACL will stay in place subject to £1m capital being repaid off the loan once stage 2 of the proposed transaction is completed and subject to a revision of the terms from current 38 years to 20 years.
- 5.1.7 The terms of the existing loan facility [REDACTED] will be amended at the point at which Wasps acquire the City Council's stake in ACL. In general these revisions will reflect the fact that the City Council will no longer be a 50% owner in the Company, and in general terms the provisions will be strengthened to enable to City Council to have sufficient visibility of the financial position of the Company. The remaining commercial terms of the loan including the rate at which interest is charged will not change.
- 5.1.8 As part of the future governance arrangements for ACL it has been agreed that, for at least as long as the City Council's loan is still outstanding, the City Council will have the right to appoint a non-executive director to the Board of the Company. In the short-term, and at least until Wasps conclude the second part of the transaction to purchase the AEHC shares, the Council's non-executive director will have observer status, but may assume full rights and responsibilities once the AEHC transaction has been completed.

#### Due Diligence

- 5.1.9 In order to test the strength of the revised business plan which Wasps have prepared for ACL, the City Council has also commissioned KPMG to undertake a due diligence report to test the strength of this financial covenant. The due diligence report tests the assumptions made by Wasps and the robustness of its plans for growing the business. Although there are clearly risks of uncertainties associated with any business plan assumptions, the due diligence report indicates that these assumptions are not unreasonable, although some will be challenging to deliver. It also notes the funding requirement that will be needed for LWHC which has made significant losses in recent years. However the consolidated business plan for Wasps and ACL takes account of this funding requirement and is within overall levels of working capital committed as part of this transaction.
- 5.1.10 The due diligence report also runs some sensitivity analysis which effectively tests the level of financial headroom should not all of the assumptions be met. It is the view of officers that notwithstanding some inevitable uncertainties in projections and assumptions within the

revised business plan, ACL's financial covenant is greatly strengthened with the addition of Wasps as a long-term sporting franchise and that therefore the City Council's loan repayments are made more secure under the terms of this transaction. Clearly any business venture is not without risk and there can of course be no guarantee that the City Council's loan will be secure in the longer term. The potential for Wasps to refinance the loan at some point in the future has been discussed and officers will continue to discuss this possibility with Wasps post transaction and try to secure full repayment of the City Council's loan as early as possible.

#### Securing the ongoing viability of ACL

5.1.11 Given the proposed Company structure in the transaction whereby Wasps and ACL will remain as separate companies, Wasps will effectively become a tenant of ACL and occupy the Stadium on match days under the licence agreement similar to that of the Football Club. It is agreed that for this licence payment ACL will receive £0.5m per annum, which will include some costs associated with presenting a clean stadium for Wasps home rugby matches. All other financial transactions between the Companies will occur on an appropriate arms-length basis. This will ensure the on-going robustness and liability of the ACL business plan and ensure that ACL is not inappropriately subsidising Wasps in a way that jeopardises future loan repayments to the City Council. Should Wasps propose to change this company structure in the future, this will be subject to consideration by the City Council at the appropriate time, but will in any other circumstances represent an event of default under the loan agreement.

5.1.12 The consolidated Wasps business plan does require the injection of additional funding through LWHL. The terms of the current loan facility mean that the City Council's security will not be subordinated behind any additional borrowing undertaken. The City Council will therefore retain its primary fixed and floating charge over all assets of ACL.

#### Tax advice

5.1.13 As the City Council's shares are currently held via NHCL the City Council has also receive appropriate tax advice to ensure that the transaction can be structured in the most tax efficient way.

#### 5.2 Legal implications

The Council will use the general power of competence ("GPOC") under section 1 of the Localism Act 2011 ("the Act") to i) to sell all its shares in ACL via NCHL to LWHL and to grant an extension to the lease to ACL 2006 for a total term of 250 years. This is very broad power and Section 1 states that:-

- (1) A local authority has the power to do anything that individuals generally may do.
- (2) The power applies to things that an individual may do even though they are in nature, extent or otherwise:
  - (a) unlike anything the authority may do apart from subsection (1), or
  - (b) Unlike anything that other public bodies may do

Section 2 of the Act provides that where the GPOC is conferred on the authority to do something, it confers power to do it in any way whatever, including for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

The limitations set out in Section 2 of the Act and imposed on the GPOC do not apply to this report and these are:

- a. if the exercise of the GPOC overlaps with a pre-commencement power then GPOC is subject to the same restrictions as that power
- b. GPOC does not enable the Council to do anything which it is unable to do because of a pre-commencement limitation
- c. GPOC does not enable the Council to do anything which it is unable to do because of a post commencement limitation which is expressed to apply to GPOC

The structure of the companies remain in place and the Council remains the mortgagee of ACL.

The existing loan from the Council to ACL is not an abnormally low rate because of the company relationship it is at a commercial rate and the loan will be fully secured against the assets of ACL.

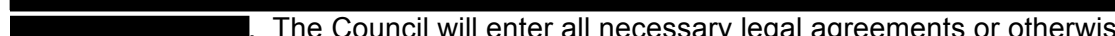

The Council will maintain in place a cross guarantee in the Council's favour between ACL and ACL 2006, a first ranking legal charge from ACL over the lease between the Council and ACL 2006, a first ranking debenture to the Council from ACL and a first ranking debenture from ACL 2006 as security for the loan.

There is a small risk that will exist for two years from the date of the loan (ie on or before 13 January 2015) from the Council in the unlikely event that ACL goes into insolvency. This is due to ACL and the Council being 'connected parties' and an administrator or other insolvency practitioner that was appointed by ACL's creditors may challenge the basis on which the loan was made. It would be for the Council to satisfy any court that the provision of the loan was made on a commercial basis and this report and its proposals is on the basis that the loan is commercial.

Section 123 of the Local Government Act 1972 enables the Council to dispose of land held by them in any manner it wishes provided that best consideration is obtained. The consideration to be paid for the extension of the lease to 250 years is £1m. The Council sought professional advice in relation to its valuation which KPMG estimated to be between £0.6m and £1m.

Taking all circumstances into account this is a reasonable decision to be taken by the Council and in accordance with the Council's fiduciary duty. The Council is satisfied that the terms of the recommended proposal are based on commercial terms.

Under EU legislation the public sector cannot support commercial organisations, such action would be seen as disadvantaging EU competitors and is referred to as state aid. In 2003 when the Council approved the delivery of the arena by its 100% owned company Coventry North regeneration Limited the structure of the companies involved in the arena was carefully put in place to ensure compliance with EU legislation.

  
. The Council will enter all necessary legal agreements or otherwise in order to give effect to the recommendations and proposals contained within this report.

## **6. Other implications**

*Any other specific implications*

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The recommendations in this report aim to secure the ongoing achievement of the original project objectives through the existence and operation of the stadium business. These are:

- To deliver regeneration and inward investment
- To create jobs
- To promote Coventry
- To provide a major sporting and cultural venue

These objectives contribute to the Council's core aims to deliver a prosperous Coventry, making Coventry an attractive and enjoyable place to be and encouraging a vibrant city. The proposal will also help to deliver wider commercial and economic benefits for the City Council and the city more generally with an increase in the number of events hosted at the Arena and the prospect of marinating and growing business rate revenue.

### **6.2 How is risk being managed?**

#### **6.2.1 There is a risk that the City Council's loan will not be repaid.**

WASPs have produced a new business plan for ACL which demonstrates an improved financial performance for the company. This has been subject to a due diligence analysis by KPMG. This analysis highlights the risks associated with its business plan and the challenges in meeting some of the key assumptions but does not conclude that the business plan is unreasonable. In addition it provides a significant amount of headroom over and above what is required to continue to meet.

The City Council will continue to have significant security over its loan, a fixed and floating charge overall of ACL's assets which will not be subordinated by any other borrowing.

The City Council for as long as the loan remains outstanding will also be represented on ACL board.

#### **6.2.2 There is a risk that ACL is sold in the very near future at a significant increase in value.**

The agreement with LWHL will include a restricted period within which the shares can be sold onward. If LWHL seeks to sell on it's shares within this period, this will be subject to an anti-embarrassment provision that will ensure the City Council receives part of any value uplift.

#### **6.2.3 There is a risk that the sale process that the City Council has gone through is challenged in the courts.**

The City Council has a requirement to ensure that it is acting legally and on commercial terms in ensuring that it gets the best value for its assets. To this end the City Council has commissioned an independent valuation opinion which demonstrates the

commerciality of the proposed transaction. [REDACTED]  
[REDACTED]

6.2.4 There is a risk that the subsequent transaction between AEHC and LWHL does not proceed.

It is likely that if an acceptable offer from a third party for the AEHC shares in ACL is not received that LWHL will use their call option to procure the AEHC shares. However there is an opportunity for a third party investor to purchase the AEHC stake. The City Council will not seek to prevent any other party from securing a stake in the arena although any change of control under the terms of the existing loan facility will potentially mean an event of default and the City Council will need to consider whether it exercises its rights in the loan facility in this scenario.

### **6.3 What is the impact on the organisation?**

6.3.1 This has been covered throughout the report.

### **6.4 Equalities / EIA**

6.4.1 No equality impact assessment has been carried out as the recommendations do not constitute a change in service or policy.

6.4.2 A significant benefit of having Wasps locate in Coventry is the work that they undertake in the community and in particular with disadvantaged groups of young people.

6.4.3 Wasps has a separate department (currently structured as a charitable foundation) to deliver far-reaching programmes into the surrounding community, including socially deprived areas. The commitment to the community is a long-term project (and is a mandatory requirement), working with partners, and focusing on forging and developing strong relationships with schools, clubs, universities, local authorities and businesses. The aim is to deliver quality rugby and lifestyle programmes; supporting grass roots development in primary schools, secondary schools, Further Education and local rugby clubs.

6.4.4 Wasps aim to be accessible to young people from all backgrounds by establishing links with projects such as the Coachclass Programme, Aviva Tackling Numbers, Something to Chew On, Wasps Independent Schools Programme, Extra-Curricular opportunities and local initiatives.

### **6.5 Implications for (or impact on) the environment**

6.5.1 There is no impact.

### **6.6 Implications for partner organisations?**

6.6.1 This report has implications for ACL in which the Council and AEHC each has a 50% shareholding. These are detailed in the body of the report.

**Report author(s):** Barry Hastie, Assistant Director Finance

**Directorate:** Resources

**Tel and email contact:** 02476 833710  
Barry.hastie@coventry.gov.uk

Enquiries should be directed to the above person.

| <b>Contributor/approver name</b>                                 | <b>Title</b>               | <b>Directorate or organisation</b> | <b>Date doc sent out</b> | <b>Date response received or approved</b> |
|--|----------------------------|------------------------------------|--------------------------|---|
| <b>Contributors:</b>   |                            |                                    |                          |   |
| Christine Forde  | Council Solicitor          | Resources                          | 30/9/14                  | 30/9/14                                   |
|  |                            |                                    |                          |   |
| Other members  |                            |                                    |                          |   |
|  |                            |                                    |                          |   |
| <b>Names of approvers for submission:</b> (officers and members) |                            |                                    |                          |   |
| Finance: Barry Hastie  | Assistant Director Finance | Resources                          | 30/9/14                  | 30/9/14                                   |
| Legal: Christine Forde   | Council Solicitor          | Resources                          | 30/9/14                  | 30/9/14                                   |
| Director: Martin Reeves  | Chief Executive            |                                    | 30/9/14                  | 30/9/14                                   |
| Members: Cllr Ann Lucas  | Leader                     |                                    |                          |   |
|  |                            |                                    |                          |   |
|  |                            |                                    |                          |   |

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