

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	10 <sup>th</sup> June 2013
<b>Report of:</b>	Director of Economic Growth and Prosperity
<b>Subject/Title:</b>	Macclesfield Town Football Club
<b>Portfolio Holder:</b>	Portfolio Holder, Resources, Cllr Peter Raynes Leader, Cllr Michael Jones

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In accordance with Section 100B(4)(b) of the Local Government Act 1972 the Chairman is of the opinion that by reason of special circumstances this item should be considered as a matter of urgency. The circumstances are set out in the report.

This decision has been judged to be a key decision. The Chairman of the Corporate Scrutiny Committee has therefore been consulted in accordance with Section 54.6 of the Executive Arrangements and Cabinet Procedure Rules and has agreed that the decision is urgent and cannot reasonably be deferred. Decisions made under this Section are not subject to call-in.

### 1.0 Report Summary

- 1.1 Macclesfield Town Football Club was established in 1874. With home gates of around 1500 at its current level over 25 games a season, the Moss Rose Stadium is generating 37,500 visitors a year making it one of the most visited places in the town. Of these, 3,000-5,000 are visiting fans bringing an added stimulus, particularly to the businesses in the less affluent south of the town.
- 1.2 The Club is currently facing considerable financial challenges and the Council was approached on 3<sup>rd</sup> June 2013 to see if there was any support available from the Council to prevent imminent insolvency and the consequent economic, social and reputational impact for Macclesfield. Since the evening of the 3<sup>rd</sup> June, the Council has worked collaboratively across all services to deliver due diligence, risk assessment and appropriate options appraisal to find a possible way forward.
- 1.3 This report proposes a way forward which secures the financial viability of the Club and prevents imminent insolvency; allows for the transfer of current shares in Macclesfield Town Football Club into a Community Interest Company; and acquires an asset for the Council secured at good value.
- 1.4 In summary, this report sets out:
  - a) the rationale for Cheshire East Council to acquire the freehold of Moss Rose Football Ground, London Road, Macclesfield;

- b) the conditions attached to the above acquisition, including the transfer of 90% of shares of Macclesfield Town Football Club Ltd to Macclesfield Town Football Club Community Sports Trust;
- c) the economic and community benefits this acquisition will bring to the town as a whole

## **2.0 Recommendations**

2.1 It is recommended that:

- 2.1.1 Cabinet agree that the Interim Chief Executive or his identified nominee, in consultation with the Cabinet Member for Resources, and subject to taking advice from the Monitoring Officer and the Chief Financial Officer or their identified nominee(s), be given delegated authority to acquire the freehold interest of Macclesfield Town Football Club, Moss Rose Football Ground, London Road, Macclesfield;
- 2.1.2 the above be subject to terms and conditions which must not involve any departure from the Council's Budgetary and Policy Framework, or any other Cabinet or Regulatory Committee Policy; and
- 2.1.3 Cabinet agree that the acquisition be funded from the Council's agreed Capital Programme, and that, if necessary, the priority of other projects be adjusted to accommodate this expenditure.

## **3.0 Reasons for Recommendations**

- 3.1 This proposal provides the opportunity to create much needed investment to Macclesfield Town Football Club in the south of Macclesfield and will deliver economic, social and community benefits to the area which suffers from relatively high levels of deprivation in Cheshire East terms.
- 3.2. The concept of a community club with modern facilities to the south of the town has been an aspiration for the Club for many years. This deal will anchor and sustain the Club and would ensure that old supporters and new could continue to look forward to a Community owned Club as the Town's representative in the National game. The community function is paramount and funding would ensure that the benefits outlined above would continue and grow.
- 3.3 Without this investment, the Club faces imminent insolvency, leading to inevitable relegation completely out of the Blue Square Conference and the risk that the Club does not survive in any capacity.
- 3.4 The deal proposed in this report would secure the first Community Interest Company in the UK which has been set up to manage and run a football club without the club first going insolvent. This route to converting to a community-owned club has far less impact on the local economy and community, as it prevents automatic relegation from the Conference and the consequent financial and reputational damage.

#### **4.0 Wards Affected**

4.1 Macclesfield South and Gawsorth

#### **5.0 Local Ward Members**

5.1 Cllr Damien Druce, Cllr Laura Jeuda and Cllr Lesley Smetham

#### **6.0 Policy Implications including - Health**

6.1 Macclesfield Town Football Club plays a valuable role in the community in relation to promoting health and wellbeing. The Club is linked to a wide variety of cultural and sporting activities across the town, focusing in particular on opportunities for young people and those living in disadvantaged areas.

#### **7.0 Financial Implications**

7.1 The proposal is to purchase the freehold of the football ground for £285,000. Subject to the legal implications below concerning valuation, undervalue and discharge of the debenture, this transaction represents good value and full security for this level of investment. The transaction is also subject to at least 90% of current shares of Macclesfield Town Football Club Ltd to Macclesfield Town Football Club Community Sports Trust;

7.2 The Council's agreed 2013/2014 Capital Budget does not include this expenditure on a capital asset, however, due to the significance of this club to the community, the capital programme can be revisited to accommodate this expenditure. The funding will be provided as a first call on the Council's capital receipts in 2013/2014 where current estimates are that income may exceed budget, negating the need for borrowing.

7.3 The ongoing financial viability of the club will remain the responsibility of the club and the purchase of the freehold land and lease arrangement must not impose any further financial commitments or ongoing revenue implications for the Council.

7.4 The primary financial implication in providing financial support to Macclesfield Town Football Club is security of the Council's investment. Subject to legal terms related to purchase of a freehold interest in the ground, subject only to the occupational lease in favour of the club which will run until 2055, the Council's financial investment would be secured in property.

7.5 The removal of the debentures and other director loans is a pre-requisite of the transaction, as is confirmation that the club will retain its current league status into the 2013/2014 Football Season.

7.6 This matter does not require a valuation for s123 purposes.

7.7 The Debenture of £1.3 million must be released in its entirety, and to the satisfaction of the Authorised Officer of the Council, prior to any transaction taking place. Indeed the Authority needs to ensure that the freehold is suitably unencumbered.

7.8 The 150 year Lease (dated 1952) between the Football Club and the Authority will collapse upon the freehold transferring to the Council.

## **8.0 Legal Implications**

### **8.1 Legal Powers**

8.1.1 S111 of the Local Government Act 1972 makes provision as to subsidiary powers of local authorities, and states that, without prejudice to any powers exercisable apart from that Section, but subject to the provisions of the Act and any other enactment passed before or after it, a local authority shall have power to do “anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”. It goes on to state that a local authority shall not by virtue of this section raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

8.1.2 Section 1 of the Localism Act 2011 (in force from February 18<sup>th</sup> 2012, and supplementing the “wellbeing” power in Section 2 of the Local Government Act 2000) also provides local authorities with a “general power of competence”. Section 1 of the Localism Act 2011 is subject to provisos contained in Section 2 of the same Act. To summarise, the power states that a local authority has power to do anything that individuals generally may do.

8.1.3 It 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. Where it confers power on the authority to do something, it confers power (subject to the above provisos) to do it in any way whatever, including: (a) power to do it anywhere in the United Kingdom or elsewhere, (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

8.1.4 Any such other power is not limited by the existence of the general power (under Section 5 (2) the Secretary of State can make further provisions but this has not yet happened).

8.1.5 Section 2, in setting out boundaries of the general power, states that if exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power. The general power does not enable a local authority to do (a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or (b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply (i) to the general power, (ii) to all of the authority's powers, or (iii) to all of the authority's powers but with exceptions that do not include the general power.

8.1.6 The general power of competence is a relatively new power, and as yet is relatively untested in case law.

## 8.2 Land Valuation

8.2.1 Section 123 of the Local Government Act 1972 provides that except with the consent of the Secretary of State, a council shall not dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. This would be relevant in the future at the point at which the Council sold the land back to the current freehold owner, and is also relevant in relation to the rental to be included in any lease back to the football club.

8.2.2 The Insolvency Act 1986 allows the transactions entered into before a company becomes insolvent to be unwound in certain circumstances to the intent that creditors should be treated equally. Under Section 238 of the Act, a company is deemed to enter into a transaction at a undervalue if it enters into a transaction with another person (the Council is a corporate person, in law) for a consideration the value of which is less than the value of the consideration provided by the company. The relevance is that, if the Council were to pay an undervalue for the freehold to the Club and the Club were to become insolvent, the Court would have the power to set aside the transaction. Similarly, under Section 239 of the Act, if the Company was deemed, prefer the Council, over other creditors ie put it into a better position than them by reason of the transaction the Court could set aside the transaction. There is a risk if the land transfer were to be set aside that the Club might have insufficient funds to reimburse the purchase price.

8.2.3 It is therefore important to ensure that the purchase price, rental, and any re-sale price satisfy the requirements of these provisions, which in this case Officers are confident this is the case.

## 8.3 Fiduciary duty

8.3.1 The Council owes a fiduciary duty to its taxpayers to safeguard public funds, a duty which has been extensively examined in case law. The steps in place intended to ensure that the Council fulfils this duty are set out in the financial implications elsewhere in this report.

#### 8.4 Title

8.4.1 The freehold title to Macclesfield Town Football Club is owned by Macclesfield Town Football Club Limited and registered at HM Land Registry under Title Number CH442689. The Council has the benefit of a lease, for a period of 150 years, at an annual rent of one pound (£1), commencing from 29 September 1952 and varied on 19<sup>th</sup> December 1990. On 21 December 1990, the land was sub-leased, at an annual rent of one pound (£1) back to the Football Club for a period of 66 years. It is a prerequisite of the purchase that a charge (debenture) in favour of RAMY Limited on the whole of the land will be discharged at the point of purchase by the Council. It is noted that the intention will be that the Football Club will be given the benefit of an option to purchase the land back within a 5-year period at the same price, subject to adjustment for indexation. The Council would be able to negotiate an extension of the 5 year period if it was so minded, but would be under no obligation to do so.

#### 8.5 State Aid

8.5.1 Any provision of financial assistance by a public body to private undertakings gives rise to a risk of a State Aid challenge arising; the European Commission is the regulator in this area, and a challenge can be raised where it considers that assistance has been provided to a selected undertaking, which has potential to distort competition and affect trade between member states of the EU. In this case, whilst the risk exists, it is judged to be relatively low, especially as the view is that the EC would have difficulty in successfully arguing that there existed a distortion of competition affecting trade between member states.

#### 8.6 Community Nomination

8.6.1 A “community nomination” in relation to the land was submitted to the Council on 7 May, the purpose of which was to seek to have the land added to the list of “assets of community value” which under Chapter 3 of the Localism Act 2011, the Council has a duty to maintain. On receipt of such a nomination, the Council is under a duty to consider it; this has not yet happened. The existence of this nomination would create an obstacle to the proposed purchase of the freehold; however, it is understood, that the nomination will be withdrawn prior to the purchase taking place.

### **9.0 Risk Management**

9.1 Internal Valuation has confirmed that the proposal to pay £285,000 to purchase the freehold of the Macclesfield Town Football Club site, ie 1.6 ha / 3.9 acres land on a main arterial route out of the town and adjacent to existing Housing and Retail Development, would represent a sound transaction to secure a strategically important site in the area.

9.2 Early Due Diligence on the Clubs current financial position has been undertaken to ensure as much as possible within the time constraints, that the investment proposed will be enough to secure financial stability for the short/medium-term.

9.3 In the event that the Club does subsequently fail then (subject to satisfactory advice about any potential insolvency proceedings) the freehold would remain with the Council, and the Council would have the right to forfeit the lease, subject to the Clubs right to apply for relief from forfeiture.

## **10.0 Background and Options**

10.1 The Silkmen have played a part in the community of Macclesfield since 1874, with many current supporters representing the latest generation of their families to have been regulars at Moss Rose.

10.2 In common with most British football clubs, the Silkmen are identified with the town in which they play and, for many thousands of football fans around the country, the converse is true; they relate to Macclesfield, the town, through a rivalry with the club.

10.3 Over the years, football has provided a vehicle for social cohesion in Macclesfield. From the Cheshire League days when 8,000 supporters would turn up to watch Christmas fixtures against Congleton Town or Northwich Victoria, through visits to Wembley for FA Trophy finals, to more recent adventures in the FA Cup against Chelsea, Bolton Wanderers and Wigan Athletic, the Silkmen have brought the town together and given it something to cheer about.

### **Club Facilities**

10.4 The Club has rooms for hire and can cater for up to 150 people and has the capacity for up to 250 at an affordable rate. It also has a computer suite with 8 computers and car parking is available adjacent to the Club.

10.5 This facility can be used for small informal meetings and also large scale conferences with good catering and bar facilities. It is also DDA compliant with an existing lift to the first floor. This is a unique venue which is used regularly by community groups and outside bodies and has a good reputation.

### **Economic Benefits**

10.6 As a professional football club, Macclesfield Town provides direct full time employment for more the 40 people and is one of the biggest providers of apprenticeships in the town. It also provides part time employment for 50 or so staff on match days, offering many youngsters a first experience of work.

- 10.7 The business has forecast a turnover of c.£1.1m for the 2013/2014 season. However this may vary depending on the playing success of the team on the pitch.
- 10.8 With home gates of around 1500 at its current level over 25 games a season, Moss Rose is generating 37,500 visitors a year, making it one of the most visited places in the town. Of these, 3,000-5,000 are visiting fans bringing an added stimulus, particularly to the businesses in the less affluent south of the town.
- 10.9 The Club is one of the very few organisations with Macclesfield in its name that is capable of generating national, and occasionally global, interest and media coverage. For example, the games at Moss Rose against Everton and Wigan Athletic were televised live around the world and Arnaud Mendy's famous goal against Bolton Wanderers in January 2011 was viewed by more than two million people around the world on You Tube. The direct economic value of this coverage is difficult to measure, but it adds strength to the view that the Football Club is an integral part of the town's brand and identity.

### **Impact on the Economy**

- 10.10 Some of the recognised economic benefits of the Football Club are that it:
- Creates jobs
  - Offers alternative route to employment and training
  - Reduces vandalism and crime locally
  - Promotes tourism
  - Attracts people, business and inward investment

### **Community Benefits**

- 10.11 The Club has, over the years, regularly put the town on the national stage, but its major benefit lies in its relationship with the community. It continues to work hard within that community, welcoming and providing support to many facets of local society.
- 10.12 The Club and its charitable arm, the Macclesfield Town Community Sports Trust, work with many local groups including schools and charities:
- A long-standing relationship with the Rossendale Trust, providing work experience and a welcome on match days for residents.
  - Working closely with Cheshire Peaks and Plains Housing Trust, Cre8 and other community groups to provide a variety of services on the Moss Estate.

- The Trust is involved in community projects including the traditional soccer schools and working with young people around the town providing street sports and dance.
- Staff and apprentices are spending time in residential care homes providing gentle games and exercise and simple social interaction with young people to older residents.
- The Club and the Trust also provide a channel for elite sports development through an apprenticeship scheme and a newly established academy. This year, more than 20 apprentices were developing new skills and some have progressed to a professional career in the game, but many more have continued their education and careers through College and University.
- Working with Young offenders
- 'It's a Goal' Scheme working with the mentally ill to help engage with people and build confidence

### **Community Impact**

10.13 The Club has been keen for many years to develop its role within the community and it is evident that the Club can build on the impact it is already having in the area. Some of the recognised benefits are listed below:

- Engage people who are at risk of exclusion
- Help break down the barriers between people
- Address issues of poverty and help to strengthen community cohesion
- Help to engage people irrespective of their background
- Build confidence and increase people's self esteem
- Promote better health and wellbeing
- Reduce obesity
- Increase volunteering
- Increase adult and young people's participation in sport

### **11.0 Access to Information**

11.1 The background papers relating to this report can be inspected by contacting the report writer:

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