

# ***Review of policies and procedures relating to the provision of loan finance to Northampton Town Football Club***

*Northampton  
Borough Council*

*November 2016*



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# *Executive Summary*

## **Background**

In July 2013, the Cabinet of Northampton Borough Council ('NBC' or 'the Council') approved a decision to loan monies to Northampton Town Football Club (NTFC) to pay for improvements to its Sixfields Football Stadium and to build a hotel. This builds on a 2011 Conservative manifesto pledge:

*A Conservative administration will actively support development plans for retail and commercial opportunities that will provide our sports clubs with funding for the development of their teams and facilities*

A loan agreement was prepared and funding was passed to the football club between September 2013 and August 2014. The Council also entered into an agreement for the development of residential and commercial properties around Sixfields on land, owned by the Council and the Homes and Communities Agency. The receipts from this development and additional revenues arising from the improved facilities at the Stadium would repay the loan.

In late 2014 the works to improve the east stand at the stadium ceased following a dispute between the Football Club, the developers (County Developments Northampton Limited) and the building contractors (First Land Limited). The parties resolved their dispute, without the involvement of the Council, and works recommenced on the stadium in early 2015. However, in the spring of 2015 works ceased on the stadium again when the contractor was not paid. At this time loan repayments to the Council started to be late or were missed but still eventually paid until early autumn 2015 when payments stopped. Consequently, the loan agreement was cancelled and the development company, County Developments Northampton Limited was put into liquidation by the contractor, Buckingham Group Contracting Limited.

The Council continued to try to find a solution to the situation, including ensuring a financially sustainable Football Club. During this period the Football Club was placed under the threat of a winding up petition from HMRC which would have led to the Football Club going into liquidation. This prompted more serious action by the Council, including a request for the full repayment of the loan and a Memorandum of Understanding between the Council and the Football Club which was agreed in November 2015 to collaborate and work together to ensure the continued survival of the Football Club.

The Football Club has now been sold to a new buyer and a memorandum of understanding is in place with the new owner. The Council has informed the police of the situation and has initiated a series of work streams to investigate the details of the loan agreement, whether there has been any fraudulent action and to seek recovery of the monies.

## **Scope**

The Audit Committee asked Internal Audit to conduct a review into the provision of loan finance to the Football Club and in particular to consider the relevant policies and procedures that are applicable to a transaction of this nature. This review has focused on whether the policies and procedures that were in place were adequate and whether they were adhered to in this instance.

A number of other investigations have also taken place or are in progress:

- KPMG, the external auditors, have considered the transactions as part of their external audit and reported their findings in their ISA260 report for 2015/16;
- KPMG are responding to an objection to the Financial Statements; and
- There is an ongoing police investigation.

Our objectives were to comment on:

- the business case for the transaction
- the decision to accept the case and enter into the transaction, in accordance with the Council's policies
- the loan agreement
- the governance over the decision and subsequent action
- the risk management over the transaction
- the performance management arrangements for the transaction
- the management information on the transaction
- the financial controls over the transaction
- the project management over the transaction

## ***Limitations of scope***

The scope of our work was limited to the areas outlined above and was focused on the internal arrangements within NBC concerning the provision of loan finance. Our review has only considered the policies and procedures relating to the provision of loan finance to NTFC and not the activities undertaken in relation to the wider redevelopment of the Sixfields area and surrounding land.

We are aware of the ongoing Police investigation and External Audit work which have a wider remit considering other elements of the Sixfields redevelopment. This report does not make reference to any of these topics and is focused purely on the provision of loan finance, as requested by the Audit Committee and approved as part of our terms of reference.

## ***Approach***

We have been provided access to the Council's virtual data room which contains a significant number of documents, collated by the Council in relation to the arrangements with NTFC.

There are a significant number of emails from numerous individuals involved across the Council and external bodies. There is considerable communication between the following individuals:

- Chief Financial Officer
- Principal lawyer for property, planning and highways; LGSS legal
- Legal contracts and procurement advisor, LGSS Legal
- Corporate Asset Manager

In addition there was a smaller volume of communication from the following individuals:

- Monitoring Officer
- Leader of the Council
- Chief Executive
- Director of Regeneration, Enterprise and Planning

We have sought to review the majority of relevant information in line with the scope of work defined above and where appropriate we have reviewed the additional information which the Council have provided to respond to specific queries we have raised. The fact that it has taken the Council a number of months to identify supporting evidence and the significant volume of correspondence which has subsequently been produced to undertake this, and other ongoing, reviews indicates a lack of organisation and systematic processes in place at the point of inception for the loan financing agreement.

## Key findings

Key control objective	Findings
<p><b>Business case and decision making process</b></p>	<p>We would expect there to have been a full business case, drafted by the Council, to support the decision to make financing available to NTFC before cabinet approval. Instead, there was a high level options paper for providing loan finance to NTFC before the Cabinet decision. However, this was at a very high level and does not constitute a full and robust business case. The paper concluded that there was a requirement for a guarantor and that NTFC's income and capital projections needed to be objectively assessed. There is no evidence to demonstrate that these actions were undertaken before Cabinet approval was sought.</p> <p>In September 2013, following Cabinet approval some due diligence checks were undertaken, including credit checks and review of latest financial statements. However, the credit checks identified that the risk of Northampton Town Football Club Ltd's failure was "high" owing to the negative net worth of Northampton Town Football Club Ltd and the fact that the auditor's report on the financial statements for the previous four years up to 2012 included an emphasis of matter paragraph highlighting that there were material uncertainties regarding the Company's ability to continue on a going concern basis. It is unclear how the Council responded to the negative indicators which were identified.</p> <p>NTFC developed a number of separate business and financial models for the redevelopment of the Sixfields Stadium and for a hotel on the Sixfields site. These were re-developed and re-issued to reflect changes. These were shared with the Council and we have seen copies of these, each being annotated by the Chief Financial Officer and others, followed by challenge to NTFC and updates. But there was not a final definitive version to support the decision to provide finance to NTFC.</p> <p>The earliest business and financial model was not produced until August 2013, the month following Cabinet approval of the loan finance. Whilst there were a number of business cases produced, there is no formal evidence available to demonstrate these were shared with Cabinet or sufficiently challenged by sources independent to both the Council's decision making process and the football club.</p>
<p>Decisions based on adequate, accurate information in accordance with the Council's financial regulations</p>	<p>The recommendation to Cabinet should have contained a detailed analysis of the financial implications and associated sensitivity analyses of the business plan prepared by the Council.</p> <p>Instead, the Cabinet paper prepared and presented in July 2013 identifies that "NTFC have indicated they would like to have an agreed facility with the Council for loan finance of up to £12 million to support these stadium and hotel / conference centre plans". There are no further, specific details about the form of this loan or potential repayment options. The paper includes a high level summary of the implications, including: resources, risk, legal and equality considerations. The legal considerations indicate that the Council is entitled to make a loan of this nature and we have not seen any evidence to suggest otherwise.</p> <p>This indicates the Cabinet was not provided with adequate information on which to provide full approval. Approval from Cabinet appears to have been a "decision in principle". Which is reflective of the meeting minutes which state "Cabinet approved the principle of providing loan finance". Approval and delegation of responsibility for the amounts and terms of any loan finance arrangements were subject to a number of additional requirements which were defined in the Cabinet Report.</p>

The financial regulations state that where functions are delegated, Cabinet remains accountable for them to the Full Council. Although responsibility for the amounts and terms of any loan finance arrangements were delegated, ultimate responsibility for the loan was retained by Cabinet.

## **Loan agreement**

Decision taken by Council translated into a formal loan agreement

Once the decision was made to provide loan financing to NTFC, this should have translated into a formal loan agreement taking into account the conditions and limitations imposed by Cabinet in July 2013. The conditions and limitations were:

- No net or initial costs to the Council of setting up and administering the loan finance
- Sufficient tangible security is offered until full repayment is made
- Length of the loan and its repayment are linked to the timing of additional revenue generated by the club
- Income projections are sufficient to service the debt
- Robust contractual arrangements in place between NTFC and a third party to secure minimum future levels of income

There is no record of the Council having undertaken a formal assessment against the Cabinet requirements before entering into the facility agreements. It would have been good practice for the Council to have undertaken such an exercise prior to entering into the facility agreements. Whilst these have been complied with to some extent, we have been unable to confirm that these were complied with fully, addressing all concerns. For these reasons, we have been unable to confirm that the decisions taken were in line with the delegated authority.

The Cabinet report of July 2013 delegated the actions required and responsibility for entering into the facility agreements appropriately to the Chief Executive, in consultation with the Section 151 Officer and Leader of the Council. Delegation of this nature is in compliance with the financial regulations of the Council. The Cabinet paper also delegated to the Director of Regeneration Enterprise and Planning the authority, in consultations with the leader of the Council, to agree the terms of transfer of the land. Since our scope of work is limited to the loan agreement we have not considered this delegation further.

The original Cabinet report included reference to loan finance of “up to £12m”; the subsequent facility agreements entered into total £13.5m. Officers sought legal advice from LGSS which determined that since the recorded decision does not reference a specific figure additional Cabinet approval for the additional £1.5m was not required and approval up to £13.5m was in line with the existing decision. For the purposes of transparency and openness it would have been good practice to obtain further Cabinet approval for the additional monies as whilst the decision does not reference a specific amount the Cabinet report does clearly refer to “up to £12m”.

The minutes of the Cabinet meeting on the 13 July 2013 clearly identify that three opposition members raised concerns about the approval in principle. No information has been provided which identifies whether these concerns were investigated and adequately resolved.

Professional advice in producing the agreement

A transaction of this sort requires appropriate professional advice, particularly in drafting a robust, formal loan agreement which addressed the conditions imposed by Cabinet in July 2013.

We have been given access to the Council’s virtual data room which contains a significant number of emails from numerous individuals involved in preparing the facility agreements. Review of the email correspondence demonstrates that there were ongoing discussions internally around financial, legal and statutory duties in preparing the facility agreements, alongside consideration of risks and potential mitigations.

Capita Asset Services reported on key matters for consideration in providing loans to NTFC. The report focuses on the legal considerations, state aid considerations, soft loan and capital accounting implications associated with the financial assistance. It does not consider affordability or suitability of the proposed option and the disclaimer indicates that Capita were not instructed to complete any due diligence work associated with the proposed loan to NTFC.

A number of the emails raise concerns about the short timescales and pressure from management and politicians to conclude arrangements. It is evident that these time pressures significantly reduced the Council's ability to challenge and fully evaluate the professional advice it had obtained as part of the preparation for the Football Club loan.

Email correspondence between the leader and officers highlights the importance of the transaction and the desire to conclude the transaction promptly.

The political commitment in the Conservative manifesto, along with the July 2013 Cabinet decision was considered a commitment to provide loan financing, despite there being limited information available at this time. Detailed business cases, due diligence checks and professional legal advice were not obtained until after the Cabinet approval was obtained. Whilst due diligence checks were undertaken we were unable to identify evidence that the issues identified were adequately resolved before the transaction was completed.

Whilst the email correspondence demonstrates the involvement of appropriate professionals in producing and monitoring the agreement the emails the volume of evidence provided from across the organisation suggests that this did not follow a formal, defined process.

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## **Governance**

Governance arrangements to oversee the agreement

Governance needed to be put in place which would operate throughout the term of the agreement.

The Council's virtual data room includes emails which evidence ongoing communication within the Council involving suitable individuals in reviewing the arrangements and performance against the facility agreement. In our view, these were more ad hoc rather than structured, and the records do not show a coherent picture of effective governance. Following discussion with the Council in August 2016, we were subsequently provided with additional information not originally available which included minutes from the Programme Board meetings and Project Highlight reports which demonstrate that there was oversight and governance in place regarding the redevelopment of the wider Sixfields regeneration project. However, these are focused on the operational aspects of the programme and do not separately identify performance of the loan agreement.

The available information, including substantial email correspondence, demonstrates that the project involved a significant number of senior officers; including the Chief Executive, Section 151 Officer, Monitoring Officer and Director of Regeneration, Enterprise and Planning, amongst others which one might expect given this is a key priority for the administration. We have seen no evidence to demonstrate that the governance arrangements and oversight for the loan agreement was formalised. The fact that the subject attracted such a senior level of involvement indicates that efforts were made to challenge and address the potential issues associated with providing loan financing to NTFC. However, it is unusual to have such senior officers being involved in day to day activities of the Council and it would have been beneficial to have had an officer stay removed from the day to day activities to ensure there was an individual officer who could retain oversight of the transaction.



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## **Risk management**

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Risks identified, assessed and appropriate mitigations in place.

Risk assessment should form part of any significant decision. Any risks identified should be mitigated to the fullest extent possible and monitored for the duration of the project.

Risks reviewed on a regular basis and action taken to protect the Council's interests

Officers indicated that a risk assessment was considered as part of the decision making process and that risks were identified and mitigated throughout the project as part of the Sixfields land development project. The Sixfields Programme Board meetings and discussion of the Project Highlight Report included consideration of the risks associated with the wider site redevelopment. However, we have been unable to identify any formal risk assessment documentation which was produced specifically in relation to the provision of loan finance as part of the decision making progress, nor any evidence which demonstrates that the provision of loan finance and its associated risks were considered as part of the strategic or service area risk registers.

As part of its Treasury Management Strategy the Council sets out the broad Treasury risks facing the Council and how these will be mitigated. We found no specific consideration of the Football Club loan agreement in sufficient detail to identify and address specific risks. The Council has since updated its Treasury Management procedures to address this going forward, including a specific provision for loans to third parties and commitment that the Council's Treasury Strategy incorporates the limits and permissions required to allow future borrowing to go ahead.

As indicated above there is evidence to demonstrate ongoing challenge, identification and resolution of risks as part of the ongoing email correspondence. But this was not undertaken on a formal basis and the thousands of emails make it difficult to identify whether sufficient action was taken to identify and mitigate risks.

The Constitution states that the Chief Finance Officer is responsible for collating the Council's Strategic Risk Register and ensuring it is reported to Cabinet and the Audit Committee at least annually. In addition, the Chief Officers should maintain a register of risks affecting their service areas, including corporate risks. Since there was no formal risk management documentation it was not possible for the Council to review and update its risk assessment on a regular basis and we judge that the Constitution was not followed in this respect.

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## **Performance management**

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Arrangements to monitor and manage performance of the agreement

We would expect there to have been formal performance management arrangements established to monitor and manage performance of the agreement.

Whilst there was ongoing involvement of the Council following the establishment of the facility agreement this extended to a number of other areas, including arrangements with the HCA and wider developments in the area, which did not directly relate to the performance management of the facility agreements. Once again, the performance management activities focused on the wider Sixfields redevelopment through the project team meetings and there is no explicit consideration of the loan agreement in place.

Although the terms and conditions of the facility agreements were being adhered to it should have been clear that the physical progress of the Sixfields redevelopment did not align with the amount of money drawn down. It is understood that informal site visits did take place, although there is no documented evidence of this. Even so there appears to have been no formal correlation between progress with the works progress and the loan monies permitted for draw down.

There were no formal performance management processes established to oversee the facility agreements. The documentation provided to NTFC as part of each tranche drawdown associated with each facility agreement was accompanied by a Loan Term



Sheet and Repayment Schedule detailing when interest payments were due. Performance against these repayment dates was monitored by the LGSS Finance team and we have seen email correspondence between the Council and NTFC in following up late payments immediately and trying to reach a resolution to secure repayment from NTFC. In addition, we have seen annotated copies of the different models which demonstrate that Council employees, including the Chief Financial Officer, reviewed the business models prepared by NTFC and challenged a number of the figures included which prompted updates and amendments to the business cases.

The evidence demonstrates that the cash flows and compliance with the repayment schedules were monitored and followed up. However, there was no formal monitoring of the physical progress of the construction works which, despite not being a works contract, would still have provided substantial assurance that the loan was being used appropriately.

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## **Management information**

Format and content of management information for effective governance and performance management

As part of the formal performance management and governance arrangements management information should have been produced which provided management with adequate information to facilitate ongoing governance and performance management. This type of loan and agreement was a new undertaking for the Council and the significant sums involved provided additional risk indicators which should have prompted detailed, regular management information.

There was no formal management information process defined in relation to performance of the facility agreements. As identified above, the evidence of LGSS Finance escalating overdue payments and following up with NTFC does indicate some element of management information was received even though there was no formal defined process in place for this.

From the information reviewed it is apparent that once the facility agreements had been formalised and provision of loan finance secured the Council focused on areas of the wider Sixfields development, including arrangements with the HCA and these areas were the subsequent focus of governance, performance management and management information.

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## **Financial controls**

Adequate information in the agreement on the financial obligations and payment mechanisms

In all instances the stipulated precondition for the drawdown of the loan was satisfied and funds were released in line with the Constitution following Chief Financial Officer approval.

Whilst the drawdowns were made in compliance with the terms specified in the relevant Facility Agreement, that these terms were unsuitable as the basis for the tranche drawdown. It is understood that the conditions used were the result of commercial negotiations which required compromise from both the Council and Football Club regarding the timing of payment drawdowns. Too large a proportion of the funds were drawdown at too early a stage in the project. It is difficult to see how each drawdown was based on an assessment of progress or value for money. Indeed, it would appear that the loan terms meant that the loan was drawn down in advance of need.

The physical progress of the stadium development should have provided a warning sign that the development was not progressing at the rate expected or in line with the funds provided. In spite of this the Council continued to permit drawdowns on the

loan agreement since the Football Club were in compliance with the Facility Agreement terms.

In August 2014 a variation to the original planning permission was registered which identified that the East Stand would no longer include a conference and banqueting facility and there would be a reduction to the proposed increased capacity. This planning application was approved in September 2014. Despite the changes to the planned construction works we have not seen any evidence to indicate that the construction changes were reflected in the structure of the loan and there is no alignment between the final loan drawdown in August and the revised planned construction works.

We have confirmed that each of the planned payment due dates recorded is in line with the issued Loan and Repayment Schedule. As noted above, performance against the scheduled repayment dates was monitored by the LGSS Finance team and we have seen email correspondence between the Council and NTFC in following up late payments immediately and trying to reach a resolution to secure repayment from NTFC, up until the point at which the Council requested all outstanding monies to be repaid.

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Financial exposure identified and reported immediately to protect the Council's interests

Drawdowns of the loan finance were made between 20 September 2013 and 19 August 2014. Wider issues around the NTFC contractor's administration and cessation of works on site did not occur until March 2015 and at the time of making the facility agreement drawdowns there was limited indication of future concerns. The first delayed interest repayment occurred on 19 February 2015, which was six days overdue, and the first repayment which was not made was not due until 28 August 2015, again after all drawdowns had already been made.

In response to NTFC's failure to make the scheduled interest repayment on 28 August 2015, the Council issued a notice to NTFC on 24 September 2015 requesting that all monies be repaid under the terms of the facility agreements.

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## *Project Management*

Arrangements to project manage the agreement and financial arrangements

Ongoing project management arrangements should have been established to oversee the agreements, financial arrangements and review progress on a regular basis to ensure that the Council's interests were protected and any risks mitigated.

Regular reviews of the project management arrangements to ensure that the Council's interests were protected and any risks mitigated.

Officers indicated that regular project management meetings were held to provide an update on progress and enabled officers to mitigate any risks which were identified throughout the project. Review of the evidence available demonstrates that there was oversight and governance in place regarding the redevelopment of the wider Sixfields regeneration project. However, these are focused on the operational aspects of the programme and do not separately address the performance of the loan agreement.

As previously identified there are a number of emails between all involved parties throughout the duration of the arrangement which demonstrates clearly there was ongoing involvement and interaction with all parties. Whilst the email correspondence demonstrates the involvement of appropriate professionals in producing and monitoring the agreement the fact that the Council has taken months to identify and collate a series of thousands of emails to demonstrate the adequacy of the professional advice indicates that the arrangements were informal and did not follow a strict procedural process.

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## *Conclusion*

We concluded that:

- Cabinet approved a loan of up to £12m, but this decision was based on limited information as a business case was not made available
- A number of conditions were made by Cabinet and we have been unable to confirm that these were complied with fully, addressing all concerns. For these reasons, we have been unable to confirm that decisions taken were in line with the delegated authority. There were loan agreements established to formalise the provision of finance and drawdowns of the finance were made in line with the relevant terms and conditions and established procedures requiring approval from officers. The information reviewed demonstrates that there was a lack of formal processes implemented and adhered to regarding risk management, project management, management information and performance management. Whilst there is evidence to show the Council has challenged some areas and professional advice has been sought, the fact that the Council has taken months to identify and collate a series of thousands of emails to evidence the adequacy of the actions undertaken highlights that the arrangements were informal and did not follow a strict procedural process. Where issues have been identified the volume of evidence available makes it very difficult to demonstrate that all issues were adequately resolved.

This incident demonstrates the need for careful thought, structure, independent advice and monitoring in making a decision on a transaction which was significant and unusual.

We attempted to reconstruct the thought process for the decision made and for subsequent monitoring. Our view is that the Council failed to demonstrate this in its data room. This was made extremely difficult because of a lack of an approved business case, appropriate independent advice and documented risk management and governance processes. These documents need to be at the same time concise and comprehensive. We found the documentation we were presented with to be neither.

The significant time invested by the Council in retrospectively collating information and evidence to demonstrate adequate governance, risk and performance management indicates that this was not undertaken in a formal, process driven manner at the time of inception. The fact that there are thousands of emails and sources of evidence to demonstrate the actions undertaken is confusing and fails to demonstrate adequately ownership and control of the situation.

It is apparent that the overriding focus on the Sixfields redevelopment was on the operational aspects and subsequent governance arrangements failed to identify and address adequately the loan agreement.

# Findings

## Findings against the terms of reference

Key control objective	Findings
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### *Business case and decision making process*

Suitably detailed and costed business case was produced to support the decision to make financing available to the Football Club

Before the Cabinet approval was obtained a paper was prepared in June 2013 by the Council's Corporate Asset Manager which set out the potential options for how NBC could support in financing the football stadium and hotel development. This also considered NTFC's sources of income for repaying the Council. The paper references key issues and risks at a very high level, concluding that there was a requirement for a guarantor and that NTFC's income and capital projections needed to be objectively assessed. There is no evidence to demonstrate that these were undertaken before Cabinet approval was sought.

Two cash flow forecasts were prepared by County Group Development in late June 2013 which consider the residential redevelopment and multi-use redevelopment of the Sixfields site; neither consider the stadium expansion element of the program which was described as one of the key purposes of the loan finance in the Cabinet report. We have not been provided with any evidence to demonstrate that these reports were objectively assessed by the Council or assumptions subject to adequate scrutiny and evaluation.

The Cabinet decision was approved on 17<sup>th</sup> July 2013 and subsequently the football club prepared business cases and the Council undertook due diligence checks.

This included a report prepared by Capita Asset Services, dated 17 September 2013, which considered key matters for consideration in connection with the provision of loans to NTFC. The report focuses on legal considerations, state aid considerations, soft loan and capital accounting implications associated with the financial assistance. It does not consider affordability or suitability of the proposed options. Assessing the suitability of the advice taken regarding State Aid is not in the remit of our scope of work. No further information has been provided regarding Capita's agreed scope of work or how the report was used by the Council. There is a clear disclaimer which indicates that Capita were not instructed to complete any work on securitisation/collateral or risk and due diligence associated with the proposed loan to NTFC. No further information has been identified to demonstrate that the recommendation that NTFC's income and capital projections were objectively assessed.

Due diligence checks were undertaken by the Council including Dun & Bradstreet credit checks for Northampton Town Football Club Ltd and other associations including: Northampton Town FC Football in the Community Programme, NTFC Ltd, Sixfields Stadium Co Ltd, Premier Sports Stadia Ltd, County Developments (Northampton) Ltd, Cobblers Rugby Football League Ltd. However, these checks identified that the risk of Northampton Town Football Club Ltd's failure was "high" owing to the negative net worth of Northampton Town Football Club Ltd and the fact that the auditor's report on the financial

statements for the previous four years up to 2012 included an emphasis of matter paragraph highlighting that there were material uncertainties regarding the Company's ability to continue on a going concern basis.

Northampton Town Football Club Ltd's audited accounts for 2013, 2012 and 2011 have also been obtained. These show that the company made a loss of £221,555 and was in a net liabilities position as at 30 June 2013. We have not seen any evidence to show how these negative indicators were considered and responded to. Some due diligence activities were undertaken but the results from both internal and external evidence were not formalised, collated and issues identified, considered and adequately resolved before a decision was taken to provide loan finance to NTFC.

NTFC developed numerous business and financial models for the redevelopment of the Sixfields Stadium and for a hotel on the Sixfields site between August 2013 to March 2015 and April 2014 to November 2014 for the stadium and hotel respectively. Each of the models included specific details of assumptions used, five year profit and loss forecast, five year cash flow forecast and later models were developed to include a number of sensitivity analyses. These documents were shared with the Council throughout the period. Whilst the projected expenditure includes an element of redevelopment loan interest these business and financial models were not directly linked to the planned Council financing but were instead to demonstrate the improved financial position of NTFC following redevelopment.

There was no final version of the business and financial models for each of the schemes and each document states that the "business model will be developed as part of the ongoing budgetary control procedures in place at the club" which explains the number of business cases developed over the period. An update report prepared in November 2014 summarising the changes states that the business and financial models have been continuously developed due to the significant uncertainty at the outset of the project.

There is also a statement in the models that "any third party relying upon [the financial and business model] is advised to undertake whatever due diligence they feel appropriate to test the assumptions contained". We have not seen a separate business case, developed by the Council, to support the decision to provide loan finance to the Football Club. Although the business case was developed by NTFC these documents were shared with the Council throughout the period. We have seen annotated copies of the different models which demonstrate that Council employees, including the Chief Financial Officer, reviewed the models and challenged a number of the figures included which prompted updates and amendments to the documents and inclusion of detailed sensitivity analysis.

Whilst there was clearly some preliminary work done in assessing potential options for providing loan finance to NTFC before the Cabinet decision, this was at a very high level and does not constitute a full and robust business case. The timing of the subsequent business cases fails to support the fact that sufficient evidence was available to support the decision to make financing available to NTFC at the point at which Cabinet approval was sought. The earliest business and financial model was not produced until August 2013, the month following Cabinet approval of loan finance. The first legal facility agreement, in relation to the Stadium redevelopment, was signed in September 2013 which does suggest that the first copy of the business and financial model was available. Similarly, the legal facility agreement, in relation to the Hotel redevelopment, was signed in July 2014 which suggests that an early version of the business case was available. Whilst some due diligence checks were undertaken it is unclear how the Council responded to the negative indicators which were identified.

*The information reviewed identifies that there were a number of detailed and costed business cases produced; however there are inadequate records to demonstrate that these were sufficiently challenged. Before Cabinet approval a high level options paper was prepared, subject to a number of conditions, which outlined potential options for providing financial*

*support to NTFC. The timing of the detailed business cases, prepared after Cabinet approval, indicates that adequate information was not available at the time a decision was taken to make financing available to the Football Club. Going forward, the Council should ensure business cases are fully developed by the Council and finalised before any decision is taken by members.*

Decisions are based on adequate, accurate information and are in accordance with Council financial regulations

Cabinet approved in principle, the decision to provide loan finance to NTFC to support stadium expansion and development of associated land on the 13 July 2013, delegating authority to the Chief Executive, in consultation with the Section 151 Officer and Leader of the Council, to approve the amounts and terms of any loan finance arrangements subject to a number of conditions. The Cabinet paper also delegated to the Director of Regeneration Enterprise and Planning the authority, in consultations with the leader of the Council, to agree the terms of transfer of the land. Since our scope of work is limited to the loan agreement we have not considered this delegation further.

The provision of loan finance to NTFC to support stadium expansion formally commenced on 18 September 2013 with a facility agreement for £7.5m. This was subsequently followed with an additional facility agreement signed 14 April 2014 for £1.5m and a final facility agreement signed on 23 July 2014 for £4.5m to support the hotel redevelopment. To summarise, there was a formal agreement in place for the provision of the following monies to NTFC:

Agreement	Date	Amount
Stadium facility agreement	18 September 2013	£7,500,000
Additional loan facility agreement	14 April 2014	£1,500,000
Hotel facility agreement	23 July 2014	£4,500,000
Total		£13,500,000

### Cabinet Decision

We have reviewed the paper provided to Cabinet in July 2013 to consider whether the decision to approve the provision of loan finance in principle was based on adequate, accurate information and in accordance with Council's financial regulations.

The paper identifies that "NTFC have indicated they would like to have an agreed facility with the Council for loan finance of up to £12 million to support these stadium and hotel / conference centre plans". This is in line with the Conservative Party manifesto regarding redevelopment and investment in the Sixfields area. There are no further, specific details about the form of this loan or repayment options. The paper includes a high level summary of the implications; including: resources, risk, legal and equality considerations. The legal considerations indicate that the Council is entitled to make a loan of this nature and we have not seen any evidence to suggest otherwise. This indicates that Cabinet were not provided with adequate information upon which to provide approval. Instead, the approval from Cabinet does appear to have been very much a 'decision in principle' but this is mitigated by the fact that approval and delegation of responsibility for the amounts and terms of any loan finance arrangements are subject to a number of additional requirements. These are summarised as:

1. There would be no net initial or later costs to the Council of setting up, administering and servicing any borrowing it in turn makes, whether via the Public Works Loans Board or from any other external source, to in turn provide loan finance to the clubs.



2. There is sufficient tangible security offered by the clubs to the Council from the time of taking loan finance until full repayment is made. In the case of the Saints this could be through the Council being granted a legal charge on Franklins Gardens. In the case of NTFC this may be via legal charges on a combination of assets or other appropriate arrangements.
3. The length of the loan and its repayment are linked to the timing of additional revenue generated by both clubs from the expansion, with the principle being any monies loaned should be repaid in the shortest possible time.
4. The income projections from additional revenue generated by both clubs as a result of expansion is sufficient to service debt owed to the Council, after taking into account any capital sums that are, objectively, judged very likely to become available to the clubs in the short to medium term.
5. In the case specifically of NTFC's proposed hotel development, there are robust contractual arrangements in place between NTFC and a financially sufficient third party concerning certainty of minimum levels of income for a suitable minimum period of years.

The minutes of the meeting clearly identify that three opposition members raised concerns. Suggestions were made that the report should be examined by the Overview and Scrutiny Committee with reference to the relocation of the athletics track, nature of negotiations which had been undertaken and potential legal challenges. The minutes demonstrate the Leader of the Council had responded and "explained that there had been numerous people involved in negotiations, including himself, Cabinet Members, the Chief Executive of Northampton Borough Council and the Section 151 Officer. He further commented that he was happy that the decision was transparent and had been scrutinised by officers but emphasised that there was a need to make progress as soon as possible".

No information has been provided which identifies whether these concerns were investigated and adequately resolved, and there is no record of the report having gone to the Overview and Scrutiny Committee. Opposition members could have exercised their right to request the decision to be reviewed by the Overview and Scrutiny Committee, however, they did not exercise this right.

Redevelopment of the Sixfields region was a key aspect of the Conservative 2013 election manifesto and the email correspondence between the leader and officers indicates the importance of the transaction and the desire to conclude the transaction promptly.

The approval in principle subject to conditions shows that full and accurate data was not available during July 2013 when the decision was taken. The decision to delegate responsibility to the Leader of the Council, Section 151 Officer and Chief Executive places the ownership on them to ensure that adequate and accurate data is available to demonstrate the conditions have being complied with before taking the final decision to enter into any facility agreement.

#### Cabinet decision and the financial regulations

The financial regulations of NBC define a key decision as an executive decision which is likely to result in the Council incurring expenditure which is significant having regard to the Council's budget for the service or function. The Cabinet paper of July 2013 appropriately defines the decision regarding financing NTFC as a key decision. The subsequent approval of the agreement in principle, and delegation of authority was in line with the financial regulations for the treatment of a key decision.



The financial regulations similarly state that “The Cabinet is responsible for approving the Council’s participation in all significant partnerships/joint working arrangements with other public, private, voluntary and community sector organisations.... The Cabinet can delegate functions - including those relating to partnerships - to specific Members or Officers....Where functions are delegated, the Cabinet remains accountable for them to the Full Council”. This demonstrates that the approval by Cabinet in July 2013 and the decision to delegate subsequent activities was in line with the financial regulations of the Council. We have not seen any evidence to show that there were reports from Cabinet to Council to show that they retained accountability for the transaction.

*The decision to provide loan finance to NTFC was identified as a “key decision” and approved appropriately in line with the Council’s financial regulations. However, there are concerns regarding the availability of information to make this decision since no formal business case had been developed at the time of approving the decision.*

## Loan agreement

Decision taken by Council is translated into a formal loan agreement

### Officers decision

The nature of advice sought and information which officers used in making the decision to enter into a facility agreement has been considered as part of the commentary below. Cabinet approval granted in July 2013 contained a number of conditions, set out above, which had to be satisfied along with the delegation of responsibility. There is no record of the Council having undertaken a formal assessment against the Cabinet requirements before having entered into the facility agreements. Before entering into the facility agreements it would have been good practice to revisit with Cabinet the original decision and provide an update to demonstrate the conditions had been complied with and to provide details regarding the final agreements.

Compliance with the Cabinet decision conditions has been assessed and reviewed retrospectively with management. We acknowledge that compliance with these specific conditions is linked to the wider Sixfields redevelopment programme; however, consideration of the elements beyond the loan financing are outside the remit of our agreed scope of work.

<b>Cabinet condition</b>	<b>decision</b>	<b>Comments</b>
There would be no net initial or later costs to the Council of setting up, administering and servicing any borrowing it in turn makes, whether via the Public Works Loans Board or from any other external source, to in turn provide loan finance to the clubs.		<p>In all the facility agreements section 10 states:  <i>“the borrower shall, promptly on demand, pay to the Lender the following costs and expenses (including printing and out of office expenses and disbursements):</i></p> <ul style="list-style-type: none"> <li>- <i>the reasonable legal fees and other professional adviser costs in connection with the making of Advances, the entry into arrangements by the Lender with the PWLB and the negotiation, preparation, execution and perfection of the Finance Documents and the other documents referred to in them;</i></li> <li>- <i>the reasonable legal fees and other professional adviser costs in connection with any amendment, extension, waiver, consent or suspension of rights relating to the Finance documents or a document referred to in them.”</i></li> </ul>

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There is sufficient tangible security offered by the clubs to the Council from the time of taking loan finance until full repayment is made. In the case of the Saints this could be through the Council being granted a legal charge on Franklins Gardens. In the case of NTFC this may be via legal charges on a combination of assets or other appropriate arrangements.

We acknowledge that the primary security was linked to the development of the land which would be used to repay the majority of the loan. Initially, the value of the land was assessed by the developer and CBRE (on behalf of the Council) and it was considered that the £6.5m due to the Council was realistic.

The Asset Manager was consulted about the value of this land and he confirmed that in his professional opinion it would offer an opportunity for development given the current sites in the close vicinity. It was noted that the Stadium site had been decontaminated and the stadium would need to be demolished. He also commented that the land value would be even greater with a hotel on site.

In addition, each facility agreement included a corresponding legal mortgage over the long leasehold of the stadium and surrounding area as security for the facility agreement. Section 15 of the facility agreements states “the borrower legal mortgage creates valid, legally binding and enforceable security for the obligations expressed to be secured by it”. Email correspondence shows that the Council consulted their Asset Manager regarding the value of this land and he confirmed that the site would offer an opportunity for development and hold a greater value with a hotel on site. However, no evidence has been provided to demonstrate what this assessment was based on or to independently show that the secured assets, mainly land around the Sixfields site, were sufficient in value to cover the loan finance arrangements.

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The length of the loan and its repayment are linked to the timing of additional revenue generated by both clubs from the expansion, with the principle being any monies loaned should be repaid in the shortest possible time.

We understand from discussions with officers that the key driver for the length of the stadium loan was the value being realised from the development land.

The facility agreements state that the repayment date is specified in the relevant Loan Term Sheet for each drawdown as the loan is repaid in instalments. Review of the Loan Term Sheet for the drawdowns includes the capital repayment dates, set at five years following drawdown for the stadium monies. Further details are included in appendix 2. It is understood this is linked to coincide with the wider development land appraisal and assessment of planned return; however there is no clear evidence to substantiate this assessment.

The remaining balance of the loan was to be repaid from the additional revenues generated by NTFC. There is no information to demonstrate that these repayment dates are linked to the timing of additional revenue generated by the club from the expansion and that the monies loaned are scheduled to be repaid in the shortest possible time.

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The income projections from additional revenue generated by both clubs as a result of expansion is sufficient to service debt

The August 2013 Business and Financial model for the redevelopment of the Sixfields Stadium, the only one available at the time of signing the facility agreement, includes the repayment of interest on a £7.5m loan at an assumed interest rate of 2.5%. This is broadly in line with the 2.58% interest rate applied to the first tranche of the loan drawdown.

owed to the Council, after taking into account any capital sums that are, objectively, judged very likely to become available to the clubs in the short to medium term.

Similarly, the June 2014 Business and Financial model for a hotel at Sixfields includes the repayment of interest on a £4.5m loan at an assumed interest rate of 4.1%. This is broadly in line with the 3.82% interest rate applied to the first tranche on the loan drawdown.

The Business and Financial models do not consider the repayment of the capital element of the loan provision in their projections, despite amounts becoming due during the period covered in the future financial forecasts. It is acknowledged that the Business and Financial models show surpluses and it is understood that the surpluses to be used to repay any outstanding principle loans.

Whilst the income projections are sufficient to service the interest on the debt there is no evidence to demonstrate that the capital repayment was considered as part of the Business and Financial models.

As identified above, there is insufficient information available to demonstrate that the Council undertook sufficient due diligence work around the projections included in the business cases.

In the case specifically of NTFC's proposed hotel development, there are robust contractual arrangements in place between NTFC and a financially sufficient third party concerning certainty of minimum levels of income for a suitable minimum period of years.

The initial plan by NTFC, when the Cabinet report was prepared in July 2013 was for a hotel to be built and operated by a hotel chain. We have seen no evidence to demonstrate that this condition was specifically addressed prior to entering into an agreement to provide loan financing to fund the development of a hotel development.

Subsequent to the facility agreements it is acknowledged that NTFC explored a number of different options for the hotel including design, build and operate a hotel themselves; lease to a developer to design build and operate; and work with a hotel chain. A quote was included in the NTFC Hotel Business Plan that "the hotel will be owned by Northampton Town Football Club. A partner will be brought in to manage and operate the hotel; this will be either an existing hotel chain or a management company. This partner will take their return by way of a license fee and management fee based on income".

Since this was undertaken after the Council entered into the facility agreements, we have not assessed this information as it relates to the Hotel development and not specifically the provision of loan finance as defined in our scope of work.

Whilst the conditions have been complied with to some extent, we have been unable to confirm that these were complied with fully, addressing all concerns. For these reasons, we have been unable to confirm that officers acted within their delegated authority.

#### Officers decision and the financial regulations

Since the Cabinet report of July 2013 delegated responsibility to the Chief Executive, in consultation with the Section 151 Officer and Leader of the Council the actions of officers in signing the facility agreement was appropriate and in line with the financial regulations of the Council.

The original Cabinet report included reference to loan finance of “up to £12m”; however the subsequent facility agreements entered into total £13.5m. Officers sought legal advice from LGSS which determined that additional Cabinet approval for the additional £1.5m was not required and approval up to £13.5m was in line with the existing delegations since the original decision did not specify a defined amount. For the purposes of transparency and openness it would have been good practice to obtain further Cabinet approval for the additional monies.

*The decision in principle was translated into a formal agreement, taking account to some extent the elements of the preconditions. It would have been good practice to formally assess compliance with the defined conditions and share an updated, detailed plan prior to signing the facility agreements. Although the legal advice sought did not indicate additional approval was required for £13.5m it would have been good practice to revisit.*

Appropriate professional advice has been obtained in producing the agreement

Capita Asset Services prepared a report on the loan to NTFC. In their disclaimer, Capita state that they were not instructed to complete any work on due diligence on the proposed loan.

The Council’s virtual data room contains a significant number of emails from numerous individuals involved in preparing the facility agreements, including:

- Chief Financial Officer
- Principal lawyer for property, planning and highways; LGSS legal
- Legal contracts and procurement advisor, LGSS Legal
- Corporate Asset Manager

In addition there are emails from the following individuals:

- Monitoring Officer
- Leader of the Council
- Chief Executive
- Director of Regeneration, Enterprise and Planning

Review of the email correspondence shows that there were ongoing internal discussions about financial, legal and statutory duties in preparing for the facility agreements with due regard to the need to protect taxpayers’ money. Numerous email correspondence makes reference to the associated time constraints and pressure from management, members and the involved external parties in needing to progress the loan as soon as possible. It is evident that changes were still being made to the facility agreements right up until the time of formally signing the agreements and a number of emails reference having insufficient time to resolve all matters. This highlights that whilst appropriate professional advice was sought there was insufficient time available to ensure that all matters identified were adequately addressed and resolved before signing the agreements.

It is unclear why there was such time pressure and why officers were challenged to meet the specific deadlines associated with the Facility Agreements. Email correspondence makes reference to the associated time constraints and pressure from management, members and the involved external parties in needing to progress the loan as soon as possible. It is evident that the time pressures significantly reduced the Council’s ability to challenge and evaluate the professional advice it had obtained from the legal team and Corporate Asset Manager as part of the preparation for the Football Club loan.

Email correspondence between the leader and officers highlights the importance of the transaction and the desire to conclude the transaction promptly. The political commitment in the Conservative manifesto, along with the July 2013 Cabinet decision was considered a commitment to provide loan financing, despite there being limited information available at this time. Detailed business cases, due diligence checks and professional advice were not taken until after the Cabinet approval was obtained. Whilst due diligence checks were undertaken we were unable to identify evidence that the issues identified were adequately resolved before the transaction was completed.

Whilst the email correspondence demonstrates the involvement of appropriate professionals in producing and monitoring the agreement the fact that the Council has taken months to identify and collate a series of thousands of emails to demonstrate the adequacy of the professional advice highlights that the arrangements were informal and did not follow a strict procedural process. In amongst the thousands of emails, handwritten notes and reports summarising meetings numerous questions and queries were raised. It is not possible to track and ensure that every single concern was adequately addressed and resolved when preparing the facility agreements. The Council, in trying to identify the process which was followed and understand what actions were taken have identified that there is no formal, complete, record of all actions undertaken.

*There was a significant volume of email correspondence between senior officers throughout the period to demonstrate professional advice was sought. However, the advice has been obtained in a time pressured manner and it is difficult to determine if all queries were adequately resolved prior to entering into any loan agreement. Going forwards, NBC should formalise their decision making process and ensure there is adequate evidence retained to demonstrate compliance with the established process.*

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## Governance

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Adequate governance arrangements were established to oversee the agreement

We understand that there was a project group, chaired by the Director of Regeneration, Enterprise and Planning, established to oversee the redevelopment of the Sixfields site and responsible for ongoing governance and project management. Following discussion with the Council in August 2016, we were subsequently provided with minutes from the Programme Board meetings and Project Highlight reports which demonstrate that there was oversight and governance in place regarding the redevelopment of the wider Sixfields regeneration project. However, these are focused on the operational aspects of the programme and do not separately identify performance of the loan agreement. Since this information is focused on the operational aspects of the programme, which are outside our scope of work, we have not assessed the effectiveness of these governance arrangements.

We have been unable to identify evidence to demonstrate that this group met regularly and sufficiently monitored the governance arrangements in place specifically regarding the Football Club loan. As noted above, we have identified ongoing communication, involving suitable individuals in reviewing the ongoing arrangements and performance against the facility agreement. However, we have concerns in relation to the nature of these arrangements and lack of formal records to demonstrate adequate governance arrangements were in place which separately identify the loan agreement and adequately demonstrate oversight for this particular element of the Sixfields programme.

Governance for the ongoing arrangements in relation to the facility agreement was retained by the officers, with some involvement from the Leader of the Council. However, there was limited reporting to members. After the initial approval from

Cabinet in July 2013 there was no explicit reporting to members until November 2015 after NTFC had failed to repay monies requested. Given the values involved and delegation of responsibility this is not unusual, but when concerns regarding NTFC's ability to repay were identified this should have been reported to members on a timely basis.

From the date of signing the first facility agreement in September 2013 until the first delayed interest payment in February 2015 there were no explicit causes for concern or activities which required the involvement of the Council. In August 2014 a variation to the original planning permission was registered which identified that the East Stand would no longer include a conference and banqueting facility and there would be a reduction to the proposed increased capacity. This planning application was approved in September 2014. Despite the changes to the planned construction works we have not seen any evidence to indicate that the construction changes were reflected in the structure of the loan and there is no alignment between the final loan drawdown in August and the revised planned construction works. There were ongoing discussions regarding other aspects of the Sixfields development but the performance against loan finance was as expected. The benefit of hindsight identifies potential areas where the Council, both officers and members, should have sought to be more involved in monitoring the loan agreement.

*Whilst there is evidence to demonstrate wider governance around the Sixfields redevelopment this is very operational focused and does not separately identify performance of the loan agreement. There was a significant volume of email correspondence between senior officers throughout the period regarding the loan agreement to demonstrate ongoing governance. However, the professional advice has been obtained in a time pressured manner and it is difficult to determine if all queries were adequately resolved prior to entering into any loan agreement. Going forwards, NBC should formalise their governance arrangements and ensure there is adequate evidence retained to demonstrate compliance with the established process.*

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## Risk management

Formal risk assessment was undertaken as part of the decision making process. Risks were identified, assessed and appropriate mitigations put in place to manage identified risks

Risks associated with agreement were reviewed on a regular basis and necessary actions undertaken to protect the Council's interests

The NBC Constitution states that the Chief Finance Officer is responsible for collating the Council's Strategic Risk Register and ensuring it is reported to Cabinet and the Audit Committee at least annually. In addition, the Chief Officers should maintain a register of risks affecting their service areas, including corporate risks. It is their responsibility to make sure that this is kept up to date. Discussions with officers indicates that a risk assessment was undertaken as part of the decision making process and that risks were identified and mitigated as part of the Sixfields land development project. The Sixfields Programme Board meetings and discussion of the Project Highlight Report included consideration of the risks associated with the wider site redevelopment. However, we have been unable to identify any documentation which evidences that a formal risk assessment was undertaken specifically in relation to the provision of loan finance as part of the decision making progress. Furthermore, we have not been able to locate any evidence which demonstrates that the provision of loan finance and its associated risks were considered as part of the strategic or service area risk registers.

As part of its Treasury Management Strategy the Council sets out the broad risks facing the Council relating to Treasury Management arrangements and how these will be mitigated. Whilst this is accurate, there is no specific consideration of the Football Club loan agreement in sufficient detail to identify and address specific risks. The Council has since updated its Treasury Management procedures to address this going forward including a specific provision for loans to third parties and



commitment that the Council's Treasury Strategy incorporates the limits and permissions required to allow future borrowing to go ahead.

As indicated above, whilst there is evidence to demonstrate ongoing challenge, identification and resolution of risks as part of the ongoing email correspondence, this was not undertaken on a formal basis and the mass of emails make it difficult to identify whether sufficient actions were taken to identify and mitigate risks.

Since there was no formal documentation in relation to the risk assessment it was not possible for the Council to review and update on a regular basis, in breach of the conditions defined in the Constitution.

*There was an informal risk assessment and monitoring undertaken as part of the significant volume of correspondence with senior officers throughout the period; however, there is no evidence available to demonstrate that a formal risk assessment relating specifically to the loan agreement was undertaken, monitored and updated throughout the period. Going forwards, NBC should formalise their risk management arrangements and ensure there is adequate evidence retained to demonstrate compliance with the established process.*

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## Performance management

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Arrangements were established to monitor and manage performance of the agreement

Whilst there was ongoing involvement of the Council following the establishment of the facility agreement this extended to a number of other areas, including arrangements with the HCA and wider developments in the area, therefore did not directly relate to the performance management of the facility agreements. Once again, the performance management activities focused on the wider Sixfields redevelopment through the project team meetings and there is no explicit consideration of the loan agreement in place.

The benefit of hindsight identifies potential areas where the Council, both officers and members, should have sought to be more involved in the programme and monitor the ongoing status of the redevelopment. Although the terms and conditions of the facility agreements were being adhered to it should have been clear that the physical progress of the Sixfields redevelopment did not align with the amount of money drawn down. This is something which the Council could have identified had there been greater performance management, including site visits at the Sixfields Stadium. It is understood that informal site visits did take place by staff driving past the site and visits to the stadium however since the basis of the contract was not a works based contract the Council was limited in the action it could take. In spite of this there appears to have been no obvious correlation between works progress identified and the loan monies permitted for draw downs.

There were no formal performance management processes established to oversee the facility agreements. However, the documentation provided to NTFC as part of each tranche drawdown associated with each facility agreement was accompanied by a Loan Term Sheet and Repayment Schedule detailing when interest payments were due. Performance against these repayment dates was monitored by the LGSS Finance team and we have seen email correspondence between the Council and NTFC in following up late payments immediately and trying to reach a resolution to secure repayment from NTFC. In addition, we have seen annotated copies of the different models which demonstrate that Council employees, including the Chief Financial Officer, reviewed the business models prepared by NTFC and challenged a number of the figures included which prompted updates and amendments to the business cases.



Performance against the repayment schedule is detailed in appendix 1.

*There was a significant volume of email correspondence between senior officers throughout the period; however, there is no evidence to demonstrate that there was a formal process and defined approach to performance management. Going forwards, NBC should formalise their performance management arrangements and ensure there is adequate evidence retained to demonstrate compliance with the established process. Compliance with the Loan Terms and Repayment Schedule was monitored and delays in payment addressed by finance in a timely manner.*

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## Management information

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Format and content of management information is adequate for effective governance and performance management

There was no formal management information process defined in relation to performance of the facility agreements. As identified above, the evidence of LGSS Finance escalating overdue payments and following up with NTFC does indicate some element of management information was received even though there was no formal defined process in place for this.

From the information reviewed it is apparent that once the facility agreements had been formalised and provision of loan finance secured the Council focused on areas of the wider Sixfields development, including arrangements with the HCA and these areas were the subsequent focus of governance, performance management and management information.

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## Financial controls

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The agreement contains adequate information to ensure that all parties understand the financial obligations and payment mechanisms

### **Drawdown**

Each of the three agreements contained different conditions and prerequisites for the drawdown of funds. These have been reviewed and assessed to ensure conditions were met:

For the 18 September 2013 Facility Agreement (£7.5m) the conditions were:

- 1) 20% immediately
  - a) Drawdown made 20/9/13, two days after the signing of the Facility Agreement therefore considered appropriate to request and make drawdown
- 2) 20% upon planning approval for redevelopment and improvements to Sixfields Stadium
  - a) Drawdown made 2/12/13, planning application N/2013/1048 approved 26/11/13 at the Planning Committee therefore considered appropriate to request and make drawdown
- 3) 20% upon completion of contract and commencement of works onsite
  - a) Drawdown made 28/2/14, James Whiting email of 25/2/14 states works have started and attached signed pages of contract with contractors, email states contract signed 21/2/15. In line with terms of facility agreement therefore appropriate to request and make drawdown
- 4) 20% 2 months after commencement on site work (no earlier than end of April 2014).

- a) Drawdown made 12/5/14, as above work started on site as confirmed by James Whiting on 25/2/14 – confirmed payment made two months after commencement of work therefore in line with terms of facility agreement therefore appropriate to request and make drawdown
- 5) 20% upon formal Safety Advisory group sign off (not earlier than end of June 2014)
  - a) Terms changed by deed of variation to be “20% of the loan is taken as an advance when the Chief Executive of the Lender is satisfied that there are adequate arrangements in place to ensure that the final design and implementation of the scheme for the purposes herein described will comply with safety regulations and related building control requirements such advance will not be taken before end of June 2014.”
  - b) Drawdown made 19/8/14, email 23/7/14 from James Whiting stating SAG sign off last week therefore drawdown requested included certificate licence to admit spectators to watch designated football matches signed and dated July 2014. Email David Kennedy 14/8/14 confirming satisfied, further email from David Kennedy 15/8/14 confirming already confirmed satisfaction of requirements therefore process request. In line with terms of the Deed of Variation therefore appropriate to request drawdown.

For the 14 April 2014 Facility Agreement (£1.5m) the conditions were:

- 1) One immediate advance
  - a) Drawdown made 17/4/14, three days after the signing of the Facility Agreement therefore considered appropriate to request and make drawdown

For the 23 July 2014 Facility Agreement (£4.5m) the conditions were:

- 1) 1.25m immediately
  - a) Drawdown made 23/7/14, same day as the signing of the Facility Agreement therefore considered appropriate to request and make drawdown
- 2) 1.75m planning approval of hotel accommodation
  - a) Drawdown not made
- 3) 1.20m upon receipt of surveyor report confirming works are 2/3 complete (not earlier than May 2015)
  - a) Drawdown not made
- 4) 0.3m receipt of practical completion certificate
  - a) Drawdown not made

In all instances the precondition for the drawdown of the loan was satisfied and funds were released in the line with the Constitution following Chief Financial Officer approval. After all drawdowns, information was communicated to NTFC to confirm terms, conditions and ongoing repayment schedule.

Whilst the drawdowns were made in compliance with the terms specified in the relevant Facility Agreement it should have been apparent that the physical progress of the stadium development was not advancing at the rate expected. In spite of this the Council continued to permit drawdowns on the loan agreement since the Football Club were in compliance with the

Facility Agreement terms. This indicates that the terms were not robust enough to challenge physical progress and meant the Council continued to provide ongoing financial support even though there were some early indications of potential problems. It is understood that the conditions used as the basis for drawdowns were the result of commercial negotiations. The Council's starting point was to be able to pay after the stadium expansion had been completed; however the football club wanted all the money up front. Without the money up front the football club were unwilling to invest in the development of the land and as a result the Council took a view that the money should be provided. The terms for tranche drawdowns was achieved through negotiations during August and September 2013 and resulted in the terms incorporated into the loan document.

In August 2014 a variation to the original planning permission was registered which identified that the East Stand would no longer include a conference and banqueting facility and there would be a reduction to the proposed increased capacity. This planning application was approved in September 2014. Despite the changes to the planned construction works we have not seen any evidence to indicate that the construction changes were reflected in the structure of the loan and there is no alignment between the final loan drawdown in August and the revised planned construction works.

### **Repayment**

Details of the payments received have been included in appendix 1. We have confirmed that each of the planned payment due dates recorded is in line with the issued Loan and Repayment Schedule. As noted above, performance against the scheduled repayment dates was monitored by the LGSS Finance team and we have seen email correspondence between the Council and NTFC in following up late payments immediately and trying to reach a resolution to secure repayment from NTFC.

*Tranche drawdowns were made in accordance with the preconditions defined in the loan facility agreements and in line with the Council's Constitution and financial regulations. However, it is unclear why the drawdown preconditions were originally considered suitable, especially since the conditions failed to identify delays in physical progress and drawdowns continued. Going forward, the suitability and adequacy of tranche drawdown terms and conditions should be given greater consideration.*

Any financial exposure is identified and reported at an early stage in order to protect the Council's interests

The details recorded in appendix 1 include information about the ongoing compliance with the repayment schedule. Drawdowns of the loan finance were undertaken between 20 September 2013 and 19 August 2014. Wider issues around the NTFC contractor's administration and cessation of works on site did not occur until March 2015, therefore at the time of making the facility agreement drawdowns there was no indication of future concerns. The first delayed interest repayment occurred on the 19 February 2015 and the first repayment which was not made was not due until 28 August 2015; again after all drawdowns had already been made.

Following Cabinet's approval of the decision in principle to provide loan finance in July 2013 the subject matter round loan finance explicitly was not further considered until 2<sup>nd</sup> November 2015. The Democratic Services team did not prepare any updates around progress of the development or updates on loan drawdowns in between these two dates. This resulted in a significant delay in raising issues with members.

In response to NTFC's failure to make the scheduled interest repayment on 28 August 2015, the Council issued a notice to NTFC on 24 September 2015 requesting that all monies be repaid under the terms of the facility agreements. The Council officers maintained ongoing communication with the Football Club and continued trying to receive repayment of monies owed. An extraordinary Council meeting was called on the 2 November 2015 and a resolution passed which states that:

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*“This Council notes that Northampton Town Football Club owes this local authority £10.25 million and as yet has not repaid the debt. The club has missed three repayment deadlines and has been asked for the full amount to be repaid. This has not been forthcoming.*

*This Council further notes that HMRC has issued a winding up petition against Northampton Town Football Club for unpaid taxes. This case will be heard in the High Court in London on November 16th 2015.*

*This Council resolves to:*

- 1. Do whatever we can to help Northampton Town Football Club and the Supporters’ Trust.*
- 2. Retrieve the £10.25 million of public money.*
- 3. Ask Audit committee to review our policies and procedures and make recommendations necessary for implementation in business arrangements of this nature. The Audit Committee would then present any recommendations to Full Council.”*

*Compliance with the Loan Terms and Repayment Schedule was monitored and delays in payment addressed by finance in a timely manner. However, there was a significant delay before problems were escalated to Members. Going forward, the escalation process should be formalised to ensure that members are adequately informed about significant changes.*

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## *Project management*

Arrangements were established to project manage the agreement and financial arrangements

Officers indicated that regular project management meetings were held to provide an update on progress and enabled officers to mitigate any risks which were identified throughout the project. Following discussion with the Council in August 2016, we were subsequently provided with minutes from the Programme Board meetings and Project Highlight reports which demonstrate that there was oversight and governance in place regarding the redevelopment of the wider Sixfields regeneration project. However, these are focused on the operational aspects of the programme and do not separately identify performance of the loan agreement

Regular reviews were undertaken of the project management arrangements to ensure that the Council’s interests were protected and any risks mitigated.

As previously identified there are a number of emails between all involved parties throughout the duration of the arrangement which demonstrates clearly there was ongoing involvement and interaction with all invested parties. Whilst the email correspondence demonstrates the involvement of appropriate professionals in producing and monitoring the agreement the fact that the Council has taken months to identify and collate a series of thousands of emails to demonstrate the adequacy of the professional advice highlights that the arrangements were informal and did not follow a strict procedural process.

*There was a significant volume of email correspondence between senior officers throughout the period; however, there is no evidence to demonstrate that there was a formal approach to project management. Going forwards, NBC should formalise their project management arrangements and ensure there is adequate evidence retained to demonstrate compliance with the established process.*

## Lessons learnt

Priority	Topic	Observation	Recommendation
<b>Medium</b>	Business case timing	The first detailed business and financial model in relation to the redevelopment of the Football Stadium was produced in August 2013, one month following Cabinet members' approval of the decision to make loan finance available to the Football Club.	Before any key decision is taken there should be an adequate business and financial model produced.
<b>Medium</b>	Business case ownership	The business and financial models were developed by NTFC and subsequently evaluated by the Council. For a transaction of this nature we would have expected the Council to develop their own business case.	Ensure the Council produces their own business case for all significant transactions
<b>Low</b>	Business case versions	NTFC developed a number of separate business and financial models for each of the respective schemes and each version was updated to reflect the latest circumstances rather than having one final document accurate at the point at which it was approved.	When preparing a business case there should be one final document to support the approved decision.
<b>High</b>	Due diligence	Internal and external reports were prepared indicating that the figures included in NTFC's business case needed to be objectively assessed. We have not seen any evidence to demonstrate that this process was undertaken.  Where due diligence checks have been undertaken we have not seen any evidence to demonstrate issues identified were adequately considered and resolved.  Whilst there is evidence to demonstrate that there was consultation with appropriate professional advisers this was on an ad hoc basis and there is no evidence to demonstrate the resolution of all the issues and concerns raised.	Adequate, independent from the decision making process, due diligence should be undertaken on all information provided to the Council with sufficient time to enable the resolution of any matters identified.
<b>Medium</b>	Information used as the basis of member decisions	The members' approval to provide loan financing to NTFC in July 2013 was based on a minimal amount of information. Whilst the decision delegated responsibility to officers and included a number of conditions it would have been better to provide members with more information upon which to base their decision	Before any key decision is taken there should be adequate information provided to members.
<b>Low</b>	Additional Cabinet approval	It has been identified that the original Cabinet report included reference for loan finance of "up to £12m"; however the subsequent facility agreements entered into total £13.5m. Although legal advice indicated additional approval was not required, good practice would have been to obtain further Cabinet approval.	Where there are significant developments to programmes since Cabinet approval these should be shared with Cabinet to ensure transparency
<b>Medium</b>	Review of conditions	There is no record of the Council having undertaken a formal assessment against the Cabinet conditions before having entered into the facility agreements to ensure compliance with the specific terms. It would have been good practice to share an updated paper before entering into the facility agreements with details of the final arrangements.	Where there are significant developments to programmes since Cabinet approval these should be shared with Cabinet to ensure transparency

<b>High</b>	Risk register	The NBC Constitution states that the Chief Finance Officer is responsible for collating the Council's Strategic Risk Register and ensuring it is reported to Cabinet and the Audit Committee at least annually. There is no formal documentation in relation to the risk assessment so it was not possible for the Council to review and update on a regular basis, in breach of the conditions defined in the Constitution.	Ensure all projects have a formally documented risk assessment which is reviewed and updated on a regular basis.
<b>Medium</b>	Agreement conditions	Whilst the drawdowns were made in compliance with the terms specified in the relevant Facility Agreement, it should have been apparent that the physical progress of the stadium development was not advancing at the rate expected. In spite of this the Council continued to permit drawdowns on the loan agreement since the Football Club were in compliance with the Facility Agreement terms. This indicates that the terms were not robust enough to challenge physical progress and meant the Council continued to provide ongoing financial support even though there were some early indications of potential problems.	Ensure terms and conditions are robust enough to challenge and provide assurance regarding the status of project development.
<b>High</b>	Formalisation of processes and procedures	Whilst the email correspondence demonstrates the involvement of appropriate professionals in producing and monitoring the agreement the fact there are thousands of emails which has taken the Council months to collate indicates that there was no established process in place at the time. In amongst the thousands of emails, handwritten notes and reports summarising meetings numerous questions and queries were raised. It is not possible to track and ensure that every single concern was adequately addressed and resolved when preparing the facility agreements. The Council, in trying to identify the process which was followed and understand what actions were taken have identified that there is no formal, complete, record of all actions undertaken.	There should be adherence to the formal process for all projects ensuring there is adequate formal evidence to demonstrate ongoing governance, project management and performance management associated with the project.
<b>Medium</b>	Performance reporting	Following the July 2013 Cabinet approval there are brief references to the loan agreements in the Treasury Management reports, however this is very limited and does not provide adequate governance for the arrangements in place. A detailed report was presented on the 11 <sup>th</sup> November 2015 to update Cabinet on progress towards resolving the position with regards to loans outstanding to NTFC.	Regular updates on significant projects should be communicated to members to ensure they are sufficiently informed, especially when there are issues identified.

# Appendix 1. Repayment Schedule

Loan Amount	Tranche	Payment Due Date	Interest Payment £	Principal Repayment £	Total Payment due on this Date £	Payment Value Received from NTFC £	Date Payment Received from NTFC	Slippage (no. of Days)
1,500,000	Tranche 1	20 March 2014	19,350.00	-	19,350.00	19,350.00	20 March 2014	-
1,500,000	Tranche 2	02 June 2014	18,000.00	-	18,000.00	18,000.00	03 June 2014	1
1,500,000	Tranche 3	28 August 2014	19,425.00	-	19,425.00	19,425.00	29 August 2014	1
1,500,000	Tranche 1	20 September 2014	19,350.00	-	19,350.00	19,350.00	22 September 2014	2
1,500,000	Facility Agreement 2	17 October 2014	19,050.00	-	19,050.00	19,050.00	17 October 2014	-
1,500,000	Tranche 4	12 November 2014	20,100.00	-	20,100.00	20,100.00	12 November 2014	-
1,500,000	Tranche 2	02 December 2014	18,000.00	-	18,000.00	18,000.00	02 December 2014	-
1,250,000	Hotel Facility Agreement Tranche 1	23 January 2015	23,875.00	15,155.14	39,030.14	39,030.14	23 January 2015	-
1,500,000	Tranche 5	19 February 2015	19,350.00	-	19,350.00	19,350.00	25 February 2015	6



1,500,000	Tranche 3	28 February 2015	19,425.00	-	19,425.00	19,425.00	02 March 2015	2
1,500,000	Tranche 1	20 March 2015	19,350.00	-	19,350.00	19,350.00	23 March 2015	3
1,500,000	Facility Agreement 2	17 April 2015	19,050.00	-	19,050.00	19,050.00	17 April 2015	-
1,500,000	Tranche 4	12 May 2015	20,100.00	-	20,100.00	20,100.00	22 May 2015	10
1,500,000	Tranche 2	02 June 2015	18,000.00	-	18,000.00	18,000.00	11 June 2015	9
1,250,000	Hotel Facility Agreement Tranche 1	23 July 2015	23,585.54	15,444.60	39,030.14	39,030.14	18 August 2015	26
1,500,000	Tranche 5	19 August 2015	19,350.00	-	19,350.00	19,350.00	04 September 2015	16
1,500,000	Tranche 3	28 August 2015	19,425.00	-	19,425.00		Repayment not made	
1,500,000	Tranche 1	20 September 2015	19,350.00	-	19,350.00		Repayment not made	
1,500,000	Facility Agreement 2	17 October 2015	19,050.00	-	19,050.00		Repayment not made	

## Appendix 2. Capital repayment dates

<u>Loan</u>	<u>Tranche</u>	<u>Date</u>	<u>Loan Value</u>	<u>Capital to be repaid</u>
Stadium	Tranche 1	20/09/2013	£1,500,000	20/09/2018
Stadium	Tranche 2	02/12/2013	£1,500,000	02/12/2018
Stadium	Tranche 3	28/02/2014	£1,500,000	28/02/2019
Additional stadium	Facility Agreement 2	17/04/2014	£1,500,000	17/04/2019
Stadium	Tranche 4	12/05/2014	£1,500,000	12/05/2019
Hotel	Hotel Facility Agreement Tranche 1	23/07/2014	£1,250,000	23/07/2039
Stadium	Tranche 5	19/08/2014	£1,500,000	19/08/2019
			£10,250,000*	

\* The conditions for the later drawdowns of the facility agreements were not satisfied therefore the Council has only provided loan finance for a total of £10.25m compared with the facility agreement total of £13.5m.

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