

# Cabinet Report

12 February 2025



## **East Durham Community Athletics Track, Option Agreement & Ground Lease at Less Than Best Consideration**

### **Ordinary Decision**

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#### **Report of Corporate Management Team**

**John Hewitt, Chief Executive**

**Paul Darby, Corporate Director of Resources**

**Councillor James Rowlandson, Cabinet Portfolio Holder for  
Resources, Investment and Assets**

**Councillor Elizabeth Scott Portfolio Holder for Economy and  
Partnerships**

#### **Electoral division(s) affected:**

Sedgefield and Countywide

#### **Purpose of the Report**

- 1 This report sets out the background information necessary for Cabinet to consider a request from East Durham Community Athletics Track (EDCAT) for the council to grant an Option Agreement on 16.204 acres of land at NETPark, which is currently included in the Local Plan as land for industrial development.
- 2 The primary objective of the Option Agreement is twofold:
  - Remove the specified land from NETPark's available development areas;
  - Grant the group the necessary legal rights and time to:
    - (i) Develop a robust and sustainable business plan for the proposed facility (including ancillary structures such as changing rooms and car parking);

- (ii) Secure the necessary funding for its construction and operation; and
  - (iii) Provide the Council with the requisite assurances regarding their ability to successfully deliver the project.
- 3 Upon successful fulfilment of these conditions, the land will be transferred to the group via a 30-year lease.
- 4 The purpose of the Option Agreement is to remove the land requested from the developable area at NETPark (currently approximately 116 acres of land is available for future development) and provide the group with the legal entitlement and time it needs to prepare a comprehensive and sustainable business plan to build and operate the proposed facility (which includes ancillary facilities such as changing rooms and car parking), raise the necessary funding to do so and to provide the Council with the necessary assurances that it needs that it can do so. Should they be successful in doing this, the land would be transferred to them on a 30 year lease. Removing this land from the developable area at NETPark will leave circa 100 acres still available for future development.
- 5 This report sets out the terms and conditions of the proposed lease that would be exercised if the group are able to meet the conditions that will be set out in the Options Agreement, to enable the development of the athletics track.

## **Executive summary**

- 6 The East Durham Community Athletics Track is a charity that was set up in 2010 by members of the local athletics club, Sedgefield Harriers. The activities of the charity are to: *'raise funds in order to build and maintain an athletics facility in Sedgefield, Co-Durham. The facility will be suitable for disabled use and its aim is to support the aspirations of athletes and be available to those wanting to try sports and train'*.
- 7 The main strategic aim of the council supporting this project is to support the sporting activities in this locality for the benefit of the local community and wider athletic groups.
- 8 Since 2010, volunteers working on the project have investigated possible sites for the creation of a community athletics track, with the support of council officers. Steered by officers and supported by Local Ward members, and after investigating a number of suggested sites, the group have settled on a preferred site at NETPark, shown edged red at Appendix 2.

- 9 For this site, EDCAT have prepared an outline business plan for approval, submitted a planning application (which has received conditional consent) and have been negotiating a long-term lease with the council to secure the land.
- 10 The business plan has been reviewed by council officers, who view it as broadly acceptable but ambitious in terms of predicted numbers of users of the facility and therefore the ability to generate revenue to offset the likely running costs once constructed. This is an important factor for the long term sustainability of the facility.
- 11 In order to support the development and provide the group with the ability to make capital funding bids, EDCAT have requested that the council grant them an Option Agreement leading to a 30 year lease. EDCAT have requested that the lease is provided at a peppercorn rent, rather than a market rent for community sports provision in order to assist their business plan and reduce running costs.
- 12 In March 2023, EDCAT were advised that it may be possible to accept a peppercorn rent on the basis that it fulfilled the requirements of the councils 'under-value' process. This requires the council to be satisfied that the benefits of the scheme would promote or improve the economic, social or environmental wellbeing of all or part of the area, or all, or any residents within the County and that this outweighs the loss of income from applying a market rate within the lease (or in any sale process).
- 13 When the original proposal from EDCAT was received and reviewed by the council in 2019, it was agreed in principle to recommend to lease an area of land on the east side of NETPark to them for a minimum of 30 years on a peppercorn rent, this being subject to receipt of a sustainable business plan and evidence that EDCAT could raise the funding to construct the proposed facilities.
- 14 NETPark (Northeast Technology Park) is owned by the Council and having been established for over twenty years, is the region's only science park. It consists of a range of properties for early stage and growing science and technology businesses.
- 15 In September 2021, the council committed to the NETPark Phase 3 development, which is currently under construction. NETPark Phase 3 will deliver up to 270,000 sq. ft of new laboratory, office, production and storage space, based on demand from existing NETPark tenants and potential further inward investment to the site. Over the last decade, NETPark has had approximately £100 million of investment with circa 116 acres of development land remaining of which 33 acres of land is now being developed as employment land.

- 16 The scale and speed of the current expansion was not foreseen in 2019 when the original proposition was received from EDCAT. This means that the granting of an option to EDCAT, which is a departure from the strategic plan allocation of the land for employment land, will result in the loss of circa 16 acres of land for strategic employment in the future, leaving circa 100 acres of developable land available still for future strategic employment development. Removal of the developable land for future strategic employment needs to be given careful consideration.
- 17 Since 2019, officers have continued to work with EDCAT to support the development of their business plan, set out in Appendix 5 of this report EDCAT have continued to work diligently on the project and in 2022 were successful in securing planning permission (subject to conditions regarding ecology and offsetting) for the development of the proposed facilities: an Athletics Track, and associated facilities, including floodlighting, changing facilities and car parking.
- 18 In March 2024 a meeting with EDCAT identified two requirements that had to be addressed for project to succeed and in order for officers to be able to support the proposed lease of the land to EDCAT. These were:
- (i) EDCAT to provide a dedicated volunteer post or appointment of paid full-time sports development post for the final planning stages and first year of operations; and
  - (ii) The council to allow a reasonable period of time to enable EDCAT to acquire and secure sufficient funds for the project development in advance of granting a lease.
- 19 EDCAT has advised that a granting of an Option Agreement in advance of the lease would enable them to seek and obtain the funding they require for project development and allow them to comply with the obligations of the planning permission with regards to ecology and offsetting. Should they be successful in doing this, then the council would require the production and subsequent approval of a viable business plan for both construction and running of the facility before the lease obligation would be granted.
- 20 Heads of Terms for the Option Agreement and the proposed Lease are set out in Appendix 3 of this report.
- 21 EDCAT would be required to commit to a 30-year lease term, on a full repairing and insuring basis, at a peppercorn rent with prior submission of an updated business plan required, thus providing confidence to the council that the proposal will be sustainable as well as developable.

- 22 Due to the ongoing uncertainty that EDCAT can actually achieve sufficient capital funding to deliver the development, it is considered that the granting of a two year Option Agreement is reasonable. This will allow the group to demonstrate to potential funders that they have a legal interest in the site, a standard eligibility requirement for grant funding bodies.
- 23 The outline business plan submitted to date indicates that in order to facilitate the development, EDCAT will need to secure approximately £3.2 million of capital funding. These forecasts have not been verified by the council and are now several years old. Updated cost estimates would need to be set out in the final business plan. To date they have secured £500,000 of funding, of which £345,000 is Section 106 monies.
- 24 Normally an option to draw down a lease is only considered for recommendation when some if not all planning approvals are obtained, along with sufficient funding for the development being secured along with the development of a robust Business Plan which sets out future viability of the development throughout the proposed lease term.
- 25 EDCAT has planning consent, secured in April 2022, subject to Section 39 approval regarding ecology related matters (ecological mitigation/biodiversity net gain).
- 26 The council has been clear that there is no council funding available for either capital or revenue to support the development.
- 27 In ascertaining whether or not the council can deliver a lease to EDCAT the council's title, and deeds have been inspected. Within the council's registered title, the Church Commissioners for England (CCE) have a qualified title to freehold mines and minerals. Subsequently, any development on the land will require CCE's written consent.
- 28 CCE was approached last year and in principle will agree to the construction of the track and are proposing to protect their interests through a deed of grant of easement.
- 29 The removal of circa 16.2 acres of employment land does represent a significant loss of potential income to the council should it be developed for industrial use, with employment land in this area capable of achieving a capital receipt of approximately £75,000 - £100,000 per developable acre should it be disposed of.
- 30 It is anticipated that included in the lease would have a gross income value of circa £1 million should it be retained for employment and leased post development for industrial use. However, due to the amount of land available (circa 100 acres will still be available if the lease is granted), this income is unlikely to be achieved for at least 20

years and is fully dependent on significant further expansion and assumes continuing demand for this site. Note that this income would also be offset by capital financing costs to facilitate the development of the site, including any necessary infrastructure works and unit build costs.

- 31 For context, the current development expansion at Phase 3a, covers approximately 33 acres and has the potential to create around 1,250 skilled jobs, plus 2,200 in the supply chain and be worth £625 million to the local economy over the next 10 years.
- 32 Due to its strategic importance in the region NETPark has also been designated as a growth site through the creation of a new Investment Zone for the region aligned to the £4.2 billion North East devolution deal.
- 33 Taking into consideration the longevity of this project and the previous and continued support for the development of the running track facility, which has strong local member support, the wider benefits of the facility and the remaining supply of employment land available at NETPark (circa 100 acres, excluding EDCAT site) it is recommended to approve in principle the granting of a two year Option Agreement to EDCAT on the heads of Terms set out at Appendix 3. Subject to production of a satisfactory Business Plan, a 30 year lease will be provided to allow the development of the running track and associated facilities. Should a viable business plan not be received within the two years then the Option Agreement will fall away and the land would be retained.

### **Recommendations**

- 34 Cabinet is recommended to:
  - (a) approve the granting of a two year Option Agreement to EDCAT;
  - (b) delegate authority to the Corporate Director of Regeneration, Economy and Growth, in consultation with the Corporate Director of Resources to assure EDCAT's business plan;
  - (c) following approval of the business plan , agree to grant a 30 year lease on a full repairing and insuring basis at a peppercorn rent to EDCAT;
  - (d) delegate authority to the Corporate Director of Resources to agree the detailed terms of the FRI lease, subject to approval of EDCAT's Business Plan and in line with the Council's agreed Less than Best Process;

- (e) delegate authority to Director of Resources to agree any necessary easements with the Church Commissioners for England for the required site; and
- (f) agree that payment for the easement is made from the monies remaining from the NETPark freehold acquisition budget.

## Background

- 35 The East Durham Community Athletics Track is a project that was initiated in 2010 by members of the local athletics club, known as the 'Sedgefield Harriers.' It was and continues to be supported by local ward members.
- 36 Since 2010, volunteers working on behalf of EDCAT on the project have been supported by officers from the council to investigate possible sites for an athletics track in this part of the county.
- 37 Following investigations of a number of sites, which took into account geographic location requirements of the club, which limited sites to Sedgefield and the surrounding area, considered planning and conservation requirements as well as availability of land within the council's ownership, EDCAT settled on a site at NETPark, shown edged red at Appendix 2.
- 38 NETPark (Northeast Technology Park) is owned by the Council and having been established for nineteen years, is the region's only science park. It consists of a range of properties for early stage and growing science and technology businesses and is currently home to 35 companies, including Kromek, Filtronic, IBEX Innovations and Polyphotonix, employing a total of over 600 staff specialising in fields such as nanotechnology, X-Ray technology, forensics and semiconductor technology.
- 39 NETPark has strong links with Durham University, with the NETPark Research Institute housing part of the University's Centre for Advanced Instrumentation. It is also home to two National Catapult Centres – The High Value Manufacturing Catapult, managed by CPI, and the Northeast Satellite Applications Centre of Excellence managed by Business Durham; three national innovation centres including National Formulations Centre, National Centre for Healthcare Photonics and National Centre for Printable Electronics operated by CPI.
- 40 Managed by Business Durham as part of the Council's portfolio of industrial and commercial property, NETPark currently has ten buildings totalling some 200,000 sq. ft, including two owned by CPI and the rest owned by the Council including Plexus 1 and 2, Discovery 1 and 2, Explorer 1 and 2, Kromek plc and the Durham University Research Institute, the first building to open in 2004 and now also home to Orbit, the Durham University Enterprise Zone.
- 41 The Strategic Economic Plan highlights that innovation is central to the region's long-term ambition to build a more productive Northeast with stronger innovation delivery improving productivity and growth in 'better'



jobs, which are highly paid and highly skilled. The plan identifies NETPark as a key Science Park in the Northeast supporting this aim of more and better jobs.

- 42 Furthermore, the recent Northeast Local Enterprise Partnership (NELEP) Health and Life Science Strategy cites NETPark as an essential part of the region's innovation infrastructure and one of a number of key locations where the health and life sciences sector is clustering. There is a strong opportunity to complete the development of these locations, and to strengthen the linkages between them to ensure a vibrant regional eco-system.
- 43 The Council is committed to NETPark as a key innovation asset and driver of economic growth in the County, supporting businesses to innovate and grow.
- 44 In September 2021, the council committed to the NETPark Phase 3 development, which is currently under construction. NETPark Phase 3 will deliver up to 270,000 sq. ft of new laboratory, office, production and storage space, based on demand from existing NETPark tenants and potential further inward investment to the site. It is anticipated that Phase 3 will help achieve key targets of the Council Plan including the creation of up to 1,250 skilled jobs adding over £625 million GVA (Gross Value Added) to the County Durham economy. A typical business taking space on NETPark Phase 3 would provide a broad range of job opportunities including scientists, technicians, administration, accounting, marketing, IT and logistics
- 45 Throughout the development of the project, various funding avenues have been explored. Sedgefield Harriers and the EDCAT Charitable Incorporated Organisation have raised £60,000 and the project was awarded £40,000 from the Terrace Hill (Sainsbury's) fund held by Sedgefield Town Council.
- 46 EDCAT have submitted proposals and been supported in allocating £345,000 of S106 funding from recent housing developments in Sedgefield towards the project, subject to EDCAT acquiring a lease, approval of a planning application and the development of a viable Business Plan.
- 47 Pre-planning application discussions took place from Summer 2020 and, following a positive consultation exercise over December 2020 - January 2021, a planning application for the development of a Community Athletics Track on the north-eastern side of NETPark was submitted in May 2021.
- 48 DM/21/01984/FPA refers to the current planning application pending approval. The proposal under consideration concerns the formation of a

community athletics track facility with associated floodlighting, access, car parking, drainage and landscaping.

- 49 The Planning Committee in April 2022 deemed the application acceptable subject to the completion of a Section 39 agreement relating to the delivery of biodiversity net gain. While the terms of the agreement were agreed in May 2022, the planning decision notice won't be issued until EDCAT demonstrate that they have adequate legal interest in the land, together with an approved updated financially viable Business Plan.
- 50 EDCAT have been negotiating with the council for a 30-year lease relating to the proposed land at NETPark since early 2022.
- 51 EDCAT has requested that the rent payable for the lease should be at a peppercorn only, rather than a market rent for a sports facility.
- 52 In March 2023 EDCAT were advised that it may be possible to accept a peppercorn rent on the basis it fulfilled the requirements of the councils 'under-value,' process. This requires a project to demonstrate that the benefits it would promote or the improvements it would deliver to the economic, social or environmental wellbeing of all or part of the area, or all, or any residents within the County offset the loss of potential receipt forgone.
- 53 Local Authorities have powers under the Local Government Act 1972 to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies), unless the Secretary of State consents to the disposal (section 123, LGA 1972). In this case the best consideration reasonably obtainable would be the market value for the land in use as employment land.
- 54 Notwithstanding this, it is considered that the use of the land as a community athletics facility did provide other non-momentary benefits which could demonstrate best consideration.
- 55 Aside from the peppercorn rental requested, EDCAT have requested a term certain greater than the 30 years offered. However, following detailed discussion, it was determined that 30 years is the maximum term that council can and should offer.
- 56 The main strategic aim of the council supporting this project is to support the sporting activities in this locality for the benefit of the local community and wider athletic groups.

- 57 Following further detailed discussions in March 2024, focussing on their draft Business Plan, it was identified that in order to move forward EDCAT needed to appoint a dedicated volunteer post or a paid full-time sports development post for the final planning stages and first year of operations.
- 58 This addition, EDCAT's Business Plan left one outstanding matter; how to secure funding and investors prior to the lease. It was determined that offering EDCAT an Option Agreement would allow time for EDCAT to seek and obtain the funding they require for project development and subsequently draw down the lease as set out in EDCAT's Business Plan upon satisfactory compliance with the terms of the Option Agreement.
- 59 A three year option term has been requested by EDCAT, however, given the broader strategic land requirements it is the considered view of officers that an option for two years should be adequate for EDCAT to secure the funding they require.
- 60 For clarity, the Option Agreement in this situation is a contract where the council enters into an agreement with EDCAT for a two-year period and subject to EDCAT satisfying their obligations under the agreement a 30 year lease on the terms agreed would be triggered. This gives EDCAT time to seek the required funding for the Athletics Facilities and to develop their Business Plan further.
- 61 Subject to the planning conditions set out in this report EDCAT can opt to draw down the lease at any point in the two year option period if they secure the funding and satisfy the council that it has a financially viable business plan.
- 62 The council is somewhat 'burdened' by this Option Agreement as it will be required to resolve any third-party implications in readiness of EDCAT achieving the Option Agreement terms and requesting the lease.
- 63 The Option Agreement is a means of overcoming the issue raised by EDCAT that a lease needs to be in place or a contract confirming such for them to seek and secure project funding from third parties.
- 64 In considering whether to grant an option to EDCAT an assessment of the options available to the council have been fully considered and are set out below.

## Options

### **Option 1 – Do Nothing in aiding EDCAT’s Project**

- 65 This would likely result in the Athletics track not being developed and the land, prior to any forthcoming commercial development in the future (potentially some 20 years plus into the future), to be let out for horse grazing or agricultural use as is common for these areas of undeveloped land.
- 66 Without securing a long-term lease with the council, EDCAT would be unable to apply for and secure grant funding, severely limiting their options and effectively killing the project. This would result in a lost opportunity to develop access to high-quality athletic facilities within this local community. This option is therefore not recommended.

### **Option 2 – Charge rent at market rate for community sport facilities**

- 67 An indicative market rent for a community sports facility based on recreational and sport used by the local community is determined to be in the region of £2,500 per annum.
- 68 Discussions with EDCAT in terms of an annual rent determined at £2,500 pa reveals that it would be prohibitive to EDCAT taking on a lease. EDCAT have advised that as a registered charity they do not have the level of income required to pay a full commercial rent for a sports facility.
- 69 Any income retained by EDCAT will be reinvested and used to maintain the site and any future facilities, with any surplus used to provide additional activities and services for local people. Any rent other than a peppercorn rent applied effectively has a significantly detrimental impact on EDCAT’s ability to take on a long-term lease reducing opportunities for the local community to utilise the facilities.

### **Option 3 – Long term lease at peppercorn rent**

- 70 Under this option, the council would grant a 30-year lease on the site to EDCAT at a peppercorn rent, maximising the opportunities for the local community to utilise the facilities. It would greatly assist EDCAT in terms of its revenue business plan and provide an opportunity for it to be able to be sustainable.
- 71 Rent at below commercial value will enable EDCAT to pass on savings to key stakeholders and beneficiaries of the facility and ensure it is an accessible community facility.

- 72 A 30-year lease term, or more, would enable EDCAT to leverage funds to complete the initial and subsequent phases of the project.
- 73 Any lease granted would need to be on a full repairing and insuring basis and no other financial commitment would be provided by the council either capital or revenue towards the scheme.
- 74 The offering of a peppercorn rent in such circumstances is not uncommon and the council has similar arrangements with other community and voluntary sector organisations.
- 75 This is the option that it is considered provides the best opportunities for the development to succeed. The proposed Option Agreement and lease terms are set out in Appendix 3 of this report.

### **Main Implications**

- 76 By granting an option to EDCAT for two years the council is effectively committing to give up its interest in the land for a period of up to 32 years (2 year option plus 30 year lease).
- 77 The land is currently allocated in the local plan as employment land and has the potential to be developed for this use. Should the land be disposed of as employment land it would likely have the potential to earn capital receipt of circa £1 million. Whilst the land is not required for development at NETPark in the immediate future and indeed is considered to be outside the requirements of the 10-year master plan, 'giving' up the land is certainly something that needs to be duly considered.
- 78 This is of particular relevance when considering that Phase 3 of NETPark has seen investment of £62 million for Zones 2 & 3 (11 units that will be completed by end March 2025 totalling 232,150 sq ft) plus the proposed investment in Phase 3a of circa £37 million to open up Zone 1 and build Unit 9 for a potential inwards investor.
- 79 Taking both of these phases of development together circa £100million of investment will have been invested in NETPark in the last few years, which has resulted in approximately 60 acres of land being developed. This exceeds the expectations and demonstrates the success of NETPark. The scale and speed of the expansion of NETPark in recent years was not envisaged when discussions started with EDCAT.
- 80 The NETPark site currently consists of 116 acres of undeveloped land, once Phase 3 and 3a and developed. Removing the proposed site from the developable area would still leave 100 acres of land available for further future expansion of NETPark, over the next 20+ years.

- 81 In determining whether or not the council can grant a lease to EDCAT the council's title and deeds have been inspected. Within the councils' registered title, the Church Commissioners for England (CCE have a qualified title for freehold mines and minerals. Subsequently any development on the land will require CCE's written consent for development.
- 82 CCE has been approached to ascertain whether they will agree to the construction of the running track and associated facilities. They have proposed that a deed of grant of easement with a caveat that the easement is granted in so far as CCE title comprise real property and is time-matched to the proposed lease of 30 years.
- 83 Costs borne by this easement include the consideration sum of £10,000 subject to legal fees. The council has agreed that it would meet these costs and reasonable legal fees and this is to be funded from the funding remaining from the freehold title acquisition from the NHS for NETPark. The remaining monies total £85,768 and it is anticipated that this sum will cover the consideration payment and agent and legal fees for third party consent.
- 84 A 30-year lease term has been considered appropriate for the EDCAT development within NETPark, rather than a freehold disposal due to the existing and ongoing development and expansion of the NETPark and its strategic importance.
- 85 Prior to the option being granted it will be necessary for the land which is currently held under the Town and Country Planning Act 1990 to be appropriated to the relevant Local Government Act provisions.
- 86 Although theoretically the subject land would be brought back into council use after the 30 year lease term is expired, should the option be triggered, in reality it has to be acknowledged that once the land is given over for recreational and sport use there will be little prospect of it being brought back into use as employment land in the future.
- 87 It would be prudent to consider the granting of the Option Agreement, which could lead to the trigger for the lease, as being a permanent loss of the land for employment purposes.

### **Subsidy Control**

- 88 Subsidy Control Regulations will apply for this transaction as the granting of a lease at a peppercorn and forgoing the land as employment land, along with the provision of S106 monies, are considered to be public subsidies, as they will be awarded together i.e they are mutually exclusive in that one cannot be granted without the other and the total exceeds £100,000.

## **General Consent for the Disposal of Land at an Undervalue**

- 89 The granting of the option at a peppercorn and subsequent lease for 30 years at a peppercorn would be considered for the purpose of the General Disposal Consent Regulations a disposal at less than best consideration. The regulations for disposing of land at an undervalue, not exceeding £2 million, by Local Authorities is provided by under Circular 06/2003 of the Local Government Act 1972. This applies where the purpose of the sale will promote or improve the economic, social or environmental well-being of all or part of the area, or all, or any residents within the county. The Local Authority must be satisfied that the disposal contributes to the achievement of one or more of the following objectives. These are:
- (a) The promotion or improvement of economic well-being;
  - (b) The promotion or improvement of social well-being;
  - (c) The promotion or improvement of environmental well-being.
- 90 It is anticipated that following the approval of a viable and sustainable business plan, the development of the running track and associated buildings will provide facilities for users of the athletics clubs, sports and community groups, schools and businesses and it will be used for training, competition and improvement of health and wellbeing in the local community.
- 91 The club actively encourages coaching, education and development and this in turn led to a large junior section drawn from local schools and the wider area. The project will be managed by volunteers for its thirty-year lifespan.
- 92 The EDCAT team has led the way in founding the East Durham Athletics Network (EDAN), which will play a core role in promoting and managing use of the proposed facilities.
- 93 On that basis the council is satisfied that the proposal meets the promotion or improvement of social well-being and promotion or improvement of environmental well-being tests and can be supported as disposal at less than best consideration

## **Conclusion**

- 94 By granting the Option Agreement and committing to the lease, the council is effectively agreeing to give up its land for 32 years. This will

result in loss of a development site as well as the potential to earn rental income/capital receipt.

- 95 The council has remained committed to supporting EDCAT and has clearly demonstrated this through its actions in working with EDCAT and incurring some costs ahead of formal agreement being reached for the lease.
- 96 The proposed lease arrangements would require the council to incur cost of circa £10,000 plus legal fees to facilitate the granting of an easement with the Church Commissioners of England for this site. These costs would be met from existing budgets.
- 97 It is therefore considered that the granting of an Option Agreement for two years, which would result in a 30 year lease being granted should the necessary funding be secured, is a good compromise solution which will provide a degree of protection to both parties and allow EDCAT to fulfil part of their planning conditions and provide them with a foundation on which to seek funding to meet the costs of the development.
- 98 Transferring the site to EDCAT through a long lease at a peppercorn, by initially entering into an Option Agreement as detailed in this report will promote athletic sporting activities for the benefit of the local community and wider athletic clubs using the local facilities.
- 99 The council have been clear with EDCAT that the granting of the lease at peppercorn, and associated costs in terms of arranging the easements with the Church Commissioners is the total financial commitment to the scheme and that no additional capital or revenue contributions will be available to support the development.

## **Background papers**

- Appendix 1 - Implications
- Appendix 2 - Site Plan
- Appendix 3 – Option and Lease terms

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## **Appendix 1: Implications**

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### **Legal Implications**

The Authority can rely on the General Consent under circular 06/2003 of the Local Government Act 1972 to sell the property at an undervalue where the transfer would result in the promotion or improvement of the economic, social, or environmental well-being of all or part of the area, or all, or any residents within the County.

It is demonstrated in the report that this lease / disposal should be considered as an undervalue transaction.

There will need to be a change of land designation via appropriation to enable delegated powers. Subject land to be appropriated from Town and Country Planning Act to Open Spaces Act.

### **Option Agreement**

The Option Agreement is otherwise considered as a contract obligating the council to enter into the lease pending planning approval. The council is therefore obliged to grant the lease within the option term should planning permission be obtained by the developer and qualifying conditions for 106 grant funding within the two year period.

Subsidy Control and subsequent grant funding agreement applies concerning investment and promoting effective and efficient use of public money.

### **Finance**

Site to be transferred at a peppercorn.

Costs of £10,000 plus legal fees to facilitate the granting of an easement with the Church Commissioners of England for this site will be incurred as a result of taking this proposal forward. These costs would be met from existing budgets – a capital budget held by Business Durham which was set aside for the acquisition of the freehold of NETPark from the NHS.

The report sets out an estimate of the under-value costs (opportunity costs) to the council from agreeing to this lease. This is estimated to be circa £1 million.

S106 grant funding applies subject to planning approval amounting to £345,000.

Each party is to bear its own Legal and Surveyor's costs associated with this transaction.

## **Consultation**

The Portfolio Holder for Strategic Housing and Assets, and Portfolio Holder for Economic and Partnerships, together with Local Members have been consulted on the proposals and are supportive of them, with no objections or conflicts of interest declared.

## **Equality and Diversity / Public Sector Equality Duty**

The provision of the Athletics Track Facilities within NETPark Sedgefield will give accessible opportunities to participate in sports to many thousands of County Durham residents, particularly young people. The track will provide a much-needed facility for residents of Sedgefield, but also the surrounding areas of Fishburn, the Trimdons, Ferryhill, Coxhoe and Spennymoor from where Sedgefield Harriers draw much of their membership, along with those in Wingate, Peterlee throughout east Durham, and in parts of the Tees Valley.

## **Climate Change**

S39 Ecology agreement applies as part of Planning consent granted. This relates to the delivery of ecological mitigation/biodiversity net gain and will need to be satisfied by EDCAT before the development can progress.

## **Human Rights**

N/A

## **Crime and Disorder**

N/A

## **Staffing**

EDCAT are to appoint a dedicated volunteer post or appointment of a paid full-time sports development post for the final planning stages and the first year of operations. Officers will continue to work with EDCAT to develop and assess the business plan for viability and a delegated decision report will be prepared in due course prior to triggering the lease.

## **Accommodation**

N/A - the terms of the proposed lease if full repair and insurance. The council will have no obligations and is making no financial commitments to the project beyond facilitating the required easements with the Church Commissioners of England.

## **Risk**

The Option Agreement provides two years for EDCAT to obtain the required funding to develop the Athletics Track Facilities, in accordance with Planning conditions. During this time EDCAT will need to further develop their Business Plan, update the costings for the development of the facilities and secure the necessary funding to build the facility.

There is a risk that EDCAT are not able to secure the required funding within the two years of the Option Agreement. The Council has been clear that the option will fall away if the deadline is not achieved, and it has also been made clear that the council is not making any financial commitment or would welcome any bid for further funding from the council to meet any capital or revenue shortfalls.

Costs undertaken by the council for third-party agreements are not recoverable, but the agreements are necessary to have in place in readiness for EDCAT drawing down the lease.

The same applies to the appropriation of land currently under the Town & Country Planning Act to enable the land to be leased out for sports and recreational use.

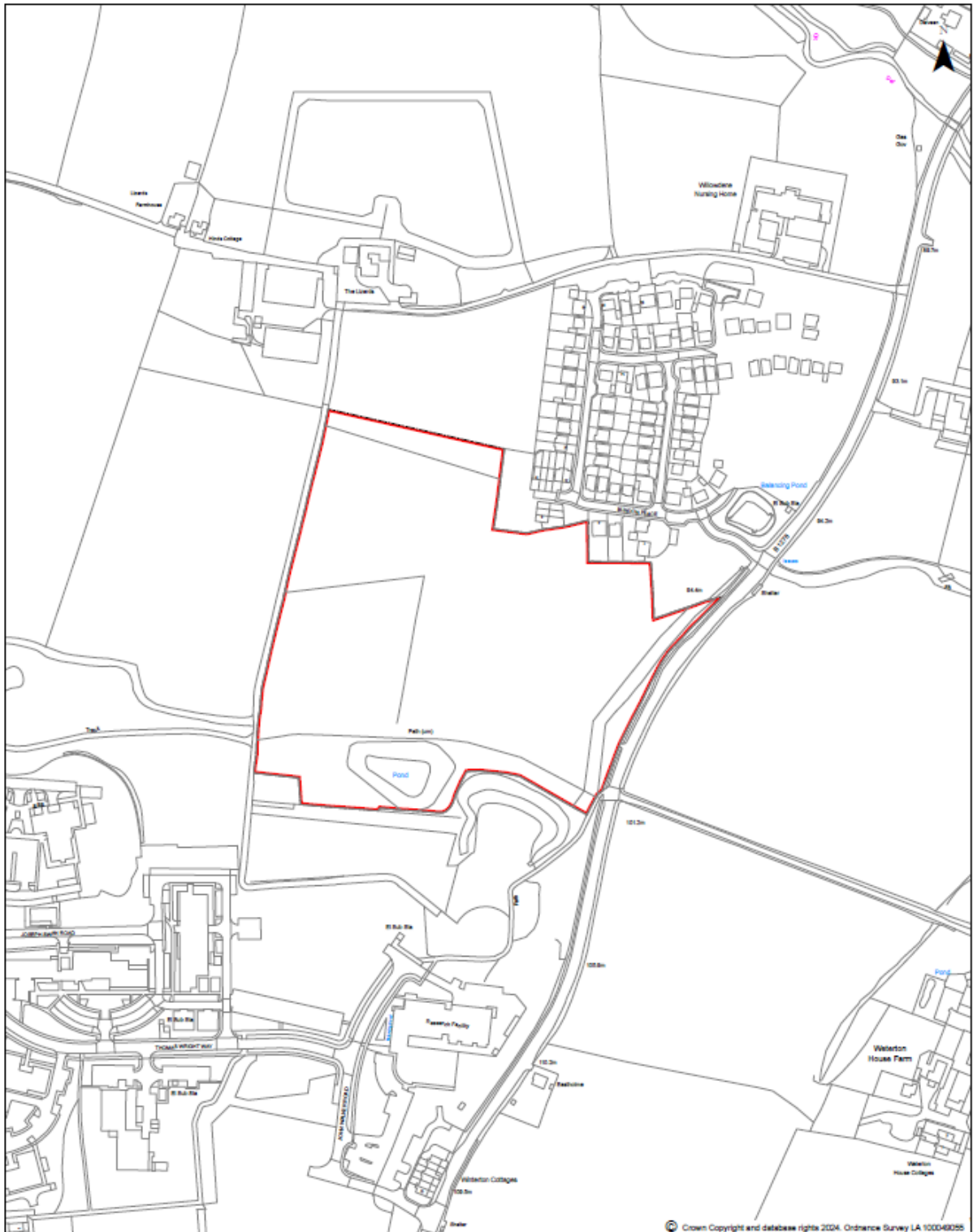
At the end of the 30 year lease, the council would have the option to return the land to employment land, however, in reality, it is unlikely that this would happen and in reality the granting of the lease would result in the land being permanently excluded from the developable area at NETPark.

Removing the land from the developable area would limit the space available for future development. The undeveloped land available at NETPark is currently 116 acres, removing the 16 acres of land for the athletics facilities would reduce this to 100 acres. This would be a long term risk as it is expected that it will take 20+ years for the site to reach saturation – assuming there is sufficient demand for the commercial development of this land.


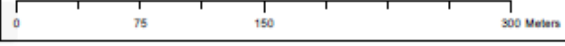
## **Procurement**

N/A

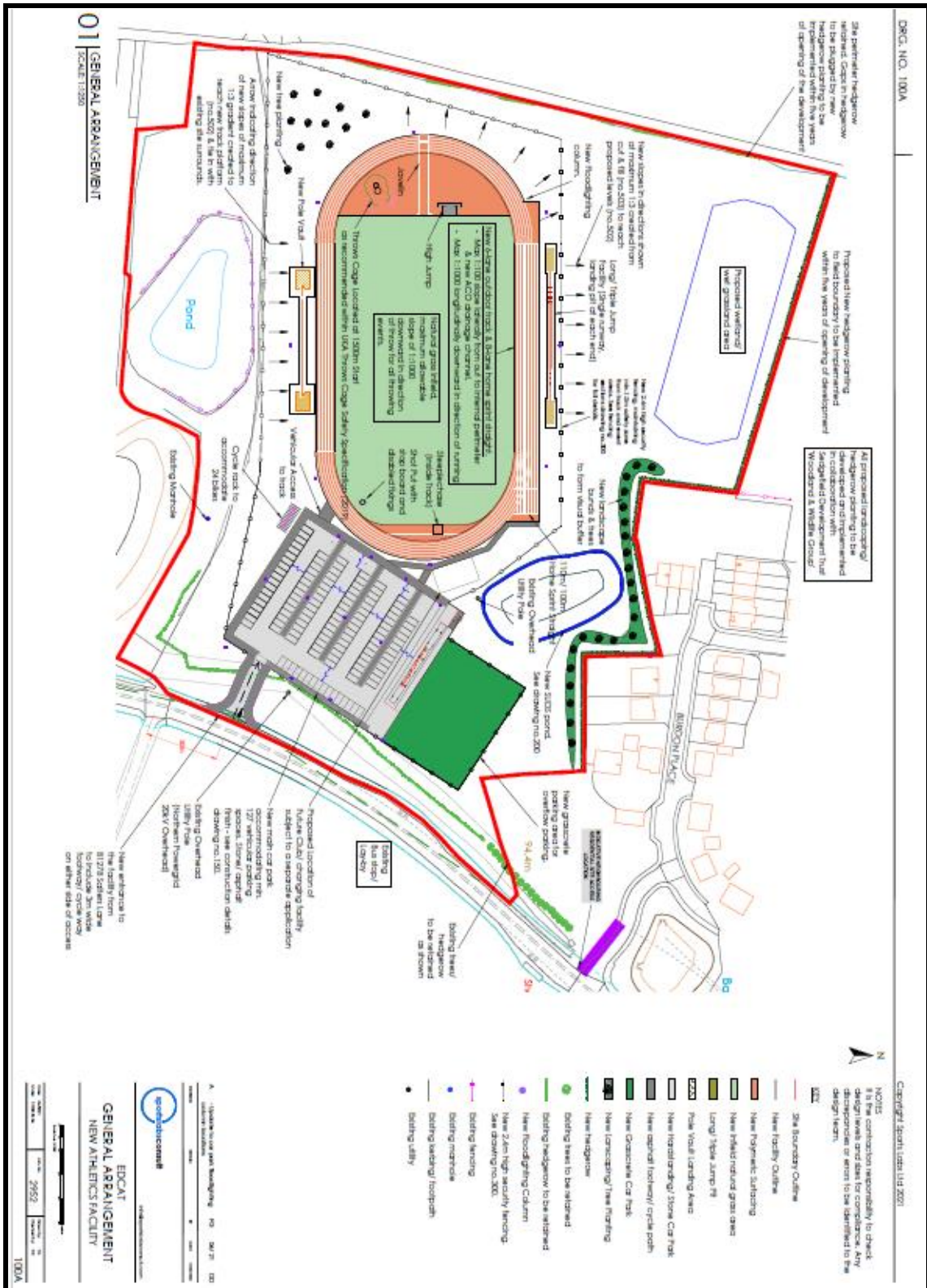
## Appendix 2: Current Lease Plan Area Edged Red - 16 Acres



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<p>Total Area Coloured Red: 65,574.2 m<sup>2</sup>, 16.204 Acres or thereabouts.</p>	<p>Sedgely NETpark - Sedgely Harriers</p>
<p>Based Upon O.S Map: NZ3531. Date: 08/08/2024. Scale: 1:2,500 (Paper Size: A3)</p>	<p>AMY HARHOFF REGENERATION, ECONOMY AND GROWTH COUNTY HALL, DURHAM, DH1 5UJ. TEL 03000 260 000 CORPORATE PROPERTY AND LAND</p>
<p>UPRN: 3301S05 (Part). Plan Ref: ARC-24-339</p>	
	

# Site Layout extracted from drawings contained in the Planning Application



## Appendix 3: Proposed Option and Lease Terms

<b>OPTION AGREEMENT</b>	
Grantor	Durham County Council,
Grantor's solicitor	Inhouse Legal Services
Grantee (EDCAT)	East Durham Community Athletics Track (Registered Charity No. 1154064)  Chair Steve Foreman/Ean Parsons
Grantee's solicitor	Alex Wright  Ward Hadaway LLP  <a href="mailto:Alex.Wright@wardhadaway.com">Alex.Wright@wardhadaway.com</a>
Plan	Draft Lease Plan attached, area edged red
Access Area	B1278 close to Weterton House Farm junction
Option Period	Initial Period of 2 years from date of completion, to allow EDCAT to secure third-party funding
Option Fee	£1 per annum if demanded.
Exercise of Option	EDCAT may exercise the Option to draw down the Lease upon giving written notice to the Landlord having obtained sufficient funding to develop, run and maintain the site in accordance with the Business Plan and Planning consent as approved by Durham County Council (at their absolute discretion) and Durham County Council being satisfied (at their absolute discretion) that the grant of the lease and any separate grant comply with the subsidy control principles in the Subsidy Control Act 2022. Exercise of the option will also be subject to mines & minerals (deed of grant or similar as approved by Legal Services), Coal Authority consent for site investigations and site development and grant of planning permission.

<b>OPTION AGREEMENT</b>	
Grantor/Landlord's restrictions and obligations	Landlord will grant utility wayleaves/easement and development site investigation licences over the Landlord's Property as required for the Athletics track development. Approval by Landlord in principle to matters concerning s.38 and s278 highway matters and s104 agreements with drainage for example.
Insurance	To carry and produce on-demand insurance certification amounting to £10 million public liability insurance.
EDCAT Rights	The following rights are required during the Option Period: <ul style="list-style-type: none"> <li>• Use of the access land and development land for surveys and inspections to secure planning permission and to prepare for construction.</li> </ul> EDCAT will make good damage caused or pay compensation for such damage.
Costs	Each party is to pay its costs incurred Legal & Surveyors fees concerning this matter.
Determination	EDCAT may determine the Option at any time by giving the Landlord one months' notice in writing.
Grant funding agreement	If appropriate, a form of grant funding agreement, to be entered into on completion of the lease, will be annexed to the option agreement

<b>LEASE AGREEMENT</b>	
Landlord	Durham County Council
Tenant	East Durham Community Athletics Track ("EDCAT") (Registered Charity No. 1154064)
Period	30 years
Rent	£1 per annum if demanded
Property	Community Athletics Track Facility as defined by Planning Application DM/21/01984/FPA and Lease Plan



## LEASE AGREEMENT

Landlord & Tenant Act	The Lease will be excluded from the Security of Tenure provisions of the Landlord & Tenant Act 1954 part II (Sections 24-28)
Use	For community sport and leisure facilities only (Tenant's restrictive use)
Alienation	<p>Not to assign, sub-let or part with possession of part only of the demised premises.</p> <p>(The right to implement AGA arrangement on assignment of the whole)</p> <p>Not to assign the whole of the demised premises without the Landlord's prior written consent, such consent not to be unreasonably withheld. Not to sub-let or part with possession of the whole of the demised premises.</p>
Repair	The lease is to be drawn on a full repairing and insuring basis.
Alterations following practical completion of tenant's works to create community athletics track facility	<p>No future extensions, improvements or alterations are to be carried out without the Landlord's approval of plans and specifications, such approval is not to be unreasonably withheld. (Note CCE restricted to use with regards to deed of grant over mines and minerals rights. Future possibility of Clubhouse accepted in principle. Landlord to be able to refuse consent if not compliant with Planning, Church Commissioners conditions and Coal Authority conditions).</p> <p>The Landlord reserves the right at the end of the term for all buildings to be demolished to ground level and utilities decommissioned leaving a cleared site free of any building debris.</p> <p>Decommissioning Insurance Policy undertaking to be determined.</p>
Insurance	The Tenant is to insure the property and indemnify the Landlord against any claims which may arise as a result of the grant of this lease.



## LEASE AGREEMENT

Conditions  
to be  
satisfied  
before grant  
of option

Subject to Contract

Subject to Delegated Authority

Subject to Approval of Business Plan & Approval of Planning Authority for Planning Permission & Release of S106 grant funding

Satisfactory site investigations on EDCAT's behalf reported to Landlord

Appropriation of land away from TCPA 1990

Compliance with Landlord's undervalue procedure

Compliance with subsidy control requirements