 <b>Council 21 August 2013</b>		<b>Agenda Item No. 3</b>
<b>Title</b>	Call-in of Executive Decisions	
<b>For further information about this report please contact</b>	Graham Leach, Civic and Committee Services	
<b>Wards of the District directly affected</b>	Kenilworth Abbey and Warwick West	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	O & S and F & A Committees 18 June 2013, Executive 19 June 2013, O&S Committee 10 July 2013.	
<b>Background Papers</b>	Reports to Executive 19 June 2013 "St Mary's Lands Business Strategy" and "Potential Recreation of the Mere at Kenilworth Castle". Minutes of the meeting of the Executive 19 June 2013.	

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes (Ref 435)
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	26 June 2013	Andy Jones
Head of Service	26 June 2013	Graham Leach
CMT		
Section 151 Officer		
Monitoring Officer	26 June 2013	Andy Jones
Finance	26 June 2013	Jenny Clayton
Portfolio Holder(s)		
<b>Consultation &amp; Community Engagement</b>		
Philip Clarke, Senior Projects Co-ordinator for information purposes only.		
<b>Final Decision?</b>		Yes
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. **SUMMARY**

- 1.2 On 19 June 2013, the Executive made decisions on two reports: item 6 "Potential recreation of the Mere at Kenilworth Castle and item 9 St Mary's Lands Business Strategy". In accordance with the Council's call in procedure, these decisions have been called in to Council for consideration.

## 2. **RECOMMENDATIONS**

- 2.1 That in respect of the resolution 19 June 2013 made by the Executive on the "Potential recreation of the Mere at Kenilworth Castle", the Council takes one of the following actions:

- (i) to allow the decision made by the Executive on 19 June 2013 to be implemented without further delay; or
- (ii) to refer the decision back to the Executive for further comments.

- 2.2 That in respect of the resolution 19 June 2013 made by the Executive on the "St Mary's Lands Business Strategy", the Overview and Scrutiny Committee takes one of the following actions:

- (i) to allow the decision made by the Executive on 19 June 2013 to be implemented without further delay; or
- (ii) to refer the decision back to the Executive for further comments.

## 3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 The recommendations are in line with the procedure set out in the Council's Constitution under Council Procedure Rules for call-ins.

## 4. **POLICY FRAMEWORK**

- 4.1 A call-in is simply the referral of a decision made, but not yet implemented, to the Council. It is a key way of holding the Executive to account. A called-in decision cannot be implemented until it has been considered by Council, which can examine the issue and question the decision maker on the reasons for the decision.

## 5. **BUDGETARY FRAMEWORK**

- 5.1 Budgetary implications have been detailed in the reports that went to the Executive on 19 June 2013, as set out in Appendix 2 and 3.

## 6. **ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 There is no requirement for alternative options because a call-in requires that a set procedure is followed.

## 7. BACKGROUND

- 7.1 On 18 June 2013, the Overview and Scrutiny Committee and the Finance and Audit Scrutiny Committee considered two reports that would be decided by the Executive the following day. These were listed on the Executive agenda as:
- Item 6 – Potential recreation of the Mere at Kenilworth Castle; and  
Item 9 – St Mary’s Lands Business Strategy.
- 7.2 The Summary of the Scrutiny comments is attached as Appendix 4. During the meeting of the Executive, the Chairman of the Finance and Audit Scrutiny Committee amended his Committee’s comments to remove its recommendation to defer a decision on the report and accepted that full consultation would be undertaken as part of due process.
- 7.3 On 19 June 2013, the Executive met and made its decision on both reports as set out in Appendices 2 and 3 to this report. Appendix 5 is an extract of the minutes of the meeting which shows the decisions made by the Executive in respect of both reports.
- 7.4 On 22 June 2013, Councillors called-in the Mere report and on 24 June 2013, the St Mary’s Lands report was also called in the reasons for the call are set out at Appendix 1 to the report. The reports were considered by Overview & Scrutiny Committee on 10 July 2013.
- 7.5 The Overview & Scrutiny Committee determined that “Item 6 – Potential recreation of the Mere at Kenilworth Castle” should be referred to Council for consideration because the Committee was extremely disappointed with the decision of the Executive because of the significant concerns raised by both itself and the Finance & Audit Scrutiny Committee. In the opinion of both Committees, neither the feasibility study nor the recreation of the Mere, which would cost in excess of £20m, represented good value for money. In addition, and more importantly, the consultation responses from Kenilworth residents clearly stated that they did not want this and that the Council should listen to the public.
- 7.6 The Overview & Scrutiny Committee determined that and that no further action should be taken with regard to “Item 9 – St Mary’s Lands Business Strategy.”
- 7.7 Subsequent to the Overview & Scrutiny Committee, under Council procedure rule 23(h) three of the Councillors (Councillors Dhillon, Mrs Bromley and Higgins) called the Item 9 – St Mary’s Lands Business Strategy for consideration by Council. The reasons for the Councillors referring this to Council were given as:
- (i) Concerns on handing over common land to provide a hotel
  - (ii) Conflict identified with 1984 Act of Parliament
  - (iii) Concerns on getting market price should land be given
  - (iv) Concerns on conflict of Interest if a Cllr is appointed to the board of the Racecourse Company.
  - (v) Concerns on expansion of caravan park on to the common land
  - (vi) If some common land is sold off, what is stopping more being sold off in the future
  - (vii) Concern of suggested delegation in 2.2
  - (viii) Concern on insistence to build hotel in area rejected by the planning committee and with neighbour objections


- (ix) Conflicts to national polices
- (x) Conflicts with County Council Cycle and travel routes

**Appendix 1 –Reasons for call in to O&S Committee**

<b>Executive Agenda Item Number</b>	<b>Report Title</b>	<b>Councillors who called-in the report</b>	<b>Reasons</b>
6	Potential recreation of the Mere at Kenilworth Castle	Councillors: Boad Copping Ms Dean Mrs Falp Mrs Gallagher Gifford Gill Heath Kirton Mrs Knight MacKay Mrs Syson Ms Weed	<ul style="list-style-type: none"> <li>(i) Both cross-party Scrutiny Committees were not in favour of the study.</li> <li>(ii) It is not appropriate use of the Service Transformation Budget Reserve or any of Warwick District Council budgets.</li> <li>(iii) It has a lack of support from many Councillors.</li> <li>(iv) It is speculative.</li> <li>(v) Warwick District Council does not own the land.</li> <li>(vi) There is no commitment from the Land Owner to put in any finance.</li> <li>(vii) Considerable interest in the project is stated in the report, yet only a small minority agreed with the principle (57% to 43%) but no actual figures of how many people this was out of 100-1000?</li> <li>(viii) 64% against, 36% agreed to developments to support, again no idea percentage of what.</li> <li>(ix) If it is going to cost £120,000 for just the study, what cost will the whole scheme end up being.</li> <li>(x) A waste of money when residents in our area are struggling.</li> <li>(xi) A waste of money when our officers are looking to cut their budgets.</li> <li>(xii) With so much opposition, all councillors should be given the right to debate and state what they think about the scheme.</li> </ul>

<b>Executive Agenda Item Number</b>	<b>Report Title</b>	<b>Councillors who called-in the report</b>	<b>Reasons</b>
9	St Mary's Lands Business Strategy	Councillors: Mrs Bromley Dhillon Mrs Higgins Mrs Mellor	<ul style="list-style-type: none"> <li>(i) Concerns about expansion of both the golf course and the caravan site on Common Land.</li> <li>(ii) Planning permission was rejected for the hotel on brown field land at the entrance to the Racecourse and there were strong objections from neighbours to this.</li> <li>(iii) Conflicts with national policies.</li> <li>(iv) Conflicts with the County Council Cycle and Travel Routes.</li> <li>(v) The site is in a Conservation Area.</li> <li>(vi) There might be a conflict of interest if a councillor were appointed to the Racecourse Board.</li> <li>(vii) Concern at the suggested delegation stated in point 2.2 of the report</li> <li>(viii) Concerns on handing over Common Land for the hotel. (Conflict identified within an Act of Parliament 1984.)</li> <li>(ix) Councillors feel that if part of the Common land is sold, then it should be sold at market rate, not tenant's price.</li> <li>(x) Concerns that more land will be sold off in the future.</li> <li>(xi) The dispute between the Ministry of Defence, Air Cadets base, should be settled with the Landlord.</li> </ul>

## Appendix 2 – Report to Executive 19 June 2013

 <b>Executive – 19<sup>th</sup> June 2013</b>		<b>Agenda Item No.</b>  <h1 style="text-align: center;">6</h1>
<b>Title</b>	Potential recreation of the Mere at Kenilworth Castle	
<b>For further information about this report please contact</b>	<p>Chris Elliott Chief Executive 01926 456000 <a href="mailto:chris.elliott@warwickdc.gov.uk">chris.elliott@warwickdc.gov.uk</a></p> <p>Philip Clarke Senior Projects Co-ordinator 01926 456518 <a href="mailto:Philip.clarke@warwickdc.gov.uk">Philip.clarke@warwickdc.gov.uk</a></p>	
<b>Wards of the District directly affected</b>	Kenilworth Abbey	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Executive 26 <sup>th</sup> August 2009 Minute number 72c	
<b>Background Papers</b>		
<b>Contrary to the policy framework:</b>	No	
<b>Contrary to the budgetary framework:</b>	No	
<b>Key Decision?</b>	Yes	
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes (Ref 435)	
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	No	
<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	24 <sup>th</sup> May 2013	Author
Head of Service	24 <sup>th</sup> May 2013	n/a (Chief Executive's Department)
CMT	24 <sup>th</sup> May 2013	Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer	24 <sup>th</sup> May 2013	Mike Snow
Monitoring Officer	24 <sup>th</sup> May 2013	Andy Jones
Finance	24 <sup>th</sup> May 2013	Mike Snow
Portfolio Holder(s)		Cllr. Hammon
<b>Consultation &amp; Community Engagement</b>		
n/a		
<b>Final Decision?</b>	Yes	
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. **SUMMARY**

- 1.1 The purpose of this report is to seek approval for the Council to fund a feasibility study into the re-creation of the Mere at Kenilworth Castle.

## 2. **RECOMMENDATIONS**

- 2.1 That Executive supports the principle of undertaking a study to consider the feasibility of re-creating the Mere at Kenilworth Castle in accordance with the approach set out in para. 3.4 and paras. 3.7–3.12 below.
- 2.2 That Executive allocates £120,000 funded from the Service Transformation Reserve and agrees to procure consultants to undertake the whole study, but within this to only authorise stage 1 (up to a maximum of £25,000) to be undertaken now.
- 2.3 That officers be asked to report back once stage 1 is completed so that Executive can consider whether to release up to a further £95,000 of the budget to complete the subsequent stages of the study.
- 2.4 That Executive asks the Kenilworth Town Centre Steering Group to work with officers alongside the appointed consultants to manage the delivery of the feasibility study.

## 3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 There has been much public debate in Kenilworth over many years as to the costs and benefits of seeking to recreate the medieval Mere at Kenilworth Castle. This project has attracted considerable public interest in the past with strong views expressed both for and against the proposal. The proposal has had high level support in the past from within English Heritage (see **appendix A**).
- 3.2 Members will recall that the council has previously investigated the potential of funding a study to consider the feasibility of recreating the Mere. Back in 2009, it had been hoped that Advantage West Midlands, the (then) Regional Development Agency (RDA), would fund the study. This was ultimately unsuccessful and the RDA has now been wound up.
- 3.3 A feasibility study is considered important to enable the Council (and its partners) to take a more informed view as to whether it wishes to continue to support the Mere project. Officers have been seeking to scope the issues that a feasibility study would need to address and to get a broad indication of the likely costs.
- 3.4 Any feasibility study would need to consider the following issues:-
- 1 Engineering, geological, hydrological and other technical matters that would inform the technical feasibility of creating the Mere; and in consequence inform an understanding of the Mere's size and appearance.
  - 2 The full range of planning issues (including ecological, heritage, transportation and landscape matters) that would need to be weighted in the balance as the council considers the proposal further



- 3 The likely broad cost of reinstating the Mere, together with the running costs thereof.
  - 4 leisure, economic and tourism opportunities that could potentially be created by the Mere. What would be the benefits, implications and broad costs of these opportunities?
  - 5 Details of the funding opportunities to reinstate the mere, and to pay for any running costs.
  - 6 the key delivery issues that the Council and its partners would need to consider in moving the project forward.
  - 7 Alongside all the assumptions on which the feasibility is based, the risks of the project also need to be analysed.
- 3.5 Officers have sought informal advice from two leading planning consultancies on the approximate likely cost of undertaking a feasibility study of this scope and breadth. This has indicated that the cost of the study is likely to be between £100,000 and £120,000.
- 3.6 It is considered, however, that it would be sensible to adopt a staged approach to undertaking the study. This would allow for further information to be gathered and for the possible level of support for recreating the mere to be tested before committing the council (and possibly other funding partner organisations) to the full cost of the study.
- 3.7 It is therefore recommended that Executive approves a budget of up to £120,000 for commissioning the full study now, but that the study is commissioned on a staged basis, with only stage 1 (see below) being initially undertaken. It will be made clear to the successful tenderer that approval of subsequent stages will only be given by the Council following receipt and consideration of the stage 1 report and that if the council chooses not to continue to fund the study, it will cease at the end of stage 1. Such an approach avoids the time and cost of having to procure separately for each stage of the study but retains the Council's control over whether it wishes to proceed from stage 1 to stage 2 and then onto stage 3.

Stage 1: Scoping (estimated cost £25,000)

- 3.8 This stage would seek to identify as much information as possible on the likely issues associated with the creation of a mere at this location, the technical work that will be required at the feasibility stage (stage 2 – see below) and at implementation (stage 3) – should the project progress that far. The Scoping Study would consider:-
- How the project aligns with existing strategies and action plans both of the council and key stakeholders (for example English Heritage)
  - What other planning and transportation issues are raised by the proposal and what, overall, are the issues that the Council would have to weigh in the balance in considering the appropriateness of the proposal
  - What tourism and leisure opportunities may be available.
  - What are likely to be the key delivery issues taking the project forward. This will include (in very broad terms) identifying the costs of any tourism and leisure opportunities and identifying any opportunities for match funding.

- 3.9 This stage would include a workshop session to carry out a high level options exercise to explore some of the above in more detail.

Stage 2: Technical feasibility (estimated cost c£80,000)

- 3.10 This stage would consider in more detail the detailed technical feasibility of the various options identified under stage 1. Here regard will be given to the need for the Council to consider the costs associated with not only the physical construction of the mere (and associated works) but also its long term management. Conclusions will be drawn and recommendations on a preferred option made. Details will be provided on how the project could be procured, managed and delivered.

Stage 3: Detailed design and implementation (estimated cost TBD)

- 3.11 This would be a necessary third stage following on from, and dependent upon, the output of stage 2. The precise scope and cost of this would be determined depending on the output to stage 2 above.
- 3.12 In addition to the above, the council may wish to retain the successful consultancy team to undertake further work on our behalf. We would accordingly ask the consultancy team to set out their rates for further work and commit to being available to undertake this.
- 3.13 In terms of managing the production of the feasibility study, and ensuring that there is good local understanding and support of the study, it is proposed that the Kenilworth Town Centre Steering Group (KTCSG) be asked to help manage the commissioning and implementation of the study. The KTCSG is a cross party councillor group including members of the county, district and town councils.

**4. POLICY FRAMEWORK**

- 4.1 The recreation of the Mere offers potential tourism and leisure opportunities and as such fits into the shared vision set out in Warwick District's Sustainable Community Strategy 2009 – 2026 which states that "Warwick District, a great place to live, work and visit...". Furthermore, the "Fit for the Future" programme identifies a number of benefits which the council is trying to bring about, one of which is "a thriving tourist industry". One of the identified ways of delivering this is through "supporting more innovative tourism.....activities".
- 4.2 In the Local Plan Preferred Options (May 2012) the Council set out its support for protecting, enhancing and restoring Strategic Green Infrastructure and identified Kenilworth Mere as an emerging opportunity within this (policy PO15).

**5. BUDGETARY FRAMEWORK**

- 5.1 Within the Fit For the Future reports presented in April and October 2012, funding for the Kenilworth Mere feasibility was provisionally allowed for at an indicative £250,000 to come from the Service Transformation Reserve. This funding was subject to Executive approval to agree the funding following a more detailed business case. As discussed in paragraph 3.5, the cost of this feasibility work should be below £120,000.
- 5.2 The unallocated balance on the Service Transformation Reserve is £979,000. This will reduce to £859,000 after allowing for the Kenilworth Mere feasibility works.

5.3 The likely cost of reinstating the Mere will be substantial. The Feasibility reports need to consider the costs of the mere, both upfront and on-going. Alongside this, funding opportunities need to be explored, on the basis that the Council would be unable to finance the up-front costs alone, nor the capacity to absorb any increased running costs.

## 6. **ALTERNATIVE OPTION(S) CONSIDERED**

6.1 The Council could decide not to continue to investigate the opportunities for re-creating the Mere. Carrying out a feasibility study is considered to be an essential first step to helping the Council understand whether it wishes to do further work to promote the Mere project. The Council could decide not to undertake this work now and therefore to abandon the project (at least for the time being). This is not supported given the level of public interest that has been generated by the project (including most recently by the public consultation undertaken by Kenilworth Town Council (see para. 7.4 below)) and the references made to it in documents such as the Local Plan and the Council's "Fit for the future" programme.

6.2 A further alternative option would be for the Council to not undertake the feasibility study on a staged basis but to commission the full study now. This is also not supported for the reasons set out in para. 3.6 above.

## 7. **BACKGROUND**


7.1 Kenilworth Castle once stood at the heart of a 1,600-ha (4,000-acre) hunting ground, and was surrounded on two sides by a vast man-made lake. The Castle was originally established in the 1120s but was added to in subsequent years, notably in the early 13<sup>th</sup> century where King John added an outer circuit of stone walls, and the earthworks to create the "Great Mere".

7.2 The Mere was an integral part of the Castle defences until this capability was destroyed by Parliamentary edict shortly after the English Civil War. The Mere was eventually drained in the 17th century but is considered important in understanding the history and significance of the Castle.

7.3 The castle is owned by Kenilworth Town Council on behalf of local residents and has been managed by English Heritage since 1984. There has been considerable local interest and speculation surrounding the possible re-creation of the Mere since 2008, and it has been widely reported in the local press. However, to date, no comprehensive feasibility study has been undertaken of the costs and implications of re-creating the Mere.

7.4 As recently as late 2012, Kenilworth Town Council sought the views of residents on the merits of recreating the Mere. This consultation asked two questions. Firstly, it sought views on the general principle of recreating the Mere to enhance the setting of the Castle, bring an added tourist attraction to Kenilworth and control flooding. A small majority (57%) agreed (or strongly agreed) with the proposal and 43% disagreed (or strongly disagreed). Secondly, the consultation sought local views on possible developments that could help support the viable delivery of the Mere proposal; specifically a hotel, a small holiday park or a nature reserve / public recreation facility. To this question, 36% agreed (or strongly agreed) that the Mere project should proceed on this basis, and 64% disagreed (or strongly disagreed).

### Appendix 3 – Report to Executive 19 June 2013

 <b>Executive Committee – 19<sup>th</sup> June 2013</b>		<b>Agenda Item No.</b>  <h1 style="text-align: center;">9</h1>
<b>Title</b>	St Mary’s Lands Business Strategy	
<b>For further information about this report please contact</b>	Andrew Jones <a href="mailto:Andrew.jones@warwickdc.gov.uk">Andrew.jones@warwickdc.gov.uk</a> (01926) 456830	
<b>Wards of the District directly affected</b>	Warwick West	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	N/A	
<b>Background Papers</b>	Executive Committee Report 12 <sup>th</sup> December 2012	

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan?</b>	Yes
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	N/A

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive	22 <sup>nd</sup> May 2013	Chris Elliott
Deputy Chief Executive & Monitoring Officer	7 <sup>th</sup> May 2013	Author
CMT	28 <sup>th</sup> May 2013	Chris Elliott Bill Hunt Andrew Jones
Section 151 Officer	28 <sup>th</sup> May 2013	Mike Snow
Head of Service	22 <sup>nd</sup> May 2013	Tracy Darke
Legal Services	14 <sup>th</sup> May 2013	Peter Endall
Portfolio Holder	22 <sup>nd</sup> May 2013	Councillor Hammon
<b>Consultation &amp; Community Engagement</b>		
<b>Final Decision?</b>	Yes	
<b>Suggested next steps (if not final decision please set out below)</b>		

## **1. SUMMARY**

- 1.1 The report provides details of the recommendations from GVA Leisure's appraisal of potential leisure uses of St Mary's Lands, Warwick and asks the Executive to agree the next steps.

## **2. RECOMMENDATIONS**

- 2.1 That Executive considers GVA Leisure's appraisal of potential leisure uses of St Mary's Lands, Warwick (Appendix 1) and agrees the following:
- 2.1.1 That a business strategy for the development of St Mary's Lands is produced and that the strategy takes a holistic view of the land to ensure that the interests of all stakeholders are taken into account;
- 2.1.2 That in accordance with GVA's recommendation (8.15 of their report refers) a spatial master plan is produced to inform the business strategy and that £10,000 match-funding is made available from the Contingency Budget to support this work;
- 2.1.3 That the construction of a hotel on the land identified as the hatched area at Appendix 2 is integral to a successful business strategy;
- 2.1.4 That the development of a business strategy is overseen by a Steering Group, chaired by the Portfolio Holder for Development Services, consisting of key stakeholders and that the aforementioned Portfolio Holder, Deputy Chief Executive (AJ) and Warwick Racecourse Company (WRC) representatives agree the key stakeholders.
- 2.2 That subject to agreeing recommendation 2.1.3, Executive gives approval for the Deputy Chief Executive (AJ) in consultation with the Portfolio Holder for Development Services and with the support of suitably qualified professionals, to enter into negotiations with WRC and conclude agreements permitting the demolition of the buildings shown approximating to the hatched area on the plan at Appendix 2 and the construction of a hotel in that same area, either by means of:
- 2.3.1 The surrender of the land required for the hotel from the 2005 Lease and the completion of an 'Agreement for Lease' in respect of that land. The Agreement would include pre-conditions requiring WRC to:
- (a) Obtain planning permission for the proposed hotel; and
  - (b) Complete construction of that hotel,
- upon which a new lease shall be granted in accordance with the Warwick District Council Act 1984; or
- 2.3.2 In the alternative, if judged more commercially expedient, to enter into an agreement in like terms to the Agreement for Lease referred to in Recommendation 2.3.1, but providing for consent for the proposed hotel to be given by the District under the extant 2005 Lease rather than by surrender and the grant of a fresh lease; or
- 2.3.3 In the alternative, if judged more commercially expedient and providing that the interests of the District's residents are protected, to take a surrender of WRC's lease, grant a new lease without the land required for a hotel and sell

that land to WRC. Should this approach be considered to be the most beneficial then a further report would be submitted to Executive.

- 2.4 That Executive notes the arrangements officers will put in place should recommendations 2.1 & 2.2 be agreed to ensure that there is no conflict between the Council's role as a landlord and that as a planning authority.
- 2.5 That Executive notes the legal advice at 3.11 in relation to Competition law.
- 2.6 That Executive considers whether it would wish to nominate a Councillor to join the Board of Warwick Racecourse Company Limited.

### **3. REASONS FOR THE RECOMMENDATIONS**

3.1 At the Executive meeting of 12<sup>th</sup> December 2012 the following was agreed:

- *to support work on an options appraisal for a St Mary's Lands Business Strategy commissioned by Warwick Racecourse Company (WRC).*
- *to contribute up to £6,000 from the Contingency Budget to match fund WRC's investment in the commission.*

3.2 The commission was awarded to GVA Leisure who undertook their work during January and February of this year. GVA's final report is attached at Appendix 1. The report is a comprehensive piece of work, stretching to 84 pages, and its recommendations are evidence based. Its headline recommendations are as follows:

"Overall, we consider that there is a commercial market for:-

- a budget hotel;
- touring caravan park extension, and;
- improvements to the golf centre.

In addition we consider that there are opportunities for small local independent or community led schemes for:-

- a fitness gym (possibly in concert with the boxing club and/or football club);
- a community-led five-a-side facility in concert with the football club;
- an independent children's nursery and/or play centre, and;
- improvements to the central area to create an improved nature attraction/parkland attraction.

3.3 These recommendations have been discussed with the Portfolio Holder for Development Services and his two Shadow Portfolio Holders and the response has been very positive believing that GVA's appraisal provides a firm foundation for the development of a business strategy for St Mary's Lands.

3.4 Members will recall that the reason they agreed to support and part-fund the appraisal by GVA was because of the concern it had regarding the future viability of the racecourse. It may be helpful to remind Members of two passages from the financial viability work undertaken by Wilks Head & Eve (WH&E) which was commissioned by the Council in connection with the failed hotel planning application:

"If the operator fails to make improvements to visitor facilities and diversification into non-race day income generation, often relating to the same investment, then that racecourse will fall behind the competition in the light of reducing funding allocation by the racing industry."

“On the evidence which has been prepared and submitted and the indications which the outline development proposals supports (sic), suggests that development of a hotel complex at the racecourse would indeed make the prime operation of the racecourse more sustainable for the operator.”

- 3.5 GVA’s work concludes that there is a commercial market for a budget hotel. Its view is that despite Planning Committee’s rejection of the application for a hotel this is a business proposition that should be revisited if Warwick Racecourse is to materially increase its non-race day income.
- 3.6 It is therefore recommended that a business strategy for the whole of St Mary’s Lands is developed and at the heart of it sits the development of a hotel. For the arguments laid out in the 12<sup>th</sup> December report, it is in this Council’s interests to see a thriving St Mary’s Lands and to produce a business strategy may well require some further funding particularly in relation to the production of a spatial master plan. Officers consider that a maximum of £10,000 match-funded by WRC would address this.
- 3.7 Through the appraisal process, a stakeholder group has been used to take views and test ideas. This group is made up of representatives from District Council (Members), Warwick Town Council (Members), Racing Club Warwick, Warwick Marching Band and Warwick Golf Centre. To develop a business strategy it is felt that a stakeholder Group should take on a proactive Steering Group role and it is recommended that following consultation with the Portfolio Holder, Deputy Chief Executive (AJ) invites key stakeholders to form a Steering Group to develop the strategy.
- 3.8 The provision of landlord consent will mean that WRC would submit a new planning application for a hotel. The Company had previously started discussions with the Council’s planning service to produce an application that takes on board (as far as possible) the views from the Planning Committee. WRC is committed to working with the local community to try to address as many of their concerns as possible. This application will be overseen by the Council’s Development Manager. The landlord matters will be dealt with by Council Deputy Chief Executive (AJ) and officers will ensure that strict “Chinese wall” arrangements are put in place to ensure that all interests are protected. The legal advice to officers will come from different members of the Council’s legal team.
- 3.9 Should Members agree to the way forward and approval for a hotel is subsequently given, then the Council’s legal advice is that there are three viable options available in relation to the lease with negotiations revealing what is most advantageous to the Council. For each case, a pre-condition would be the construction of a hotel. Deputy Chief Executive (AJ) would lead on negotiations with WRC although it is recognised that suitably qualified professional support will be required to arrive at a premium or rent which is commensurate with the value of the interest the Council will be granting. Should the sale of any land be considered to be the best way forward, a further report will be submitted to Executive so that the proposed sale is subject to maximum transparency.
- 3.10 Correspondence from local residents, received by the Council during consideration of the hotel planning application, asserted that if the Council was to proactively support a particular hotel enterprise then this would be in breach of competition law. It was stated that the Council was intent on subsidising the hotel by not seeking a commercial consideration from WRC for the grant of the

Council's consent as landowner under the 2005 Lease. This would, it was alleged, give the proposed Racecourse Hotel an unfair competitive advantage over other providers, stifling competition for hotels in the Warwick area, constituting a breach of the Competition Act sufficient to render the District Council's actions illegal.

- 3.11 The Council's legal adviser has considered these arguments and concluded that there is no reason to believe that the Council will fall foul of the Competition Act if negotiations are conducted with WRC as suggested in this Report. Thus, it is not considered that WDC has to date, or will in any negotiations to come, subsidised the Racecourse in respect of the hotel proposals. Hence there can be no distortion of competition in the local hotel market.
- 3.12 Following the planning application refusal in 2012, there was a strong belief of WRC and Jockey Club (JC) that WDC was ambivalent to the future prospects of the racecourse. Whilst there was recognition of the distinct roles of the Council and Planning Committee, the view was that the Council had no particular interest in whether the racecourse continued its operations. However, this Council's response since the refusal has been warmly welcomed (with particular thanks to the Leader of the Council and Portfolio Holder for Development Services) and WRC & JC's view has changed markedly. In fact the view now is that WDC is a key partner and consequently WRC asks Executive whether it would like to nominate a Councillor on to its Board.

#### **4. POLICY FRAMEWORK**

- 4.1 The report supports the Council's Vision of making Warwick a great place to live, work and visit by promoting employment and protecting a valuable public amenity.
- 4.2 The Council has also agreed a strategy statement "The future and sustainable prosperity for Warwick district" which among other things seeks to:
- Support the growth of the local economy; and
  - Maintain and promote thriving town centres.
- 4.3 Warwick Racecourse's proposal will help ensure the viability of the Racecourse, bring new employment to the town and enable development to take place on the fringe of the town centre.

#### **5. BUDGETARY FRAMEWORK**

- 5.1 Should Executive agree to match fund the cost of the work then up to £10,000 could be drawn down from the Contingency Budget for which the detailed balance is shown within Appendix N of the Final Accounts report to this meeting.
- 5.2 Under the Government's new Business Rates Retention scheme, Councils will be able to benefit financially by increasing their tax base. A new hotel would increase the rates payable to the Council. However, were the Racecourse not to continue then this would have the opposite effect as the tax base would go down potentially leaving the Council with less income.



## **6. ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 Members could decide not to support the development of a business strategy but this may leave Warwick with a failed racecourse. The land would then revert to WDC with the constraints of listed buildings and a Conservation Area location.
- 6.2 With regard to the proposed hotel, Members could decide not to give consent for demolition and a hotel at this time. Members could await the outcome of any planning application that the Racecourse makes before considering the matter. Officers consider that this is not an appropriate position for the Council to take. JCR had previously been questioning the Council's commitment to the Racecourse and so providing landlord consent will be a clear demonstration that the Council recognises the strategic importance of the Racecourse and wants to do what it can to sustain the amenity.
- 6.3 Members could decide not to provide Landlord consent. This would leave WRC to "fend for itself" with the Council playing no role in the long term sustainability of the Racecourse. This approach does not accord with the Council's commitment to promote its town centres and support sustainable development.

## Appendix 4

### Extracts from the Summary of Comments made on the Executive Agenda for 19 June 2013 by the Overview and Scrutiny Committee and the Finance and Audit Scrutiny Committee

#### 6. Potential recreation of the Mere at Kenilworth Castle

The Finance and Audit Scrutiny Committee noted that some residents supported reintroduction of the Mere on its own, but that they appeared not to be supportive of any other developments which might go with that. Members felt that in the current state of austerity, such spending was frivolous and therefore the Committee did not support the recommendations in the report and made the following recommendation to the Executive.

The Finance and Audit Scrutiny Committee made the following recommendation:

That, in light of the current economic climate and financial pressures on the Council, the project is not pursued at the present time.

**The Executive are required to vote on this because it forms a recommendation to them.**

The Overview and Scrutiny Committee recommended that the money is not allocated for a feasibility study. This was unanimously supported by all Members present. In times of austerity, this gives completely the wrong message to the public and the Service Transformation Reserve is not the right fund to use.

**The Executive are required to vote on this because it forms a recommendation to them.**

#### 9. St Mary's Lands Business Strategy

The Finance and Audit Scrutiny Committee did not support £10,000 match funding at this stage until local residents had been given an opportunity to comment on proposals. It therefore made the following recommendation to the Executive.

The Finance and Audit Scrutiny Committee made the following recommendation:

That a decision on the report be deferred in order to allow for a one-off consultation exercise, such as a public meeting, in order to allow residents to express their concerns before any decision is taken.

**The Executive are required to vote on this because it forms a recommendation to them.**

The Overview and Scrutiny Committee recommended that:

(1) There should be full and widespread consultation with the people of Warwick and Warwick Town Council

- (2) Recommendation 2.6 should be removed because there is a potential conflict of interest and there is no need for this position
- (3) The scheme must come back to the Council/Executive before any agreement with the Racecourse is concluded
- (4) Procurement guidelines must be followed closely and the possibility for open bidding for the leases must be ensured
- (5) The independence of the Planning Committee must be safeguarded and made clear to the public

**The Executive are required to vote on this  
because it forms a recommendation to them.**

Several Members of the Overview and Scrutiny Committee had strong reservations about the location of the hotel.

## **Appendix 5 – Extracts from the approved minutes of the Executive 19 June 2013**

### **10. POTENTIAL RECREATION OF THE MERE AT KENILWORTH CASTLE**

The Executive considered a report from the Chief Executive and Development Services which sought approval for the Council to fund a feasibility study into the re-creation of the Mere at Kenilworth Castle.

There had been much public debate in Kenilworth over many years as to the costs and benefits of seeking to recreate the medieval Mere at Kenilworth Castle. This project had attracted considerable public interest in the past with strong views expressed both for and against the proposal. The proposal had also had high level support in the past from within English Heritage.

The report asked that Members allocate £120,000 funded from the Service Transformation Reserve and agree to procure consultants to undertake the whole study, but within this to only authorise stage 1 (up to a maximum of £25,000) to be undertaken now. It was recommended that officers be asked to report back once stage 1 had been completed so that the Executive could consider whether to release up to a further £95,000 of the budget to complete the subsequent stages of the study.

The report also recommended that the Executive ask the Kenilworth Town Centre Steering Group to work with officers alongside the appointed consultants to manage the delivery of the feasibility study.

The Council could decide not to continue to investigate the opportunities for re-creating the Mere. However, officers advised that carrying out a feasibility study was considered to be an essential first step to helping the Council understand whether it wished to do further work to promote the Mere project. The Council could decide not to undertake the work now and therefore to abandon the project (at least for the time being). This was not supported given the level of public interest that had been generated by the project (including most recently by the public consultation undertaken by Kenilworth Town Council, as detailed in the report and the references made to it in documents such as the Local Plan and the Council's "Fit for the future" programme).

A further alternative option would be for the Council to not undertake the feasibility study on a staged basis but to commission the full study now. This was also not supported because to do so would exclude the option of gathering further information and for the council to test any possible level of support.

The Finance and Audit Scrutiny Committee noted that some residents supported reintroduction of the Mere on its own, but that they appeared not to be supportive of any other developments which might go with that. Members felt that in the current state of austerity, such spending was frivolous and therefore the Committee did not support the recommendations in the report and made the following recommendation to the Executive.

That, in light of the current economic climate and financial pressures on the Council, the project was not pursued at the present time.

The Overview and Scrutiny Committee recommended that the money was not allocated for a feasibility study. This was unanimously supported by all Members present. In times of austerity, this gave completely the wrong

message to the public and the Service Transformation Reserve was not the right fund to use.

In response, the Portfolio Holder expressed his disappointment at the lack of support from the scrutiny committees. He reminded them that this had been a project that had been talked about for some time and felt that the Council had a duty to look to the future vision of the District. He also highlighted that at this stage, the funding would only be for the feasibility study which would decide if the project was feasible or not.

Members debated the implications of investing in the future, encouraging tourism and potentially providing employment opportunities for the health and wellbeing of the community against the public perception that this was a frivolous waste of money.

The Portfolio Holder for Development Services hoped that the project would encourage English Heritage and Kenilworth Castle to find ways to share business and the benefits that the project could bring.

With regard to the Overview and Scrutiny Committee's comment that the Service Transformation Reserve was not the right fund to use, the Portfolio Holder for Finance advised that both he and the Section 151 Officer were happy with this arrangement.

The Executive did not accept the recommendations from either scrutiny committee because they felt it was vital to invest in the long term vision for Warwick District, to encourage tourism and to look to the future for both residents and visitors to the town.

Having read the report and considered the comments made by the Scrutiny Committees, the Executive agreed the recommendations as written.

**RESOLVED** that

- (1) the principle of undertaking a study to consider the feasibility of re-creating the Mere at Kenilworth Castle in accordance with the approach set out in paragraph 3.4 and paragraph 3.7–3.12 of the report, is supported;
- (2) a £120,000 allocation is funded from the Service Transformation Reserve and consultants are procured to undertake the whole study, but within this to only authorise stage 1 (up to a maximum of £25,000) which is to be undertaken now;
- (3) officers will report back once stage 1 is completed so that the Executive can consider whether to release up to a further £95,000 of the budget to complete the subsequent stages of the study; and
- (4) the Kenilworth Town Centre Steering Group are asked to work with officers alongside the appointed consultants to manage the delivery of the feasibility study.

(The Portfolio Holder for this item was Councillor Hammon)  
(Forward Plan ref 435)

### 13. **ST MARYS LANDS BUSINESS STRATEGY**

The Executive considered a report from the Deputy Chief Executive (AJ) which provided details of the recommendations from GVA Leisure's appraisal of potential leisure uses of St Mary's Lands, Warwick and asked the Executive to agree the next steps.

At the Executive meeting of 12 December 2012 it was agreed to support work on an options appraisal for a St Mary's Lands Business Strategy commissioned by Warwick Racecourse Company (WRC) and to contribute up to £6,000 from the Contingency Budget to match fund WRC's investment in the commission.

The report explained that the commission had been awarded to GVA Leisure who undertook their work during January and February of this year and their final report was attached as an appendix to the report. The report was a comprehensive piece of work and its recommendations were evidence based with the headline recommendations being outlined in paragraph 3.2 of the report.

Following submission of this report, one recommendation was that a business strategy for the development of St Mary's Lands be produced, a spatial masterplan be produced to inform the business strategy and £10,000 match funding be made available from the Contingency Budget to support this work.

Members support was also sought for the construction of a hotel on the land identified as the hatched area at Appendix 2, which officers felt was integral to a successful business strategy. In addition, a Steering Group was proposed, chaired by the Portfolio Holder for Development Services which would consist of key stakeholders. The Portfolio Holder, in conjunction with the Deputy Chief Executive (AJ) and Warwick Racecourse Company (WRC) representatives would agree the key stakeholders.

Additional recommendations requested approval for the Deputy Chief Executive, in conjunction with other key individuals, to enter into negotiations with WRC and conclude agreements permitting the demolition of the buildings shown approximating to the hatched area on the plan at Appendix 2 and the construction of a hotel in that same area, by various means. The separate options for proceeding with this were detailed in recommendations 2.3.1 to 2.3.3.

Finally, Members were asked to note officer arrangements, legal advice in relation to Competition law and to consider whether it wanted to nominate a Councillor to join the Board of Warwick Racecourse Company Limited.

An alternative option was that Members could decide not to support the development of a business strategy but this could leave Warwick with a failed racecourse. The land would then revert to the Council with the constraints of listed buildings and a Conservation Area location.

With regard to the proposed hotel, Members could decide not to give consent for demolition and a hotel at this time. Members could await the outcome of any planning application that the Racecourse made before considering the matter. However, officers did not consider that this was an appropriate position

for the Council to take. The Council's commitment to the Racecourse had previously been questioned and providing landlord consent would be a clear demonstration that the Council recognised the strategic importance of the Racecourse and wanted to do what it could to sustain the amenity.

Members could decide not to provide Landlord consent. This would leave Warwick Racecourse to "fend for itself" with the Council playing no role in the long term sustainability of the Racecourse. This approach did not accord with the Council's commitment to promote its town centres and support sustainable development.

The Finance and Audit Scrutiny Committee did not support £10,000 match funding at this stage until local residents had been given an opportunity to comment on proposals. It therefore made the following recommendation to the Executive:

That a decision on the report be deferred in order to allow for a one-off consultation exercise, such as a public meeting, in order to allow residents to express their concerns before any decision is taken.

The Chairman of Finance and Audit advised that the Committee weren't against the concept but wanted to ensure that the Council was engaging with local residents and stakeholders.

Several Members of the Overview and Scrutiny Committee had strong reservations about the location of the hotel.

The Overview and Scrutiny Committee recommended that:

- (1) There should be full and widespread consultation with the people of Warwick and Warwick Town Council
- (2) Recommendation 2.6 should be removed because there is a potential conflict of interest and there is no need for this position
- (3) The scheme must come back to the Council/Executive before any agreement with the Racecourse is concluded
- (4) Procurement guidelines must be followed closely and the possibility for open bidding for the leases must be ensured
- (5) The independence of the Planning Committee must be safeguarded and made clear to the public

In response, the Portfolio Holder for Development Services stated that Warwick Town Councillors had not been as involved as much as he would have liked them to be although he recognised that it had been difficult for Town Councillor delegates to attend all of the stakeholder meetings. He reminded Members that nothing had been set in stone and the correct controls would be in place to improve the area and benefit the residents of Warwick. He assured Members that full consultation would be undertaken as a matter of course and felt that it was more sensible to have a business strategy and masterplan to consult on so to defer a decision on the report at this stage would be impractical. He also gave a commitment that regardless of what decision was reached in respect of the tenure arrangements for the hotel's construction, a further report would be submitted to Executive for its final approval.

In response to the Overview and Scrutiny comments, the Executive reiterated that full consultation would be included as part of due process. In addition,

procurement guidelines would be stringently followed on all projects, as per the Code of Procurement Practice.

At this point, the Chairman of Finance & Audit Scrutiny Committee advised that he was sure that his Committee would not now want the matter deferred as the Portfolio Holder had given the necessary commitment around consultation.

The Chief Executive addressed members regarding recommendation (5) from the Overview and Scrutiny Committee and reminded them that all planning applications were dealt with in accordance with planning policy. He stated that the Planning Committee could not run 'independently' from the rest of the Council because Council policies had to be given due regard when dealing with applications. He therefore, suggested that the recommendation be reworded to refer to the integrity of the Planning Committee rather than the independence.

Some Members expressed their appreciation of the proposals and felt that the ideas put forward so far had good potential. The Executive agreed that joint working with Warwick Town Council and other relevant bodies was imperative to the successful regeneration of the area and the steering group would need to take their responsibilities seriously.

There was general agreement that the report was very comprehensive and included some excellent ideas for the reinvigoration of this area of Warwick.

Having read the report and accepting the comments made by the Scrutiny Committees, the Executive agreed the recommendations as set out in the report (subject to Overview & Scrutiny Committee recommendations) with the exception of recommendation 2.6.

**RESOLVED** that

- (1) GVA Leisure's appraisal of potential leisure uses of St Mary's Lands, Warwick (Appendix 1), be noted and agrees the following:
  - (a) a business strategy for the development of St Mary's Lands is produced and that the strategy takes a holistic view of the land to ensure that the interests of all stakeholders are taken into account;
  - (b) in accordance with GVA's recommendation (8.15 of their report refers) a spatial masterplan is produced to inform the business strategy and that £10,000 match-funding is made available from the Contingency Budget to support this work;
  - (c) the construction of a hotel on the land identified as the hatched area at Appendix 2 is integral to a successful business strategy;
  - (d) the development of a business strategy is overseen by a Steering Group, chaired by the Portfolio Holder for Development Services, consisting of key stakeholders and that the



aforementioned Portfolio Holder, Deputy Chief Executive (AJ) and Warwick Racecourse Company (WRC) representatives agree the key stakeholders.

- (2) the Deputy Chief Executive (AJ) in consultation with the Portfolio Holder for Development Services, with the support of suitably qualified professionals, be given approval to enter into negotiations with WRC and conclude agreements permitting the demolition of the buildings shown approximating to the hatched area on the plan attached as Appendix 2 to the report, and the construction of a hotel in that same area, either by means of:
  - (i) The surrender of the land required for the hotel from the 2005 Lease and the completion of an 'Agreement for Lease' in respect of that land. The Agreement would include pre-conditions requiring WRC to:
    - (c) Obtain planning permission for the proposed hotel; and
    - (d) Complete construction of that hotel,upon which a new lease shall be granted in accordance with the Warwick District Council Act 1984; or
  - (ii) in the alternative, if judged more commercially expedient, to enter into an agreement in like terms to the Agreement for Lease referred to in Recommendation 2.3.1, but providing for consent for the proposed hotel to be given by the District under the extant 2005 Lease rather than by surrender and the grant of a fresh lease; or
  - (iii) in the alternative, if judged more commercially expedient and providing that the interests of the District's residents are protected, to take a surrender of WRC's lease, grant a new lease without the land required for a hotel and sell that land to WRC.
  - (iv) but regardless of the agreed means, a further report is submitted to Executive for its consideration.
- (3) the arrangements officers will put in place should recommendations 2.1 & 2.2 be agreed to ensure that there is no conflict between the Council's role as a landlord and that as a planning authority;
- (4) the legal advice at detailed at paragraph 3.11 of the report, in relation to Competition law, be noted.

(The Portfolio Holder for this item was Councillor Hammon)