

This Report will be made public on 12 January 2021

Report Number **C/20/69**

---

**To:** Cabinet  
**Date:** 20 January 2021  
**Status:** Key Decision  
**Responsible Officer:** Ewan Green, Director - Place  
**Cabinet Member:** Councillor David Monk, Leader of the Council

**SUBJECT:** OTTERPOOL PARK BUSINESS PLAN

**SUMMARY:** This report seeks approval of the strategic business plan for Otterpool Park Limited Liability Partnership (LLP), being the Council's delivery vehicle for the Otterpool Park Garden Town. The Business Plan, drawn up by the Board of the LLP and appended to this report, sets out the intended activities and requests the release of monies necessary to achieve the objectives in the Business Plan. It also sets out the details of a proposed strategic land agreement between the Council and LLP, the associated funding arrangements, suggests certain amendments to the Members' Agreement and outlines future actions in respect of corporate oversight and assurance of the project.

**REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations below so that the Otterpool Park Limited Liability Partnership can proceed to deliver the project.

**RECOMMENDATIONS:**

1. To receive and note report C/20/69.
2. To approve the Business Plan submitted by the Board of Otterpool Park Limited Liability Partnership and contained in Appendix 1 to this report.
3. To note that the Heads of Terms contained in Appendix 6 will form the basis of the Strategic Land Agreement and future funding arrangements.
4. To authorise the Director of Place, in consultation with the Leader of the Council and Director of Corporate Services, to agree and complete the Strategic Land Agreement between the Council and LLP in accordance with this report.
5. To authorise the Director of Place, in consultation with the Leader of the Council and Director of Corporate Services, to determine whether the pre – conditions and any other conditions in the Strategic Land Agreement have been met in order for the transfer of the land from the Council to the LLP (or to a third party) to be actioned.
6. To authorise the Director of Corporate Services, in consultation with the Leader of the Council, to agree and enter into the appropriate funding mechanisms and agreements between the Council and the LLP (on terms

**to be determined after taking appropriate external advice) and to agree that pre - conditions for individual drawdown have been met.**

- 7. To agree the variations to the Members' Agreement as described in Section 8 of this report.**
- 8. To note that an Assurance Framework, as outlined in Section 9 of this report, will be put in place and reported as required.**

## 1. INTRODUCTION

- 1.1 Appended to this report (attached as Appendix 1) for the Cabinet's approval is the proposed strategic Business Plan of Otterpool Park Limited Liability Partnership (the LLP), as put forward by its Board.
- 1.2 The basis of the Business Plan was first presented to the Overview and Scrutiny Committee on 14 July 2020 (see minute 16 of the meeting of that date). The proposed draft plan was then considered by the Board of the LLP on 13 November 2020 and at a meeting of the members of the LLP on 17 November 2020 (the "members" being the Council and the nominee company). A note of the decisions arising from the LLP Board are included as Appendix 2 and the extract from the minutes of the members meeting setting out their comments is at Appendix 3.
- 1.3 The outline business plan was further presented to the Overview and Scrutiny Committee for comments on 1 December 2020. An extract of the minutes of the meeting recording the decisions of the Committee at that meeting are contained in Appendix 4. The Task and Finish group mentioned in that minute met on 14 December 2020. The plan has undergone revisions to take into account the observations made in each case.
- 1.4 Whilst the proposed Business Plan is in the public domain, the financial plan (in the restricted Appendix 5) which underpin its content is commercially sensitive and if members wish to discuss this appendix it is recommended that the public be excluded from the meeting on the basis that exempt information under paragraph 3 of part 1 of schedule 12A Local Government Act 1972 is contained in the appendix. Should members vote to go into private session, then external advisers, BNP Paribas, will be in attendance to address technical questions.

In presenting the Business Plan, the LLP is requesting that the Council release funding to it, from the 1<sup>st</sup> April 2021 over the next 5 years, to fund the operation of the LLP, to cover the planning application, further land acquisition as required and for key infrastructure and related investment.

- 1.5 If approved, funding will be released in tranches and subject to funding agreements to be entered into; these agreements will reflect the arms' length relationship between the Council and LLP and will protect the Council's interests as investor and lender.
- 1.6 The draw-down of funds will be linked to key milestones contained in separate detailed funding agreements which will be the subject of expert advice to be commissioned by the Director of Corporate Services (the S151 Officer of the Council). These agreements will regulate the milestones for draw down, the terms for repayment, security, and all other provisions which it would be prudent to include.

- 1.7 The LLP will be required to enter into these funding agreements which will be monitored by the Director of Corporate Services.
- 1.8 Appendix 1 is not a detailed delivery plan as that is an operational matter for the LLP Board and management to deal with. It is a strategic plan which will be updated and reviewed annually (subject to Council approval). It should be considered in the context of the Council's ambition, aims and objectives for Otterpool Park, the financial resources the Council has made available and ultimately whether the Council agrees that the Business Plan enables Otterpool Park to be delivered successfully.
- 1.9 This report also considers a number of variations to the Members' Agreement which are required to ensure that interactions between the Council and the LLP are effective and facilitate delivery of the project.

## **2. SUMMARY OF BUSINESS PLAN AND FUNDING REQUIREMENT**

- 2.1 The Business Plan is based on the LLP achieving £190 million of profit over the life of the scheme. Peak debt would be in the order of £65 million when the majority of the strategic infrastructure for the scheme would be in place.
- 2.2 The Otterpool Park LLP resolved to seek up to £75m from the Council and this was based on the currently available, high level cost assumptions which included a contingency.
- 2.3 The Council agreed a facility for up to a £100 million funding allocation for the project. To date circa £30m has been spent on land acquisition, planning and specialist reports required to progress the project and, importantly, provide evidence required as part of the local plan examination process. Therefore from the funding decisions that have been made to date £70m remains available.
- 2.4 The Otterpool Park team has confirmed there will be no detrimental impact on delivery of the project as overall cost certainty will be refined as the project moves into its delivery phases. Further, as the project evolves there will be opportunities to seek additional funding from potential partners such as Homes England in order to bring forward infrastructure and housing investment.
- 2.5 The Funding Agreements to be put in place to manage the flow of funds from the Council to Otterpool Park LLP over a number of years will therefore be based on a total of up to £70 million and in general terms this will be apportioned as follows:
  - £5m working capital to cover the operational costs of the LLP and professional fees both for work associated with the planning application and to prepare plans for the delivery phases of the scheme.

- £65m to develop deliver essential infrastructure and community facilities, in line with the principle of ‘infrastructure 1<sup>st</sup>’, and land acquisition.

### **3. BACKGROUND AND CONTEXT OF THE BUSINESS PLAN**

#### The Council’s Ambition, Aims & Objectives

- 3.1 The Council’s aims and objectives for Otterpool Park are set out in a charter which was adopted on 18 October 2017 (see Minute 48 of the Cabinet meeting of that date). The charter is synthesized in the document expressing the Council’s ambitions for Otterpool Park (see Appendix 6).
- 3.2 As stated, the charter aims to ensure that the new garden town is truly sustainable and expands this by focusing on three key elements which underpin this: economic, environmental and social sustainability. All three elements need consideration, not trading one benefit against the other but building in a way that delivers gains across all three.
- 3.3 In addition to these aspirations, the Council is the local planning authority and is required to facilitate delivery of a minimum of 13,284 additional homes a year over the period 2019/20 to 2036/37 (18 years) to meet the Government’s target of 738 new homes a year.
- 3.4 The Places and Policies Local Plan (as adopted by the Council on 16 September 2020) allocates a number of small and medium-sized sites to meet the target, and remaining development on the strategic sites identified in the 2013 Core Strategy (Folkestone Seafront, Shorncliffe Garrison and the New Romney broad location) will also contribute. However, it is clear that this target cannot be met without a substantial contribution from Otterpool Park, and an allocation for the new garden settlement forms the main focus for development in the emerging Core Strategy Review, which is currently the subject of an examination in public.

#### The role of the LLP and its relationship with the Council

- 3.5 The LLP was established on 27 May 2020, (see minute 6 of the Cabinet meeting of that date). By way of reminder, the LLP is a stand-alone corporate vehicle, registered at Companies House, and having two “members”, the Council and a nominee company of which the Council is sole shareholder (the latter having no active role).
- 3.6 The Members’ (or Owners’) Agreement governs the administration and activities of the LLP, regulating matters including:
- business planning;
  - decision-making; and
  - funding, treatment of receipts and distribution of profits.

- 3.7 In particular the Members' (or Owners') Agreement sets out the process for the approval of the LLP's business plan. In short and as a requirement of the Members' (or Owners') Agreement, every 5 years, the LLP submits its proposed business plan to the Council for approval. Within the 5-year period, annual updates will also be prepared and placed before the Council for approval. The scope of these updates will, of course, vary as the scheme progresses through the various stages of delivery.
- 3.8 The main documents and mechanisms governing the relationship between the Council and the LLP will be:
- The Members' (or Owners') Agreement approved on 27 May 2020;
  - A single, overarching Strategic Land Agreement (see paragraph 4.7 of the business plan and below);
  - Related agreements governing the transfer of land from the Council to the LLP (or other parties) pursuant to the Strategic Land Agreement;
  - Legal instruments in relation to loans / members' equity;
  - Loan agreements in relation to funds provided to the LLP by the Council as debt; and
  - The Business Plan itself (insofar as it frames the activities that the LLP Board may pursue without automatic reference back to the Council for further approvals).
- 3.9 The Council's Statutory Officers (Section 151 Officer and Monitoring Officer) will be required to agree these documents.
- 3.10 Regular meetings (at least quarterly) between the Council and the LLP Board will provide opportunity for dialogue and assessment of progress against the approved Business Plan, including detailed consideration of financial matters and project risks. Attendees at these meetings will be the nominated representatives, which include elected Members and the statutory officers of the Council as agreed by Cabinet (see Minute 6 of Cabinet meeting 27 May 2020).
- 3.11 The LLP will act as master developer for Otterpool Park. As such, it is envisaged that the LLP will secure planning permissions and put in place infrastructure in order that parcels of land can be sold to housebuilders. This will be the main focus of activity and generator of value, i.e. income to the LLP. Other suitable means of infrastructure delivery and development may present themselves over the course of time and be brought forward for consideration and approval under the evolving Business Plan.
- 3.12 Although the Council's over-riding purpose is the delivery of the Garden Town, and the resulting community benefits that will bring, the LLP has been established to make a profit as is required by the Limited Liability Partnerships Act 2000. The Act contains a fundamental principle that LLPs may only be used for the carrying on of a lawful business with a view to profit. It has always been the intention that LLP profits will provide funds back to the Council in order to repay the investment and loans made by the Council and

to sustain delivery of council priorities and activities across the district. The high level financial position is set out more fully below.

- 3.13 The processes whereby: (i) funds are provided to the LLP; and (ii) land owned by the Council is transferred either to the LLP, or direct to housebuilders or developers, will be contained in loan/funding agreements and a Strategic Land Agreement respectively, the details of which are set out below.

#### **4. THE BUSINESS PLAN**

##### The Council's Ambition, Aims & Objectives

- 4.1 The Business Plan includes a draft vision document which sets out the aspirations of the LLP for the development and which captures the essence of the scheme. The vision document draws on a range of Council documents, primarily the Charter for Otterpool Park. The draft of the Business Plan which was presented to the Overview & Scrutiny Committee was prepared by the LLP at the same time as the council's restated ambition and, following recent discussion with the owners at the meeting on 17 November 2020, it now responds more fully to the matters captured.
- 4.2 The finalised LLP Board vision document will be used, in part, to market Otterpool Park to housebuilders and is designed to distinguish it from other developments.
- 4.3 The benefits of the project to the Council are recognised and set out in section 3.1 of the business plan and these accurately build upon the aims and objectives set out in the Council's charter.
- 4.4 The three sustainability principles in "the wheel" (environmental sustainability, economic sustainability and social sustainability) are supported by details in the business plan and represent the balance that needs to be struck across all three elements.
- 4.5 The infrastructure delivery details in section 4.6 of the business plan set out the various items of infrastructure necessary to make Otterpool Park a sustainable town, including essential social and community infrastructure such as schools and medical facilities. It should be noted however that this work is at an outline stage and that significant further work will be required to confirm the precise funding requirements. At this stage, the scheme does not have planning permission nor has a section 106 agreement been prepared which means that large elements particularly of social infrastructure have yet to be designed and costed. The estimates of infrastructure costs have been produced by the LLP's consultants and are intentionally cautious. Over the next 12 months or so these estimates will be firmed up and indeed some work may have been tendered such that firm prices will be available and the financial modelling can reflect this.
- 4.6 The plans for community involvement and development appear advanced and are due for more detailed discussion with the owners – see section 6 of the

business plan - "Stakeholders". The expected requirements of the new community are acknowledged and there are plans to ensure that they are met, which is a key part of the overarching Garden Town principles which are endorsed by central government and the Town and Country Planning Association.

- 4.7 The need for the development to contribute towards the district's housing requirement is also outlined in the document. If housing was not planned and is not delivered at Otterpool Park other far more constrained areas across the district would be put under immense pressure to accept more housing. The business plan sets out in section 9 how it is intended that planning permission will be obtained including supporting the housing land allocation at the examination in public. Furthermore the team identified in section 5.4 appear resourced to deliver the planning permissions and this will be kept under review.
- 4.8 Whilst the Council's ambition, aims and objectives and charter are covered in the business plan, the LLP Board provided a more explicit response to the priorities outlined in the draft Corporate Plan 2021-30: Creating Together Tomorrow.
- 4.9 The business plan before the Cabinet now sets out the strategic approach to be taken to ensure that the Otterpool Park project will contribute to the key principle of a *Greener Folkestone & Hythe* through the overall creation of a new low carbon town. It should be noted however that it has never been the intention to deliver a zero carbon town in totality. The complexity and challenges of doing so go beyond the stated ambition of the Council at this time. However, the aspiration of the LLP Board and the Council are aligned well to the ambition that the project will include exemplar aspects and developments in this regard.
- 4.10 In terms of the approach to sustainability the LLP is operating on the basis of what is considered deliverable against the council's ambition and objectives at this point in time whilst recognising that the project will evolve over 30 years or more. The project has already committed to being gas-free, and is exploring battery storage on site, which is going further than many other developments. The business plan will be reviewed annually, and the approach to low carbon matters would be considered on an ongoing basis as new technologies (e.g. hydrogen power) are tested and made available in the market, and their take-up supported and mainstreamed by partnering organisations.

## **5. Request for Funds**

- 5.1 The LLP will not have any independent financial capacity to fund its activities, at least in the short term, and will be reliant on the Council for funding. In addition to day to day running costs, the LLP will need to be funded in order to engage a professional team (to enable planning applications and the design



and commissioning or infrastructure works e.g. waste water treatment works, highway improvements, improvements to other transport infrastructure).

- 5.2 Accordingly for the period of the Business Plan being recommended for approval, the LLP will need to be funded by the Council. Consequently, the business plan identifies the funding requirements of the LLP as outlined in section 1. Further detail to the high level figures is provided in the restricted Appendix 5.
- 5.3 Therefore, in order to implement the Business Plan the Board of the LLP has requested overall funding to be drawn down over the next five years as outlined in Section 2 of this report. This includes an initial £5 million to be used primarily to fund the operating costs of the LLP, along with professional fees both for work associated with the planning application and to prepare plans for the delivery phase of the scheme. When the need arises, for example, to acquire additional land or to fund third party works or costs for instance associated with the delivery of utilities, such requests would be considered at the time by the Director of Corporate Services in consultation with the Leader.
- 5.4 It should be recalled that on 20 November 2019, minute 69 (2) full Council resolved:-
- “To make available an additional one hundred million pounds to be drawn down over a period of up to five years to enable the Otterpool Park project to proceed.”*
- 5.5 Following recent refreshed analysis, the view from the Council’s external advisers is that the fundamental business case agreed by Council on 20 November 2019 remains sound and remains a solid basis for considering the drawdown of funds to the LLP at this time.
- 5.6 Since this decision of Council, work has continued on the development of the Business Plan and the associated underpinning documents and modelling. For a project stretching over some 30 years or more, it was always anticipated that economic cycles would be a feature of the assumptions underpinning the financial modelling of the project. Sales values are reported nationally to have increased in that period by approximately 5% and build costs have reduced albeit modestly.
- 5.7 In view of the current economic context of COVID-19 recovery, it is however entirely possible that next year sales values may flatten or reduce and build costs may increase and this indeed would be a feature periodically throughout the life of this long term project. However, market forces are expected to ensure that the gap between sales and costs remains broadly constant.
- 5.8 A prudent approach has been taken with regard to the financial modelling. In headline the business plan sets out an approach whereby the LLP acting as a master developer and principally, as stated above, funded through land parcel sales would generate around £190 million of profit over the life of the scheme.

Peak debt would be in the order of £65 million when the majority of the strategic infrastructure for the scheme would be in place.

- 5.9 The peak debt figure reflects the aspiration of the Council and the LLP to ensure that all key infrastructure is provided prior to the occupation of the 1st home. In addition to infrastructure necessary to meet the usual planning requirements, new facilities such as a primary school, community facility, health facility and major town park would all be provided at a very early stage of the development. This would allow new residents to have access to these from first occupation rather than these facilities being delivered at certain trigger point related to planning condition which is more normal. The clear intention being that new residents would have access to a broad range of facilities at the earliest opportunity rather than such facilities being delivered many years after residents move into their new homes at Otterpool Park.
- 5.10 In addition to infrastructure necessary to meet standard planning requirements such as a new primary school, community facilities, health facilities and a major new town park would all be provided at a very early stage of the development such that new residence would have access to these from first occupation rather than these facilities being delivered at a trigger point related to planning condition which is more normal. The clear intention being that new residents would have access to a broad range of facilities at the earliest possible opportunity rather than such facilities being delivered many years after residents move into their new homes at Otterpool Park.
- 5.11 The actual funding mechanism is set out below in Section 7.

## **6. STRATEGIC LAND AGREEMENT (SLA)**

- 6.1 The Council is either the landowner or prospective landowner of most of the site of the garden town. As set out in the Business Plan the LLP was established in May 2020 with the principal objective of acting as master developer for the delivery of the Otterpool Park project. There needs therefore to be a mechanism for transferring the Council's land to the LLP so it can come to agreements with housebuilders, developers and infrastructure providers. This is fundamental to the LLP's ability to implement the Business Plan.
- 6.2 Again, as set out in the Business Plan, as master developer the LLP will secure planning permissions and put in place infrastructure in order that parcels of land can be transferred. The sale of developable land will be the main generator of income to the LLP. The process whereby land owned by the council is transferred (either to the LLP and from the LLP to housebuilders/developers, or direct to them) will be captured in the SLA (the heads of terms for which are contained in Appendix 6). The purpose of the SLA to regulate that process and (among other things) deal with the pre-conditions that must be met before any land is transferred, the basis on which the land value will be ascertained and recognised, and the timing of transfer.

- 6.3 The SLA will be flexible in operation, given the various types of land transfer that maybe necessary (including where being transferred to enable infrastructure). It will operate as a framework for “option agreements” whereby the LLP may trigger a land transfer either to itself or a third party. In any case, where land is to be transferred, that would be dependent on the LLP satisfying certain pre-conditions, the nature of which may differ depending on the factors involved. The likely pre-conditions will include:
- title and vacant possession;
  - a valuation satisfactory to the Council (to satisfy Section 123 best consideration);
  - planning permission;
  - an approved phase/scheme business case – which would detail the background to the transfer and the intended purpose and outcomes, as well as a financing strategy for that transfer.
- 6.4 The pre-condition “business case” would link with how the LLP is to finance the land transfer, either on its own account, by way of further Council loan, or by payment from a third party.
- 6.5 The actual land transfer will be on an arms’ length basis subject to appropriate transaction documentation, standard conveyancing and due diligence. This may deal with a raft of matters that have a bearing on the intended use of the land (including for example, the arrangements for long term management).
- 6.6 Any transaction where land is disposed of by the Council will need to be for ‘value’. Under the SLA, that process will be supported by independent valuation advice. Value may be realised in a number of different ways, e.g. upfront payment, deferred consideration, overage, etc. The SLA and transactional documents for land transfer will provide for that process separately from the treatment of development profits/returns under the Members’ (or Owners’) Agreement.
- 6.7 It is anticipated that the LLP (as master developer) would undertake a large part of any required activity to satisfy the pre-conditions for land being transferred (e.g. the gaining of planning consent, infrastructure delivery, and other enabling works).
- 6.8 The overarching objective of the SLA in relation to land arrangements is to allow the Council and the LLP to address each phase/scheme of the project in the most efficient manner to achieve the desired development outcomes; this will include tax efficiency.
- 6.9 It is envisaged that the transactions with housebuilders will be at open market value for land with residential planning permission. As explained above, the difference between the two would then represent the revenue to the LLP which after deducting the costs of running the LLP securing planning permission and putting in place the necessary infrastructure, and financing the Business Plan represents the profits of the LLP which will be distributed to the owners.

- 6.10 As part of the SLA it is proposed that the LLP manage the site. The land is quite separate from the other land the Council owns and as the LLP's staff will be on - site, it is considered advantageous for the LLP to adopt that role.
- 6.11 The preceding paragraphs describe the salient features of the SLA. It is recommended that the Director of Place in consultation with Director of Corporate Services and the Assistant Director - Law and Governance be authorised to agree and complete the SLA.
- 6.12 Once the SLA has been completed, as noted above, the LLP will be able to call on the Council to transfer the land provided certain conditions are met. It is recommended that the Director of Place in consultation with Director of Corporate Services and the Assistant Director - Law and Governance be authorised to determine whether the key conditions (and any other conditions in the SLA) have been met thus allowing the transfer of the land.

## **7. FINANCE AND FUNDING MECHANISMS**

- 7.1 The LLP is established with a view to making a profit while delivering the Council's objectives. Each year the Board of the LLP will consider whether it can return any profits to its owners, equivalent to declaring a dividend to shareholders. This will be discussed with the owners, then reported to the Council for approval. The costs of running the LLP, servicing debt, plus the financial costs of fulfilling the requirements of the Business Plan (including any projected future costs for which the LLP will make provision) will all be taken into account. These costs will then be deducted from the LLP's income which will principally come from land sales. The balance will be available for payment to the owners as a distribution of profit.
- 7.2 The LLP will be funded through a mixture of equity and debt. The Heads of Terms of the funding arrangements for the LLP are contained in Appendix 6. Equity will be in the form of capital contribution (equivalent to taking shares in a company, and as such making an investment that is at risk). This will be dealt with under the Members' (or Owners') Agreement and the equity recognized in the accounts of the LLP as such.

By contrast, debt will be injected under arms'-length loan agreements entered into between the Council (as lender) and the LLP (as borrower). This debt will be on terms that capture the amount being loaned, the repayment terms (and timing) and interest to be applied. In addition, these loan agreements will provide rights for the Council to inspect accounts and take action where there is a default in repayment (or a significant adverse change in the circumstances of the LLP (as borrower). Moreover, these loans will be secured and rank ahead of the capital contribution (i.e. equity).

- 7.3 This blend of equity and debt will be determined by agreement with the Council on the advice of Arlingclose (financial consultants) and the loan terms and documentation on the advice of Browne Jacobson LLP (legal consultants). The costs of servicing interest and repaying any loans will be

one of the costs deducted from sales receipts prior to calculation of any LLP profits.

- 7.4 It is intended that there will be loan agreements (e.g. facilities) for distinct projects or lines of expenditure under the Business Plan. Equally, these loan agreements (which may include loans for the LLP to acquire land interests for example) will be on terms which link the drawdown of the money to the fulfillment of certain conditions. These conditions for draw down of cash will vary depending on what the funding is to cover; for example, some may be the pre – conditions in the SLA being met, and others(e.g. in the case of infrastructure) could depend on certain payments being due under the relevant construction contract. The running costs of the LLP will not be subject to particular conditions but will be monitored against the evidence of costs legitimately incurred or to be incurred.
- 7.5 It is recommended that the Director of Corporate Services be authorised to develop and enter into the appropriate funding mechanisms and agreements on terms to be determined by her after taking appropriate external advice.

## **8. VARIATIONS TO MEMBERS' AGREEMENT**

- 8.1 It is considered that variations to the Members' Agreement should be made in order to ensure that interactions between the Council and the LLP are effective and facilitate delivery of the project. These are being recommended following a review of the Agreement as the project has evolved, particularly with reference to funding arrangements.
- 8.2 Some of these are entirely cosmetic, for example certain paragraphs were shown as "Not Used" and it would be timely to remove these.
- 8.3 Of more significance is clause 5.3 which provides that no interest shall be payable on members' capital contributions (i.e. equity rather than debt). It is recommended that this should be altered to say that interest may be payable on such capital contributions.
- 8.4 The business plan process described in the Members' Agreement needs to be amended because it currently requires a five year business plan with a "further business plan" each year. The wording should recognise that there will be an annual update to the five-year plan (rather than a fresh plan each year).
- 8.5 Finally, it is recommended that the notice period for both board and meetings of the LLP's members should be reduced from the current 10 working days to 5; this would bring them into line with the general practice of the Council.

## **9. ASSURANCE, RISK MANAGEMENT AND GOVERNANCE**

### **Assurance and Risk Management**

- 9.1 Under the proposed arrangements for funding and land draw down (as described in Appendix 6), the Council will enjoy appropriate and necessary safeguards. These will operate as binding contractual obligations on the LLP under the relevant legal agreements entered into, running alongside the rights of the Council as sole owner of the LLP. In particular, these agreements will ensure that funding is only made available for authorised purposes and that land transfers only take place when certain conditions are met. Whilst these contractual arrangements will provide very thorough protections, Council officers will also establish the necessary mechanisms for gaining assurance that the activities of the LLP under these agreements are properly supervised and subject to periodic scrutiny and audit.
- 9.2 Officers have taken careful note of lessons learned elsewhere and will adopt best practice in how this is carried out. In addition, it is recognised that the Board of the LLP may, at some early point, need to be strengthened to include nominees with relevant financial and infrastructure expertise.
- 9.3 The LLP will need to adopt a broad range of policies required to ensure that it operates within the legal requirements of company law and good practice. This will include such areas as procurement and other policies to ensure value for money and a detailed reporting regime will need to be put in place (internally by the LLP and as between the LLP and Council).
- 9.4 In parallel, the Council's monitoring and audit of the activities of the LLP will ensure that there is the necessary degree of democratic oversight (and with the resources to support that in terms of officer time). This scrutiny will necessarily include member involvement, for example, through reporting to the Audit and Governance Committee, alongside the scrutiny to be exercised by the Council as sole owner of the LLP.

### **Governance**

- 9.5 A principle behind the establishment of the LLP was to enable the necessary agility and operational flexibility to achieve delivery of the Garden Park. It is therefore envisaged that the LLP Board will have a suitable degree of autonomy and operational independence. Nonetheless, the Council will continue to carry out its role as owner of the LLP, as landowner, and as lender; recognising also the entirely separate statutory function of the Council as planning authority. It will be important, not least as part of the assurance and risk management activity described in paragraphs 9.1 – 9.4 above for these different relationships with the LLP to be kept separate and distinct. The Council, as owner, has an interest in the success of the business of the LLP and the delivery of the garden town; it will primarily exercise that function through its approval of the Business Plan (and updates to it), as well as via the decision-making rights it retains under the Members' Agreement (including the composition of and appointment to, the LLP Board).

- 9.6 As landowner the Council will be able to deal with land transfers under the Strategic Land Agreement. Although necessarily flexible in nature, that agreement will mean that the Council retains an ability at certain times to agree the parameters against which parcels of land may transfer, including for example the timing and land valuation. Where necessary and appropriate, these arrangements may also capture any retained or other rights over land that are required by the Council for the scheme as a whole. Independently of the Members' Agreement and Strategic Land Agreement, the Council will also make decisions as lender and should do so with the perspective of a lender – in other words with a focus on the ability of the LLP to make repayment. Decisions will be made periodically to enter into funding agreements and these will then need to be administered and monitored on an ongoing basis as funding is provided to the LLP.
- 9.7 These governance arrangements, and the separation of perspectives in particular, will be critical for ensuring the successful delivery of the garden town. This will be achieved through regular oversight, and a focus (within both the LLP and the Council) on strong record-keeping, sound financial management and thorough risk identification and mitigation.
- 9.8 A governance and assurance framework will be put in place by the Council's Statutory Officers and reported as required.

## 10. RISK MANAGEMENT ISSUES

- 10.1 Strategic risk in relation to Otterpool Park is identified in the Corporate Risk Register (which is reported to Audit and Governance Committee), a summary of which is detailed below:

| Perceived Risk                                 | Likelihood   | Seriousness | Preventative Action   |
|--|--------------|-------------|---|
| Failure to deliver Otterpool Park development. | Low / Medium | High        | <p>Full Council decision to agree funds for project to commence and control of all major landholdings / options achieved.</p> <p>LLP has been established and Directors appointed with broad range of skills applicable to the project.</p> <p>Legal, Financial and Commercial advisors in place to provide support for the Council and LLP.</p> <p>Strategic Land Agreement and Funding Agreements to be put in place.</p> |

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>Ensure adequate Planning resources and access appropriate specialist advice.</p> <p>Governance and Assurance Framework to be developed.</p> <p>Owner / LLP Board meetings held regularly to monitor progress, finance and risk.</p> <p>Internal Corporate Oversight officers group established including Statutory Officers.</p> <p>Annual refresh of LLP Business Plan to be agreed by the Council.</p> |
|--|--|--|---|

10.2 Risks in relation to delivery of the Otterpool Park Business Plan are identified by the LLP at strategic and operational level. Consideration of strategic risk is a standing agenda item for the quarterly meeting between the Council (as owner) and the LLP Board. The LLP Business Plan includes an overview of these at Section 12. Quality and Assurance.

**11. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

**11.1 Legal Officer’s Comments**

The Council’s ability to lawfully establish the LLP has been previously reported and falls under the general power conferred by the Localism Act 2011 as well as the Council’s Housing Act powers. The matters addressed in this report (including approval of the LLP’s Business Plan) are therefore ancillary to previous decisions of the Council.

In relation to the Strategic Land Agreement, the Council may dispose of land provided it secures best consideration in accordance with Section 123 of the Local Government Act 1972. The agreement to be entered into between the Council and LLP will regulate how best consideration is to be ascertained and that duty satisfied.

The funding arrangements fall within the statutory powers of the Council and will be structured to ensure State aid compliance. The way in which the funding is to be accounted for by the Council is addressed in the report.



## **11.2 Finance Officer's Comments**

The financial implications have been outlined within the body of the report. The Council earmarked £100 million of capital resources (to be funded from prudential borrowing) and around £70 million remains available. These funds will be utilised by the LLP in accordance with the proposed Business Plan appended to this report. The allocation made in the current Medium Term Capital programme (MTCP) is considered to be sufficient given the long term nature of this project, but as the Business Plan is updated (in line with the Members Agreement) the MTCP will also be updated. The LLP has no independent source of funding (without the prior consent of the Council) and funding will be provided to the LLP on a facility basis in accordance with the funding agreement which will be developed in line with the appended heads of terms.

The Council has received advice from Arlingclose on suitable debt to equity split; accounting considerations, the Minimum Revenue Provision Strategy; state aid; market funding options and a funding strategy. Further tax, treasury and legal advice will be sought in the development of the funding agreements ahead of any funds being released to the LLP, and in any event they will be funded in accordance with the Business Plan proposed. This advice where appropriate will also inform the development of the Strategic Land Agreement, to ensure the agreements are aligned and provide an appropriate framework between the Council as lender, the Council as land owner, the Council as a corporate body and the LLP.

The development of the assurance framework will give due consideration to the management of financial risk to the Council. The arrangements will seek to learn from the sector, will balance appropriate oversight and governance with enabling the LLP to deliver the Councils ambitions.

The project is a fundamental element of the Councils medium to long term financial plan in being financially sustainable.

## **11.3 Diversities and Equalities Implications**

The proposal is for the approval of a business plan which will enable the Council, through its delivery vehicle Otterpool Park LLP, to create an inclusive community which meets the needs of all residents regardless of whether or not they have a protected characteristic. The differing needs of people, including those with different protected characteristics, will be considered during the design and planning stage of the development and kept under review as the project progresses.

## 12. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Ewan Green, Director of Place  
Telephone: 07783659864  
Email: ewan.green@folkestone-hythe.gov.uk

### **Appendices:**

- Appendix 1: Draft Strategic Business Plan
- Appendix 2: Decisions of Otterpool Park LLP Board (13 November 2020)
- Appendix 3: Extract from the minutes of the Otterpool Park LLP Members' / Owners' Meeting (17 November 2020)
- Appendix 4: Extract from the minutes of the Overview and Scrutiny Committee (1 December 2020)
- Appendix 5: Financial Plan (Restricted)
- Appendix 6: Council's Ambitions for Otterpool Park;
- Appendix 7: Heads of Terms for the Strategic Land Agreement and Funding Agreements.

The following background documents have been relied upon in the preparation of this report:

***(Note: only documents that have not been published are to be listed here)***

**"Exempt by virtue of paragraphs 3 and 5 of part 1 of Schedule 12A Local Government Act 1972 (as amended).**