

This Report will be made public on 3 December 2024

Report Number **C/24/61**

**To:** Cabinet  
**Date:** 11<sup>th</sup> December 2024  
**Status:** Key Decision  
**Responsible Officers:** Dr Susan Priest - Chief Executive  
Ewan Green - Director of Strategy & Resources  
**Cabinet Member:** Cllr Jim Martin - Leader of the Council and Cabinet Member for Otterpool Park and Planning Policy

**SUBJECT:** OTTERPOOL PARK: COLLABORATION AGREEMENT WITH HOMES ENGLAND

**SUMMARY:** This report seeks approval for the Council to enter into a time-limited Collaboration Agreement with Homes England. The outcome of this activity will support ongoing work to secure the necessary investment to identify a delivery route for Otterpool Park.

**REASONS FOR RECOMMENDATIONS:** This report follows an earlier decision in October 2023 (Report C/23/50) agreeing that the Council explores third-party investment (public and/or private sector) as a strategic partner on a joint venture basis, reporting the outcome to Cabinet for further consideration and decision. Entering into a Collaboration Agreement is a key step in this process and a matter for Cabinet agreement.

**RECOMMENDATIONS:**

1. To receive and note report C/24/61.
2. To note the final draft Heads of Terms and governance arrangements which will frame the detailed drafting and negotiation of the Collaboration Agreement.
3. To note that the Overview and Scrutiny Committee Task & Finish Group have been consulted and are supportive of the draft Heads of Terms and governance arrangements.
4. To agree that the Council progresses the detailed drafting and negotiation of, and then subsequently enter into, a Collaboration Agreement with Homes England based on the final draft Heads of Terms detailed in this report.
5. To agree to delegate authority to the Chief Executive, in consultation with the Leader, to progress the detailed drafting and negotiation of, then subsequently agree the final terms of the Collaboration Agreement.

- 6. To note that the outcome from the work undertaken through the Collaboration Agreement will be reported to Cabinet as part of future reports on progress to secure additional investment and a strategic joint venture partner to deliver the New Garden Town.**
- 7. To note that the activities of the OP LLP will continue to be contained within an annual Transition Plan with a supporting budget reported to cabinet until such time that the council makes a further decision on the matter.**

## 1. BACKGROUND

1.1 Otterpool Park, a new garden town, will be central to shaping a sustainable future for the district. It is recognised as a priority within the Council's Corporate Plan 2021-30 'Creating Tomorrow Together' and will make a significant contribution to achieving positive outcomes for:

- Service Ambition 1: Positive community leadership
- Service Ambition 2: A thriving environment
- Service Ambition 3: A vibrant economy
- Service Ambition 4: Quality homes and infrastructure.

1.2 The initial strategic framework for the project is detailed in the approved Charter for Otterpool Park. Please refer to:  
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4383&Ver=4>

1.3 The vision for Otterpool Park is:

*To deliver a next generation garden town of up to 10,000 homes that will provide sustainable living and a healthy economy: provide the best quality of life for existing and future residents and respond to local land scape and character.*

Please refer to: <https://www.otterpoolpark.org/vision/>

1.4 The Council's long-term commitment to developing a new community and strategic role in land assembly has led to the Council owning or having options on circa 90% of all land needed to deliver Otterpool Park (aside from a 10% land holding owned by Homes England).

1.5 Projected financial returns from Otterpool Park underpin the Council's longer term financial strategy , aiming to improve the financial sustainability of the Council and providing a long-term source of income to reinvest in the district and improve services for all residents.

1.6 Otterpool Park LLP (OPLLP) was established in May 2020 with the principal objective of acting as master developer for the delivery of the project. OPLLP is a wholly owned company of the Council and much has been achieved since then. OPLLP will not itself be a party to the Collaboration Agreement (which will be entered into between Homes England and the Council) but it will (led by its Managing Director) play an important role (under the Council's direction) in jointly-leading collaboration activity with Homes England. Accordingly the Council's proposed entry into the Collaboration Agreement with Homes England does not necessitate any variations to OPLLP's Members' Agreement (the agreement which established and governs the constitution / operations of OPLLP).

1.7 The Planning and Licensing Committee (4 April 2023) resolved to grant outline planning permission for Otterpool Park. Please refer to:

<https://www.otterpoolpark.org/amended-outline-planning-application-approved/>

- 1.8 The OPLLP Members' Agreement sets out the process for the approval of its business plan. This requires that every 5 years OPLLP submits its strategic business plan to the Council for approval. Within the 5-year period annual updates are also prepared and placed before the council for approval.
- 1.9 The first strategic 5-year business plan was approved by the Cabinet of the Council on 20 January 2021. Please refer to:  
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4860&Ver=4>
- 1.10 The first annual update of the Business Plan was approved by Cabinet on 26th January 2022. Please refer to:  
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4950&Ver=4>
- 1.11 In April 2023, Cabinet agreed that Officers undertake a financial assessment of the draft updated Business Plan (with input from external specialist advisors), including a risk analysis and consideration of alternative funding options which may be available to the Council and / or OPLLP. Homes England continued to support the Council by providing advice on delivery and strategic funding options. It was intended that the outcome of this work would support Members' decision making. Please refer to:  
  
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=5140&Ver=4>
- 1.12 An update report on the Otterpool Park project was considered by Cabinet on 18 October 2023. The report detailed the outcome of a management review which assessed options for the future strategic direction, funding and delivery of the project.

The resolution to grant outline planning permission on 4 April 2023 signaled that the Otterpool Park project is moving into a new phase of development which will represent a significant increase and change to the current scale and focus of activities for the Council and OPLLP.

At that stage it was therefore appropriate, and good practice, that the Council fully considered the strategic direction, funding, and delivery of the project to ensure that the vision for a sustainable new garden town at Otterpool Park is successfully delivered.

With due diligence carried out on the Otterpool Park draft updated Business Plan, it became clear that continuing to fund Otterpool Park to the level previously agreed presented a level of risk that the Council was unable to mitigate to a tolerable position. Therefore, the financing and delivery structure of the Otterpool Park project and OPLLP needed to change.

With positive progress across the project continuing to be made, Cabinet agreed that the council explore potential strategic partnership options to continue delivering Otterpool Park while reducing the Council's financial exposure, securing appropriate skills and expertise to accelerate project delivery.

It was also agreed that the Overview and Scrutiny Committee form a Task & Finish group to review any emerging joint venture proposals before the matter is returned to Cabinet for further consideration and decision. Please refer to:

<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=5271&Ver=4>

- 1.13 In lieu of an updated Business Plan being agreed, OPLLP was asked to develop a Delivery Plan for an 18-month period to April 2025, focused on essential activity to maintain positive momentum with a robust cashflow and clear milestones.

Cabinet agreed that continued investment by the council to support OPLLP over the coming 12-18 months would require approved by the S151 officer, in consultation with the Leader. This would be expressed in a Transition Plan and budget. The funding required would within the overall budget Council has already set aside for the project and reported to Council through appropriate budget reports.

- 1.14 The remainder of this report seeks agreement for the Council to progress the detailed drafting and negotiation of then subsequently enter into a Collaboration Agreement (CA) with Homes England, as a key step in the process to secure a strategic joint venture partner to deliver OP. The detailed CA will be based on the final draft Heads of Terms included in this report for Members' agreement.

In summary, the proposal is a time-limited (6 plus 3 months) period of detailed work being progressed in a collaborative way to support the investment and delivery of Otterpool Park. The outputs of the work focus on essential activities relating to detailed financial modelling and viability, land draw-down, planning and key infrastructure design and costings.

## **2. COLLABORATION AGREEMENT (Refer to Appendices 1 and 2).**

- 2.1 As part of the transition planning which has been undertaken the Council and Otterpool Park LLP have maintained an active and positive dialogue with Homes England. This reflects both the national role of Homes England in accelerating the delivery of new housing, and their interests as owners of 10% of the land now with the benefit of a resolution to grant permission to deliver Otterpool Park.
- 2.2 The Leader, Chief Executive and senior officers from the Council and Otterpool Park LLP have ensured that Homes England's senior team have been fully sighted on, and engaged in, the work undertaken to date under

the Transition Plan, particularly in relation to the development of a new robust financial model.

- 2.3 It is recognised that Homes England, as the Government's national housing agency, has a significant level of skills and expertise in facilitating large scale development which would benefit the delivery of Otterpool Park. In particular Homes England support in securing early infrastructure investment to address market failure and accelerating housing delivery is seen a critical to the success of Otterpool Park.
- 2.4 On that basis, and taking into consideration their 10% land holding, it is proposed that the Council and Homes England enter into a Collaboration Agreement which will be focused on supporting and accelerating the delivery of the new garden town.

### **Heads of Terms**

- 2.5 The Heads of Terms (HoT) which will form the basis for the detailed drafting / negotiation of the Collaboration Agreement are attached as Appendix 1. The agreement will cover an initial period of 6 months from the date of signing. There will be the potential to extend by a further 3 months. The joint objectives of the agreement are set out below:

- The Parties will work together and make strategic decisions to prepare, manage, finance and achieve an updated financial business plan and delivery strategy for the delivery of Otterpool Park Garden Town. Key outputs are anticipated to include: land drawdown plan, financial modelling (including cash flow), phasing plan, costed infrastructure delivery plan, review of delivery options, review of public sector infrastructure/ enabling development opportunities, review of exit options, planning strategy, draft section 106 heads of terms and summary of ongoing barriers / risks.
- The outcome of the financial business plan and delivery strategy work will enable decisions on the future investment strategy. At the appropriate time, Homes England will explore if there is a potential role for further intervention in Otterpool Park Garden Town to support delivery. These discussions do not form part of the current collaboration agreement.
- The Parties will primarily focus on the delivery of the existing outline planning application reference Y19/0257/FH for a mixed use scheme of up to 8,500 homes alongside supporting infrastructure and a range of community, commercial, educational, retail and recreational uses.
- The scheme will deliver the agreed design and environmental standards and other policy criteria, such as Charter for Otterpool Park, that are considered applicable at the time of signing this agreement.

- 2.6 A range of 6 workstreams will form the basis of the outputs from the collaboration including:

- Financial Business Plan, Delivery Strategy including Exit Options
- Outline Planning, commitments and section 106
- Infrastructure
- Wastewater treatment works (WwTW)
- Land Negotiations
- Comms and Engagement

2.7 The Heads of Terms do not set a precedent for any potential future agreements. If there are any future collaboration agreements proposed between the Council and Homes England these will be considered on their own merits.

### **Governance and Funding**

2.8 The governance structure for the agreement is attached as Appendix 2. A Project Director familiar with HE and central government requirements will be jointly appointed to work co-operatively with the council's Chief Executive, S151 and OP LLP Managing Director. Together they will have responsibility for delivering the outputs of this collaboration agreement.

2.9 There are 3 direct tiers of activity proposed which will be undertaken by officers, in addition to reporting back to the Council:

**Tier 1** – An officer led **Otterpool Park Collaboration Board** will be established with approximately 2 or 3 representatives from Homes England and FHDC (including the Chief Executive and S151 Officer). Both parties will have equal voting rights. The Collaboration Board will have oversight of the project and will be responsible for making all strategic officer decisions relating to the delivery of the outputs of the Collaboration Agreement. The project board will meet monthly and ad hoc if required.

**Tier 2** – An officer **Steering Group** will be established. This will be jointly led by the Project Director and OPLLP MD and attended by the workstream leads who will make recommendations and provide updates on progress. This group will meet on a weekly or fortnightly basis to oversee and monitor the various workstreams.

**Tier 3 – Workstream Leads** - officers from OPLLP, F&HDC and Homes England will work with consultant team to progress works related to the 6 workstreams. They will meet as agreed to progress these activities. OPLLP, F&HDC and Homes England will both be involved with the 6 workstreams, specific roles to be agreed.

2.10 Future consultancy costs related to the works covered by the Collaboration Agreement will be shared between the Council and Homes England. The Project Director will be appointed to work on behalf of both parties.

2.11 The Council's contribution to any future costs associated with the workstreams will be made from the approved from Otterpool Park Transition budget.

- 2.12 Importantly, the Collaboration Agreement will also provide the basis for Homes England to retrospectively contribute proportionately (circa 10%) to the appropriate historic costs incurred by FHDC and Otterpool Park LLP of increasing planning certainty of Homes England's land ownership.

### **3. TASK & FINISH GROUP FEEDBACK**

- 3.1 The Task and Finish Group has met twice. The first meeting on 18 October 2024 provided the opportunity for the Leader and Chief Executive to provide Members with an update on the work undertaken since the October 2023 Cabinet decisions. Please refer to

<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CIId=540&MIId=5521&Ver=4>

The second meeting was held on 26 November 2024 and the substantive agenda item was the proposed Collaboration Agreement with Homes England. Members considered a draft of the Heads of Terms and made a number of comments including:

- The need to ensure that the shared commitment between Homes England and the Council to deliver Otterpool Park is clearly articulated in the agreement.
- The objectives should include a specific reference relating to the aim of developing a proposition which will seek to secure further investment into the Otterpool project.
- The outcome from the joint working needs to be a clearly deliverable plan for Otterpool Park.
- That the initial 6-month period covering the Heads of Terms should be adhered to in order to maintain progress and, as far as possible, avoid the need for the 3-month extension period.

### **4. RECOMMENDATION AND NEXT STEPS**

- 4.1 It is recommended that the Council progresses the detailed drafting and negotiation of, and subsequently enters into, the Collaboration Agreement with Homes England with the aim to further support and progress the delivery of Otterpool Park. The Chief Executive will lead the Council's input along with the S151 and Managing Director of Otterpool Park LLPOPLLP. Future reports will be made to update Members on progress.

### **5. RISK MANAGEMENT ISSUES**

- 5.1 The Corporate Risk Register recognises that achieving the resolution to grant planning approval is a significant milestone and moving into the next phase with a significantly changed context brings substantial financial and delivery risks for the Council. Please refer to Risks C2 and C3 in the

Corporate Risk Register reported to Audit and Governance Committee on 4 December 2024:

[https://folkestone-hythe.moderngov.co.uk/documents/s49288/Ap1\\_Corporate%20Risk%20Register\\_Overview\\_Dashboard.pdf](https://folkestone-hythe.moderngov.co.uk/documents/s49288/Ap1_Corporate%20Risk%20Register_Overview_Dashboard.pdf)

5.2 A summary of the Corporate Risk Register risk mitigation in relation to delivery of Otterpool Park is outlined in the table below.

Perceived risk	Seriousness	Likelihood	Preventative action
Delivery of Otterpool Park	Moderate	Unlikely	<p>A Governance Framework is in place and actively managed to ensure that business related to Otterpool Park LLP and delivery of the project is subject to regular and effective monitoring.</p> <p>A Governance Review has been completed and improvement actions identified in a joint Council and OP LLP Governance Action Plan are being implemented (and monitored by EKAP). Regular Owners Committee Meetings are being held, and an internal Corporate Oversight client group is in place.</p> <p>A Transition Plan and budget are in place. A Joint Operations Board between the Council as client and LLP has been established in order to ensure key matters affecting delivery of the project are fully considered.</p> <p>The Council MTFS and Capital Strategy include commitments for the project, and these are monitored in line with the</p>

			<p>Council's financial reporting processes.</p> <p>A due diligence assessment of affordability and future delivery options has been completed and this has led to a new financial model being developed for the project, based on a new phased delivery plan. A new business plan will then be developed and used as the basis for the procurement of a joint venture partner.</p>
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## **6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### **6.1 Legal Officer's Comments (NM)**

The Council has instructed Browne Jacobson to negotiate and agree the form of the Collaboration Agreement in accordance with the agreed heads of terms.

### **6.2 Finance Officer's Comments (LM)**

Financial implications are set out in the report above and will be in line with existing and approved budgets that form part of the Council's Medium Term Capital Programme (MTCP). Any funding contribution for project historic costs and contributions towards completing the work streams within the Collaboration Agreement from Homes England will be paid directly to the Council and will form part of the Otterpool Project Budget.

### **6.3 Diversities and Equalities Implications (EG)**

There are no equality and diversity issues directly arising from this report.

### **6.4 Climate Change Implications (EG)**

There are no climate change issues directly arising from this report.

## **7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

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

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

Ewan Green, Director of Strategy & Resources  
 Telephone: 07783 659864  
 Email: ewan.green@folkestone-hythe.gov.uk

**Appendices:**

**Appendix 1 Collaboration Agreement: Heads of Terms**

**Appendix 2 Collaboration Agreement: Resource Structure**