

Working Draft Heads of Terms – October 2025**SUBJECT TO CONTRACT AND NOT LEGALLY BINDING****Otterpool Park Garden Town****Additional definitions (to be discussed and require legal input):**

- Satisfactory planning permission – would:
 - Reflect the changes to planning application Y19/0257/FH agreed by both parties at the outset likely in the first instance to reflect the better case set out in the Planning and Delivery Strategy (Oct 2025). Where these cannot be agreed with the LPA or stakeholders the Parties will agree collectively an alternative position.
 - An appropriate solution to the s106. If the LPA require signatories to the s106 prior to issuing a decision notice, then both parties will be required to sign.

The outline planning application does not need to be achieve a market facing return in order to be considered satisfactory.

- Early parcel – up to 500 homes that could be delivered in one, or multiple, development parcels outside the tier 2 process for outline planning application Y19/0257/FH. Infrastructure upgrades should be minimal focused on unlocking the early parcel(s) only. The parties will not be required to deliver any site-wide infrastructure upgrades (i.e. transport, WWTW or servicing upgrades) to unlock the early parcel(s). The purpose of the early parcel(s) is to deliver residential properties by 2029.

Parties

- Homes England – role will be strategic decision maker with the added provision of expertise and resource.
- Folkestone and Hythe District Council (F&HDC) – role will be strategic decision maker with the added provision of expertise and resource.

Period of the collaboration agreement

- This collaboration agreement will cover a period up to the grant of outline planning approval for application reference: Y19/0257/FH. This agreement will cease upon issuing of a decision notice from the Local Planning Authority on the abovementioned application. This decision must be satisfactory for both parties.
- The Parties may agree an extension to this agreement on the same terms, to complete the preparation of any Tier 1 site-wide documents, if the LPA confirms these documents are required to unlock the agreed early homes parcel(s).

Joint objectives

- The Parties will work collaboratively for the period of this collaboration agreement to implement the agreed planning strategy to secure planning approval for updated planning application Y19/0257/FH.
- In agreeing the updates to planning application Y19/0257/FH the Parties commit to working collaboratively to allow for an early residential parcel to be delivered. In doing so both parties will ensure they do not compromise or prejudice the ability for either party to bring this parcel forward.

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- Outline planning application Y19/0257/FH will continue to 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 the Collaboration Agreement.
- The Parties will work at pace and undertake all reasonable endeavours to submit an updated planning application pack within 6 months and subsequently securing the grant of planning permission within 12 months of the signing of this agreement. There will be a longstop date for this agreement of 31st December 2026.
- The Parties will co-operate and work collectively in relation to the matters which are the subject of the Collaboration Agreement.
- The parties will work collaboratively to pursue any other activities necessary to support the delivery of the Otterpool Park scheme. Parties will keep each other appropriately informed of these activities and will agree to share any required information in a timely manner.
- This collaboration agreement will not prejudice any future decisions or further agreements related to the project.

Outputs from the collaboration agreement

- OPLLP will remain the applicant for planning application Y19/0257/FH.
- The Parties will agree a scope of works, application updates and programme for delivering a planning strategy to secure OPA approval for planning application Y19/0257/FH. This will reflect the principles of the Planning and Delivery Strategy document published October 2025. This collaboration agreement will secure planning permission (including s106) for this application that is considered satisfactory to both parties.
- A comms and engagement strategy will be agreed and implemented that will support the activities to secure OPA approval.
- FHDC / OPLLP will continue to lead the planning application for the WWTW. They will keep Homes England appropriately informed of progress.
- Further refinement of the 'early homes' strategy is required. If the agreed approach requires any if the Tier 1 site wide strategies / conditions to be discharged, then the Parties will work together to undertake this work in a timely manner to secure the objectives of the early residential phase.

Land subject of the collaboration agreement

- This collaboration agreement will focus on the outline planning application area (reference: Y19/0257/FH). Please see Plan A for boundary line.

Proposed development

- The activity under this collaboration agreement will focus on that described in outline planning application Y19/0257/FH. Updates / changes to this planning application and / or its description will be agreed by both Parties and set out in the agreed OPA scope of works and programme.

Funding

- Future costs related to the works covered by this collaboration agreement will be shared between the Parties. These costs will relate to consultancy spend, pre-application fees, PPA fees and associated legal fees as well as any spend that may be required for Tier 1 site-wide strategies, only if these works are required to enable the delivery of the early residential parcel and are completed within the duration of the Collaboration Agreement. The Parties

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will contribute proportionately based on their landownership share. Therefore, Homes England would contribute 10.7% with FHDC contributing the remaining 89.3%.

- If either party increase their freehold ownership during the period of the collaboration period, then their proportion of total consultancy spend for the duration of this Collaboration Agreement will increase to reflect the revised land ownership. Neither party will be liable for any other historic costs incurred prior to this Collaboration Agreement.
- Should there be a reduction in landownership (as a result of disposal or transfer of land to third party) then the relevant party (or successor) will remain liable for their percentage costs in totality.
- Unlawful public subsidy issues will be avoided and the Parties acknowledge and agree that any services procured in connection with the joint objectives will need to be procured in compliance with the applicable law and regulation and the Parties will have equal rights to use the outputs of those services.
- A development budget for spend related to the collaboration agreement will be prepared by OPLLP and agreed by Tier 1. The total spend for both Parties under this collaboration agreement is capped at £2.266 million. This cap can only be increased by the written agreement of both Parties by no more than 10% of the original amount.
- Day-to-day management of land and estates will be the responsibility of the relevant landowner.
- OPLLP will continue to be funded by F&HDC, this includes MNDC acting as project director within OPLLP.

Governance and meetings (please see organogram)

- There will be a named organisational lead for the parties as follows:
 - FHDC – Susan Priest
 - OPLLP – Ewan Green
 - Homes England – TBC
- Tier 1 – The Otterpool Park Collaboration Board will be continued. It will have oversight of this collaboration agreement and any other strategic matters affecting project delivery. As per previous arrangements Tier 1 will have 2 or 3 representatives from Homes England and F&HDC including the nominated persons. One attendee shall be a chairperson, with that appointment rotating at regular intervals between Homes England and F&HDC. Both Parties will have equal voting rights. The Collaboration Board would have oversight and be responsible for making all strategic decisions relating to the delivery of the outputs that are the subject of the collaboration agreement. Tier 1 will agree any delegations for Tier 2 and 3.
- Project delivery board to meet monthly and ad hoc if required. The OPLLP lead will provide updates and appropriate reporting to the Collaboration Board on progress. Decisions made at Tier 1 will be communicated to Tier 2 and 3 via the OPLLP lead.
- Tier 2 – This group will be made up of key consultant workstream leads, OPLLP, FHDC and Homes England. This will be chaired by the OPLLP lead. The group will make recommendations and provide updates on progress. This frequency of meetings to be agreed (likely either fortnightly or monthly) to oversee and monitor the various workstreams. Any delegations will be agreed by Tier 1. This group will make recommendations to the Tier 1 Collaboration Board.
- Tier 3 – The specific workstreams will be agreed by Tier 1. The lead for each workstream alongside OPLLP, F&HDC and Homes England will work with consultant team to progress the outputs of the collaboration agreement. They

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will meet as agreed to progress these activities. OPLLP, F&HDC and Homes England will all be involved (as/where appropriate), specific roles to be agreed. Any delegations will be agreed by Tier 1.

Management of the work plan and project resources

- OPLLP will remain the applicant for planning application Y19/0257/FH. Therefore, they will have responsibility for delivering the outputs of this collaboration agreement.
- OPLLP will manage the work plan and programme that should be regularly updated throughout the course of the collaboration agreement and presented to Tier 1 / 2 on a monthly basis. The work plan will be Tier 1 led.
- OPLLP will manage the development budget and progress against the financial cap established in the collaboration agreement. This will be reported to Tier 1 on a monthly basis.
- OPLLP will manage resources and provide strategic direction to the appointed consultants at Tiers 2 and 3 based on Tier 1 feedback. They will also provide strategic direction to Homes England and OPLLP at Tiers 2 and 3. They will work collaboratively with the existing resource to share learning and achieve the joint aspirations for this collaboration agreement.

Management of existing and future consultants

- OLLP will be responsible for procurement of consultant advice. The approach to future procurement will be confirmed but it is anticipated that OPLLP, F&HDC and Homes England will be involved in the procurement and evaluation of consultants relevant to the outputs of this collaboration agreement. The Parties will be required to demonstrate value for money.
- The Parties will agree responsibilities for consultant management, reporting and service standards.
- OLLP will be responsible for reviewing invoices and seeking sign-off from Homes England before these are paid. FHDC will be responsible for invoicing Homes England for their proportion of the agreed consultancy spend on a monthly basis.
- The appointed consultant will represent and reports to the Parties in line with the Collaboration Agreement governance mechanisms. Collateral warranties and reliance on the outputs of the collaboration agreement (i.e. approved planning documents associated with Y19/0257/FH) will be required in favour of the Parties with flexibility for these to be assigned to any future development partner.

Additional headings that are likely to form part of the collaboration agreement:

- Appointments/ Letters of reliance – the Parties will each procure reliance for the other on reports, work and services carried out pursuant to the agreement in furtherance of the objectives, at no cost to the other.
- Co-operation – Parties will act in good faith, will cooperate in relation to the Land and will not ransom each other
- Dispute resolution procedure - in the event of a dispute between the Parties a pre-agreed dispute resolution procedure will apply (involving appropriate escalation mechanisms prior to any third party referral) and in the event that the dispute cannot be agreed, either Party can refer the dispute to the President of the Royal Institution of Chartered Surveyors for the appointment of an independent expert. The independent expert's determination will be final and legally binding.
- Ransom – see above.
- Disposal – appropriate control mechanisms on disposal by any Party will need to be agreed.
- Good faith – see above

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- Non-interference - The Parties will not enter into agreements or arrangements that inhibit or prevent the allocation of the Land for development, achieving planning permission or disposal of the Land or part thereof.
- Confidentiality - the agreement shall include confidentiality provisions subject to appropriate carve outs dealing with the obligations of the Parties in relation to Freedom of Information and other statutory and regulatory requirements as well as an agreed protocol in relation to press announcements in relation to the development
- Anti-corruption – standard provisions to be included.
- Freedom of information – see above
- Anti-bribery – standard provisions to be included.
- No-partnership – as above.
- Termination – to include termination for material breach as well as by agreement or on determination of the period of the collaboration.
- Governing law – standard position.
- Jurisdiction – as above.
- Rights of third parties – as above.
- Notices – to confirm with the standard requirements of the Parties.
- VAT – standard position as to services being exclusive of VAT to be confirmed.
- Non-fetter – standard position as to non-fettering of statutory powers/obligations.