

This Report will be made public on 11 April 2023

Report Number **C/22/109**

To: Cabinet
Date: 19 April 2023
Status: Key Decision
Responsible Officer: Ewan Green, Director of Place
Cabinet Member: Cllr David Monk, Leader of the Council

SUBJECT: OTTERPOOL PARK LLP UPDATE AND CONTRACT AWARDS

SUMMARY: This report presents an update on the preparation of the second annual update of the strategic business plan for Otterpool Park Limited Liability Partnership (LLP). The report also provides an update on engagement with Homes England in relation to a potential Collaboration Agreement and seeks agreement for Otterpool Park LLP to enter into 3 contracts which are required to continue to progress delivery of the project.

REASONS FOR RECOMMENDATIONS:

Cabinet will receive the updated business plan for consideration at a future meeting. Cabinet agreement is required in relation to requests to the Council for Otterpool Park LLP to enter into contracts with a value of £250,000 and higher.

RECOMMENDATIONS:

1. To receive and note report C/22/109.
2. To note the update in respect of the proposed collaboration with Homes England.
3. To note the due diligence and financial assessment being carried out in relation to the updated Business Plan submitted by the Board of Otterpool Park Limited Liability Partnership.
4. To note that the updated Business Plan will be subject of a report to the Overview and Scrutiny Committee prior to being presented to Cabinet for decision.
5. To agree that Otterpool Park Limited Liability Partnership enter into contracts as set out in section 4. of this report.

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 Otterpool Park LLP (the LLP) was established in May 2020 with the principal objective of acting as master developer for the delivery of the project. The Members' Agreement establishing Otterpool Park LLP sets out the process for the approval of the LLP's business plan. This requires that every 5 years the LLP 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.

1.3 The first strategic business plan was approved by the Cabinet of the Council on 20 January 2021 (refer to: <https://www.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=142&MId=4860&Ver=4>).

The first annual update of the business plan was approved by Cabinet on 26 January 2022 (refer to: <https://www.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=142&MId=4950&Ver=4>).

1.4 The principle of the Council entering into a Collaboration Agreement with Homes England was approved by Cabinet on 20 October 2022. This was on the basis that a further report be received on the details of the proposed collaboration prior to any final decisions on the matter being made (refer to: <https://service.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=142&MId=5134&Ver=4>).

1.5 Otterpool Park LLP has a Procurement Policy in place which meets the operating requirements of an LLP company. The Otterpool Park LLP Members' Agreement requires the approval of the Council, via a Cabinet decision, for the LLP to enter into contracts of a value of £250,000 and higher.

1.6 This report provides an update for Cabinet in respect of a potential collaboration with Homes England and the updated Business Plan. The report also seeks agreement for Otterpool Park LLP to enter into three key contracts which are required to continue the development of the project while the revised business plan is being assessed before being presented to members for approval.

2. HOMES ENGLAND COLLABORATION

- 2.1 The basis of the proposed collaboration is that Homes England would acquire optioned land included in the Otterpool Park project area and make a contribution to the costs of the early infrastructure required.
- 2.2 This significant level of potential investment was seen as a positive proposal which would lessen the overall financial commitment for the Council and accelerate delivery of the project. The investment would de-risk the project's peak debt period, secure land options early, and facilitate delivery of key initial site-wide infrastructure. Homes England would also bring experience and expertise in delivering large scale strategic sites which would further strengthen the overall deliverability of Otterpool Park. Homes England would have then shared in the profits generated proportionate to the size of their contribution.
- 2.3 Homes England are currently undertaking a due diligence review in order to assess collaboration options. The Council has not yet received the outcome from this assessment.

It is recognised that the scale and nature of Otterpool Park as a green field new settlement, will likely require a bespoke approach which may include support to enhance and deliver capacity, along with options for additional investment. The Council has not yet received the outcome from the assessment, however, through ongoing discussions it is considered that the form and level of investment initially proposed, directly from Homes England, through a collaboration agreement, is unlikely to be progressed as Otterpool Park is a viable, long-term profitable scheme and not affected by significant market failure (addressing market failure affecting housing delivery being a key driver for Homes England Intervention). Dialogue will continue with Homes England on the nature of its support for delivery of Otterpool Park.

3. BUSINESS PLAN 2023

- 3.1 The current Otterpool Park LLP Business Plan was agreed by Cabinet on 26 January 2022. This remains relevant and it is appropriate that the LLP continue to deliver the Otterpool Park project on that basis until an updated Business Plan is agreed.
- 3.2 The Otterpool Park LLP Board submitted an updated Business Plan for consideration of the Council on 23 February 2023. Through the updated Business Plan the LLP is seeking agreement of the Council in relation to funding, land acquisition, contract spend and the principle of a joint venture proposal for the town centre element of Otterpool Park
- 3.3 Taking into account the emerging view from Homes England (as set out above) that significant investment is unlikely through a collaboration agreement the LLP Board, through the Business Plan, is requesting that

the Council agree to a significant increase in the borrowing facility made available to the LLP by the council.

- 3.4 The LLP has requested that the Council increase its loan facility by an additional £80M to £199M to cover peak debt requirements. The current agreed level is £119M (consisting of £44m for land acquisition and £75m for working capital). The additional £80M funding request is comprised of £49M for accelerated land acquisitions and £31M for inflationary cost pressures on infrastructure provision.
- 3.5 The increased funding level sought by the LLP will address the project's peak debt period, securing land options as early as possible and facilitate timely delivery of necessary key phase 1 infrastructure of for utilities and the upgrade of Westenhanger Station to accommodate HS1.
- 3.6 The level of funding sought represents a significant undertaking at a scale which has not previously been considered in the Council's Medium Term Financial Strategy (MTFS), nor Medium Term Capital Programme (MTCP). The increase in the loan facility will require consideration of Cabinet and agreement of the Council with relevant associated documents updated accordingly.
- 3.7 Officers are currently undertaking due diligence and a financial assessment of the 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 LLP.

The outcome of this work will be a robust assessment which will support Members' decision making on this matter. It is intended that a report will be considered by the Overview and Scrutiny Committee, Cabinet and Council as soon as practicable.

- 3.8 The Overview and Scrutiny Committee considered a presentation on an initial draft updated Business Plan on 8 November 2022 (refer to: <https://www.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=437&MId=5117&Ver=4>).

That presentation to OSC was based on the proposal that the updated Business Plan would include significant investment from Homes England being agreed. As this position has now changed it is intended that OSC will have opportunity to scrutinise the revised updated Business Plan prior to a report being presented to Cabinet.

4. OTTERPOOL LLP - KEY CONTRACT AWARDS

- 4.1 In order to continue to progress the delivery of Otterpool Park the LLP wishes to enter into contracts for 3 key elements of necessary phase 1 infrastructure:

1. Utilities (Electric, Water and Telecommunications)
2. Westenhanger Station Upgrade - PACE 1

3. Masterplan and Design Code

4.2 The value of these awards is each above £250,000 and, in line with the Members' Agreement, the LLP requires approval of Cabinet to enter into these contracts.

4.3 The Appendix provides details of the 3 contracts and the procurement undertaken for each one. In summary the LLP is seeking agreement to enter into the following:

Contract	Contractor	Value
Utilities (Electric, Water and Telecommunications)	Networx Utilities	£8,500,000
Westenhanger Station Upgrade - PACE 1	Network Rail Infrastructure Ltd and South East Trains Limited	£1,233,815
Masterplan and Design Code	John Thompson & Partners LLP	£340,000

4.4 The contracts are for works that form an integral part of the overall delivery of the Otterpool Park project. They are required to support continued delivery of the Infrastructure Strategy which forms part of the current approved Business Plan (2022-23). The updated Business Plan submitted by the OP LLP Board, which is currently being assessed, includes the delivery of the proposed contracted works. Otterpool Park LLP has requested that the contracts be awarded in April 2023 as they are considered essential to ensuring that the deliverability of the overall project programme is not delayed.

4.5 A fully detailed report on the procurement of the 3 contracts has been provided by Otterpool Park LLP. This is summarised in the Appendix to this report.

4.6 In relation to the upgrade of Westenhanger station, only Network Rail / South East Trains can undertake PACE 1 as it relates to the railway infrastructure so it was not possible to undertake a competitive procurement exercise. This was accepted and approved by the board of the LLP. The other two contracts have been tendered in line Otterpool LLP Procurement Policy and consequently all the proposed contracts meet the requirements of the Council (as owner of the LLP).

4.7 The contract with Networx for the provision of utilities is set in stages and includes break clauses which can be used should there be a need to do so.

4.8 Agreement for the LLP to enter into the contracts does not bind the Council into further funding commitments ahead of decisions on the updated Business Plan.

5. RISK MANAGEMENT ISSUES

5.1 Strategic risk in relation to Otterpool Park is identified in the Corporate Risk Register (which is regularly reported to Audit and Governance Committee). The main strategic risk and mitigations in place are outlined below:

Perceived Risk	Likelihood	Seriousness	Preventative Action
Failure to deliver Otterpool Park development.	Low / Medium	High	<p>Council decision to agree further funding for the project to ensure control of all major landholdings / options and deliver essential infrastructure.</p> <p>Housebuilder selection process in place to ensure market uptake and delivery of new homes.</p> <p>Stewardship Vehicle established and funding model agreed.</p> <p>LLP 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 to appropriate specialist advice to ensure Outline Planning Application determined.</p> <p>Governance and Assurance Framework in place.</p> <p>Owner / LLP Board meetings held regularly to monitor progress, finance and risk.</p> <p>Internal Corporate Oversight officers group in place including Statutory Officers.</p>

			Annual refresh of LLP Business Plan to be agreed by the Council.
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5.2 The strategic level risks for Otterpool Park are set out in the Updated Business Plan. A more detailed risk register, to operational level, is managed by the LLP. The strategic level risks are reviewed at the Owners' meetings, between the Council and LLP Board, on a quarterly basis. This is then reflected in the Council's Corporate Risk Register.

6. LEGAL/FINANCIAL AND OTHER POLICY MATTERS

6.1 Legal Officer's Comments (NM)

On the basis that the due process in relation to procurement is being adhered to there are no legal implications arising directly from this report.

6.2 Finance Officer's Comments (LW)

The Council's total capital budget for the Otterpool Park development including expenditure incurred in previous financial years is £119m. The capital budget for the period of the current approved medium-term capital programme from 2022/23 to 2027/28 is £75m. A further report is planned for Cabinet and Council in July 2023 which will consider a request for further capital funding to deliver the development as well as seek approval for the next Business Plan for the LLP. However, the financial commitment for the contracts identified in section four of the report falls within the existing approved Business Plan and can be met from the existing approved capital budget and will form part of the Council's loan funding to the LLP.

6.3 Diversities and Equalities Implications (GE)

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

6.4 Climate Change Implications (OF)

There are no climate implications arising from this report. The report is only presents an update on the strategic business plan for Otterpool Park LLP.

7 CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

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

Appendix Proposed Contract Awards