

Appendix 2

This report will be made public
on 18 May 2020



Report Number **C/20/02**

To: Cabinet
Date: 27 May 2020
Status: Non - Key Decision
Head of Paid Service: Dr Susan Priest, Chief Executive.
Cabinet Member: Councillor David Monk, Leader of the Council

SUBJECT: OTTERPOOL PARK LLP – STRUCTURING & INITIAL ACTIVITIES

SUMMARY: This report makes recommendations regarding the corporate structuring and initial activities of Otterpool Park LLP (the “Delivery Vehicle”), the Council’s delivery vehicle in relation to the development of the Otterpool Park garden town (the “Project”).

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below on the basis that:

1. The Delivery Vehicle will deliver the Council’s objectives for the Otterpool Park garden town.
2. Appointments need to be made to the boards of both the Delivery Vehicle and Otterpool Park Development Company Ltd (the “Nominee Company”), the private limited company (itself wholly-owned by the Council) which is the other corporate member of the Delivery Vehicle alongside the Council.
3. The Delivery Vehicle’s initial activities need to be progressed in a timely way to prepare for the forthcoming Local Plan Examination in Public.
4. The Delivery Vehicles’ initial working capital requirements need to be approved.

RECOMMENDATIONS:

1. To receive and note report C/20/02.
2. To approve the Members’ Agreement for the Delivery Vehicle, including the delegations matrix (the “Delegations Matrix”) in schedule 3 of the agreement (the “Members’ Agreement”) set out in Appendix 2, with the Assistant Director of Governance & Law being authorised to make any minor drafting adjustments in finalising the document.
3. That the Council’s representative at the Members’ Meetings be the Leader of the Council and the Nominee Company’s representative be the Director of Place.
4. To continue the appointments to the board of the Delivery Vehicle of John Bunnett, Director of Development, and Andy Jarrett, Chief

- Strategic Development Officer, for another six months, subject to re-appointment on the appointment of the full board.
5. That the full board consist of additionally two Councillors appointed by the Leader of the Council as soon as practicable, the remuneration for these appointments being the equivalent to, and being treated as a Cabinet Member Special Responsibility Allowance, and three independent non – executive directors, again appointed as soon as practicable within the next six months.
 6. That the specification for the independent non – executive directors set out in appendix 3 be approved and that the remuneration be set at £10,000 pa.
 7. To approve an appointment of the Director of Place as the replacement sole director to the board of the Nominee Company.
 8. To approve the entering into of service level agreements(s) between the Council and the Delivery Vehicle for the provision of services (including staff) by the Council to the Delivery Vehicle to support the Delivery Vehicle’s initial activities described in this report.
 9. To approve the Delivery Vehicle becoming the applicant for the outline planning application for Otterpool Park (reference Y19/0257/FH) and any subsequent planning application for the Project (the “Planning Application”).
 10. To approve the provision by the Council of initial capital of £1.25m to the Delivery Vehicle to support the Delivery Vehicle’s initial activities.
 11. To approve the entering into of a loan facility between the Council and the Delivery Vehicle or the provision of Members’ Equity, or a combination of these two methods of finance, for the provision by the Council of initial capital of £1.25m to the Delivery Vehicle to support the Delivery Vehicle’s initial activities.
 12. That the Council will provide any reasonable and necessary undertakings in order to enable the Delivery Vehicle to demonstrate to third parties an ability to meet contractual obligations properly entered into relation to its initial activities.
 13. That the Delivery Vehicle’s business plan (the “Business Plan”) is presented to Cabinet for approval in due course, and in accordance with the process set out in its Members’ Agreement, prior to any further recommendations being put to Cabinet regarding the subsequent funding requirements of the Delivery Vehicle beyond its initial activities.
 14. That the Delivery Vehicle be properly licensed in due course to use the intellectual property that the Council has registered in relation to Otterpool Park.

BACKGROUND

- 1.1 The Council's aspirations for the Otterpool Park garden town are familiar to members. The development of the garden town was originally intended to be delivered via a joint venture with Cozumel Estates Ltd ("Cozumel"), the owner of the former Folkestone Racecourse site and other relevant land interests. That proposal was supported by a Collaboration Agreement entered into between the Council and Cozumel. The Council has now acquired Cozumel's land interests and the Collaboration Agreement has been terminated.
- 1.2 The Council's attention is now focussed on the delivery of the Project. The present position is as follows:
 - The Council controls approximately 90% of the planning application site with a further 10% (approximately) owned by Homes England, the government agency. Therefore, purely in respect of land ownership and control, there is very little to impede Project delivery.
 - It is anticipated that the examination in public of the local plan, which includes the residential allocation for Otterpool Park, will be heard in May / June 2020.
 - The Planning Application has been made and is likely to be determined later this year.
- 1.3 The Chief Executive used her power to take urgent decisions in January 2020 to:
 - a) Incorporate the Delivery Vehicle and the Nominee Company (and approve the entering into of necessary ancillary documents), as part of an interim corporate structure, for the purposes of the letting and management of residential properties forming part of the Cozumel land interests acquired by the Council (the "Residential Properties") to avoid the creation of secure tenancies.
 - b) To appoint John Bunnett (Director of Development) as sole director of the Nominee Company.
 - c) To appoint Andy Jarrett (Chief Strategic Development Officer) and John Bunnett (Director of Development) as board nominees of the Delivery Vehicle.
 - d) Authorise the Council to grant a lease of the Residential Properties to the Delivery Vehicle.
- 1.4 This report makes recommendations to ensure that the Delivery Vehicle is able to deliver the Project, meeting the Council's objectives for the Otterpool Park garden town, and is not confined to the narrow scope of activity under the interim corporate structure authorised under urgent decisions taken by the Chief Executive (as described above).
- 1.5 It is suggested that the Delivery Vehicle is a limited liability partnership. Although Oportunitas is a limited company the concept of working through a wholly owned corporate vehicle is familiar to members and the Council.

- 1.6 A draft of this report was considered by the Otterpool Park Working Group on 23 April 2020. The recommendations in the draft were unanimously approved by the working group. It should be noted that some of the recommendations in this report have updated the recommendations in the draft.

2. RATIONALE

- 2.1 Cabinet considered on 31 January 2018 report C/17/76. This is attached at Appendix 1. Cabinet resolved:

- “1. That report C/17/76 be received and noted.*
- 2. That the definition of commercial return set out in paragraph 2.3 be approved.*
- 3. That the corporate joint venture option be agreed in principle as the vehicle for delivering the Otterpool Park garden town, with a further report to be submitted to Cabinet on the joint venture and potential for a development company.*
- 4. That the Head of Strategic Development Projects be authorised to seek financial, commercial and legal advice on the formation and operation of a joint venture company for Otterpool Park and investigation into a council controlled development company, and a sum of up to £350,000 to be included in the capital programme for this item of expenditure to be approved by Council.*
- 5. That the existing Collaboration Agreement be extended to March 2019.*
- 6. That the Head of Strategic Development Projects be authorised, in consultation with the Leader of the Council, to continue to liaise with the Homes England (HE formerly known as Homes and Communities Agency) regarding its role in Otterpool Park, with any updates requiring a decision on this matter brought back to Cabinet in due course (the confidential annex to this report refers).*
- 7. That the council agrees in principle to using its compulsory purchase powers if necessary to assemble land.”*

- 2.2 Although that report was prepared and the decision was made in contemplation of Project delivery via a joint venture between the Council and Cozumel, much of the analysis of potential advantages and disadvantages contained within it remain relevant to the proposal contained in this report contemplating Council-led Project delivery via the Delivery Vehicle.

- 2.3 It is however worth recapping on the reasons for using a delivery vehicle amongst which are:-

- decision making is more agile than the local authority decision making process, especially important in a commercial environment;
- the vehicle will have one purpose: management time and other resources will be devoted to this. The local authority has other responsibilities which could divert attention;

- it will be able to identify efficiencies outside the local government framework;
- the private sector are used to dealing with local authority owned vehicles and are thus familiar with their workings;
- the delivery vehicle will not be a "contracting authority" for the purpose of the European Procurement Regulations and will therefore be able to pursue a more flexible procurement policy whilst still obtaining value for money. In particular this could mean engaging more local firms to the benefit of the local economy which is particularly important now; and
- the delivery vehicle offers the benefit of limited liability.

The limited liability partnership structure is flexible and crucially enables other partners to be easily brought on board. These additional partners will bring money and expertise to the project. This is particularly important when considering the ability to share risk and in a long-term project covering some 30-40 years such as Otterpool Park.

- 2.4 Whilst not a JV at the moment councillors should appreciate that it is likely to become a JV during the life of the project. The Council needs to establish a vehicle at the outset that can meet the needs of delivering an exemplary project.
- 2.5. The role of the Delivery Vehicle in Project delivery is currently envisaged as that of a master developer. Under this model the Delivery Vehicle would assume responsibility for leading and coordinating all aspects of Project delivery throughout the development cycle. There is a growing recognition that the master developer role can be an effective way of delivering new housing at scale. As master developer, the Delivery Vehicle could act as a steward of design quality, control delivery and create a positive legacy for the local community.
- 2.6 The Delivery Vehicle's activities to address the Council's objectives for the Otterpool Park garden town would include:
- a) Being the applicant for the Planning Application and, where appropriate, subsequent planning applications relating to Project delivery. Cabinet are asked to specifically approve the former.
 - b) Potentially acting as the manager of community infrastructure created as part of the Project.
 - c) Leading and coordinating development activity at the Project site, potentially via subsidiary vehicles.
 - d) Where appropriate, facilitating partnership development arrangements to bring forward housing and employment opportunities at the Project site, including joint ventures with other organisations.
 - e) Where appropriate, holding and managing residential, commercial, agricultural and/or industrial land and buildings at the Project site in advance of, during and following Project delivery (as applicable).
 - f) Leading and coordinating the delivery of such infrastructure works as are necessary as part of Project delivery.

- g) Commissioning any necessary professional services relating to either the Council's objectives for the Otterpool Park garden town and/or the business objectives of the Delivery Vehicle.
 - h) Carrying out such trading activities as will be identified in the Delivery Vehicle's Business Plan (which will be subject to periodic update/review/approval).
- 2.7 The initial activities of the Delivery Vehicle will be described in its Business Plan for Cabinet approval (see section 5 below).
- 2.8 There is an imperative for establishing the Delivery Vehicle so that it can now act as the Master Developer of Otterpool Park rather than wait for the business plan, referred to in section 5, to be finalised. The imperative is the need for evidence to be given to the inspectors at the Examination in Public ("EIP") into the Local Plan that demonstrates that the Project can deliver the housing numbers envisaged in the plan.
- 2.9 The EIP has now started with questions posed by the inspectors. One set of questions is concerned with deliverability. The inspectors will not recommend the approval of a plan that they are not convinced is realistic so they will look not only to see that the Council is aiming to deliver the appropriate number of dwellings but that there is a method of actually delivering them.
- 2.10 The Council has gone a long way to demonstrate this. It now, with the recent acquisition of the Cozumel land, owns or has the ability to own the majority of the land for the new settlement. It has decided to commit substantial sums and resources to developing the town. It does however need to have a vehicle to deliver the project and to show the inspectors that one exists.
- 2.11 It is considered that the Delivery Vehicle needs to be separately represented at the EIP to give confidence to the inspectors that the allocations will be delivered. It should be recalled that the ability of the Council to deliver the requisite number of houses rests on Otterpool Park coming forward. If this allocation is not approved the Council is highly likely to be faced with piecemeal applications on smaller sites across the whole district which, in the absence of an adopted Local Plan, could be difficult to resist.
- 2.12 In addition, work on engaging with consultants needs to be undertaken as well as continuing discussions with potential developers to progress the Project.

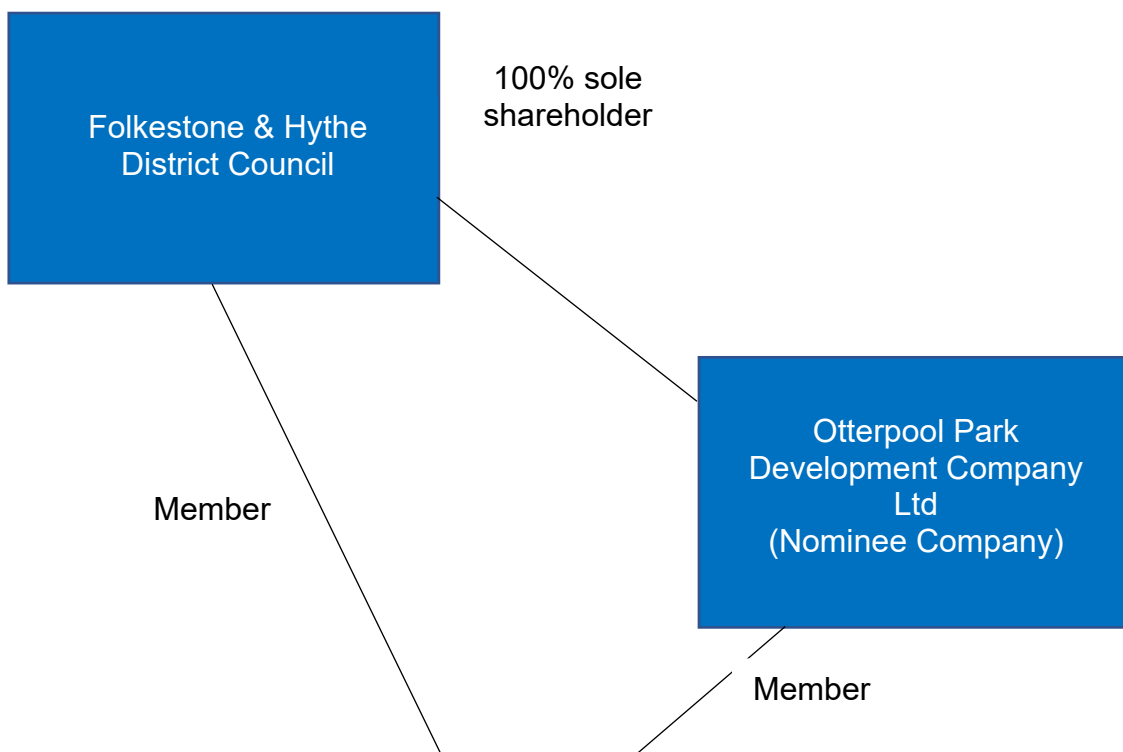
3. GOVERNANCE – THE DELIVERY VEHICLE AND NOMINEE COMPANY

Nature of a Limited Liability Partnership

- 3.1 A limited liability partnership ("LLP") is a form of corporate vehicle established by two or more persons under the section 2(1) of the Limited Liability Partnership Act 2000, where the members of the LLP intend to go

into business “with a view to profit”. LLPs have legal personality, have a board and are registered with Companies House. A LLP therefore is able to enter into contracts, purchase land, establish subsidiary vehicles and trade, in the case of the Delivery Vehicle, in accordance with its approved Business Plan - see below.

- 3.2 A LLP is tax transparent, meaning that its distributable profits are taxed in the hands of its members (i.e. owners), not the LLP. Other taxes, such as VAT and SDLT are payable in the usual way. This ‘tax transparency’ benefits the Council as owner, since it does not pay corporation tax.
- 3.3 A LLP is not required to have articles of association. The Delivery Vehicle will be governed by a Members’ Agreement, its governing instrument to regulate relationships between the members and the Delivery Vehicle, signed by the members (, i.e. the two owners being the Council and the Nominee Company) and the Delivery Vehicle itself – being the equivalent to the articles of a private limited company. One of the recommendations of this report is that the Members’ Agreement set out in Appendix 2 be approved.
- 3.4 A LLP does not issue shares. Appointment of new members (i.e. additional owners) would require the agreement of the existing members.
- 3.5 As per paragraph 3.1 above, a LLP needs a minimum of two members (i.e. owners). It was therefore necessary (as described in paragraph 1.3 above) to also incorporate the Nominee Company to act as a second member of the Delivery Vehicle alongside the Council. A diagram showing the corporate structure is set out below. It should also be noted that the Council is the sole shareholder of the Nominee Company. The Nominee Company’s primary function is to be the second member of the Delivery Vehicle. It would not play an active role in Project delivery.



Otterpool Park LLP
(Delivery Vehicle)

The Members' Agreement and the Delegations Matrix

- 3.6 The Delivery Vehicle's Members' Agreement will govern, amongst other things, the roles and powers of nominees to its board and its decision-making processes. The proposed Members' Agreement is set out in Appendix 2 for approval. This report separately describes the ownership of the Delivery Vehicle (i.e. the Council and the Nominee Company), who the nominees to the board of the Delivery Vehicle will be, and how those nominees will be appointed and removed if necessary.
- 3.7 The Members' Agreement provides the limits and qualifications on what the Delivery Vehicle is able to do in terms of governance and decision-making by being subject to the Delegations Matrix (set out in schedule 3 of the agreement). The Delegations Matrix describes the detailed day-to-day control mechanisms that the Council (as member) will have over the activities of the Delivery Vehicle and the Nominee Company. By preparing and approving the forms of the Members' Agreement and the Delegations Matrix now, the nominees to the board of the Delivery Vehicle will be in no doubt about what the Council (as member) expects of the Delivery Vehicle and the limits in which the Delivery Vehicle can operate.
- 3.8 Specifically, the Delegations Matrix describes, amongst other things, the matters which the Council (as member) in all circumstances has the final decision on (i.e. the equivalent of shareholder reserved matters in the articles of a private limited company), as well as rules regarding procurement and financial controls.
- 3.9 Fundamentally, one of the primary purposes of the Members' Agreement and the Delegations Matrix is to provide a framework for what the Delivery Vehicle can do as part of its day-to-day activities, and to introduce suitable control measures for the Council (as member) so that the Council is satisfied that the Delivery Vehicle is not exposing the Council to undue risk via those day-to-day activities, or acting beyond agreed activities.
- 3.10 The Members' Agreement provides for quarterly meetings of the members (i.e. the owners) of the Delivery Vehicle. This provides the opportunity for the owners of the Delivery Vehicle to ensure that satisfactory progress is being made towards attainment of the objectives in the business plan. Whilst at the moment the owners of the Delivery Vehicle are the Council and the Nominee Company (itself owned by the Council) third parties may, in future, also own the Delivery Vehicle jointly with the Council. The meeting will therefore be a meeting of the owners rather than a formal meeting of council. The meetings will be formally minuted and these will be made publically available.

- 3.11 It is suggested that the Council be represented at the meeting by the Leader of the Council and the Nominee Company by the Director of Place. Appropriate officers, including the statutory officers, would also attend. At the meetings progress against the business plan would be discussed, the management accounts reviewed together with any other relevant other business regarding the Delivery Vehicle's activities. Initially all the directors of the Delivery Vehicle would be invited. Once the full board is established the chairman of the board, a councillor director, an officer director and an independent director would be invited and expected to attend.
- 3.12 It should be noted that, while the Members' Agreement provides for the board of the Delivery Vehicle to meet at least quarterly, expectations are that it will meet more regularly, perhaps monthly, while the Delivery Vehicle is in its early set up phase.

Appointments to the board of the Delivery Vehicle

- 3.13 It is suggested that the board of the Delivery Vehicle initially consists of two officers for a period of up to six months with that time being used to appoint as soon as practicable two council members (i.e. Councillor representatives) and three independent non – executive directors with specific skills and expertise needed for the project. It is suggested therefore, to maintain momentum in the project, that the appointment of the existing officers be continued for six months with their appointments being re – confirmed on the appointments to the full board.
- 3.14 The ability of the Council to make payments to councillor / directors of wholly owned companies / limited liability partnerships is subject to differing opinions. It is suggested that any payment should not be more than the special responsibility allowance of a cabinet member. Accordingly, it is recommended that the remuneration be set at this level. It is also recommended that the payment be treated as if it were a SRA so that a councillor would not be able to receive the remuneration as a director and an SRA, the member would have to elect which to receive. The Leader of the Council is able to appoint the councillor directors.
- 3.15 The specification for the independent non – executive directors is attached in appendix 3 for approval. A payment of £10,000 pa for each non – executive independent director would be appropriate, and a term of four years is suggested, which is considered in line with practice elsewhere. The appointment would be by the Leader of the Council, in consultation with such other directors of the delivery vehicle as he sees appropriate. The recruitment process will commence as soon as practicable after a decision on this matter has been made.
- 3.16 The full board of the DV will be responsible for approving the business plan for onwards submission to the Council which will be considered by OSC and Cabinet through the remainder of 2020.

Delivery Vehicle staffing and resources

- 3.17 A service level agreement between the Council and the Delivery Vehicle for the provision of services (including staff) by the Council to the Delivery Vehicle to support the Delivery Vehicle's initial activities will be prepared. As the Delivery Vehicle will not initially employ staff, it will need to buy resources and other services it requires from the private sector and/or the Council. If services are purchased by the Delivery Vehicle from the Council via a service level agreement, this will be on the basis of full cost recovery at market rates so as to comply with the European State Aid rules. A service level agreement will enable the Delivery Vehicle to request the services of any officers or area of the Council and the Council will charge the Delivery Vehicle for the services or officer time that it uses. The Delivery Vehicle may also procure services/resources externally in line with legislation and existing Council frameworks. The Delivery Vehicle will not be bound by the full financial regulations of the Council, although the Delegations Matrix will ensure that appropriate financial controls are in place.
- 3.18 Five members of Council staff will support the Delivery Vehicle full time – those being the Director of Development, the Chief Strategic Development Officer, the Otterpool Park Project Manager – Masterplanning and Design, the Strategic Development Project Manager and the Corporate Projects Officer (Otterpool). Annual costs to the council of these staff are in the order of £444,000 which is a cost the council will seek to capitalise. Those individuals existing line management responsibilities (if any) will be reallocated. Over time those individuals will be located at Otterpool Park (it is envisaged that the Delivery Vehicle will lease premises from the Council in due course). However, all the officers involved will continue to be employees of the Council and they will be available to assist in other Council projects if and as necessary. Other Council officers with the necessary skills and expertise to deliver the activities of the Business Plan, i.e. with finance and legal specialisms, will work for the Delivery Vehicle as and when required in accordance with the service level agreement.

The Nominee Company

- 3.19 As stated above, the Nominee Company has been incorporated to act as the second member (owner) of the Delivery Vehicle alongside the Council. Notwithstanding the fact that the Nominee Company will not play an active role in Project delivery, a sole director still needs to be appointed to the board of directors of the Nominee Company. It is suggested that Ewan Green, Director of Place, is appointed.
- 3.20 As part of the urgent decisions described in paragraph 1.3 above, the Chief Executive appointed the Director of Development as the sole director of the Nominee Company as part of an interim corporate structure.
- 3.21 Given the Director of Development's envisaged active role in supporting the activities of the Delivery Vehicle, it is considered sensible that he resign from his role under the interim corporate structure as the sole director of the Nominee Company and that a replacement sole director be appointed.

Cabinet is asked to approve the appointment of a replacement sole director to the board of directors of the Nominee Company as per para 3.19 above.

- 3.22 As part of the urgent decisions described in paragraph 1.3 above, the Chief Executive approved the adoption of Model Articles (subject to minor amendments relevant to the Project) by the Nominee Company as part of an interim corporate structure. There is no need to make any amendments to these.

4. INITIAL ACTIVITIES AND WORKING CAPITAL

- 4.1 Described in the next section is the envisaged process for the Delivery Vehicle's business planning. It is intended that the Business Plan will be placed before Overview & Scrutiny and Cabinet after having been approved by the full board of the Delivery Vehicle in the autumn. However, there is a range of initial activities that need to be undertaken by the Delivery Vehicle now and before that approval of the Business Plan. There is a restriction in the Members' Agreement on the Delivery Vehicle operating beyond the scope of these initial activities until the Business Plan is approved by Cabinet.

Initial Activities

- 4.2 Over the next twelve months the following initial activities need to be undertaken by the Delivery Vehicle. A draft skeleton business plan has been drawn up which sets out the range of activities necessary in the first 12 months (see appendix 4). It must be emphasised that this is a draft and that further work will need to be done on it before it can be approved by the full board of the LLP before submission to council.

Capital

- 4.3 Accordingly, initial working capital will need to be made available to the Delivery Vehicle by way of either a loan facility or Members' Equity or more likely a combination of both. This loan facility and Members' Equity will need to be State Aid compliant. Subject to Cabinet's approval the capital will be provided on terms to be determined by the Council's Chief Finance Officer.
- 4.4 The estimate amount of working capital required by the Delivery Vehicle for the first twelve months of operations is £1.25m which will fund in part the activities shown in the draft skeleton business plan at appendix 4, excluding the internal staffing costs shown in para 3.18 above.

5. BUSINESS PLANNING

Business Planning

- 5.1 As provided for in the Members' Agreement, and as noted above, the Delivery Vehicle's Business Plan will need to be approved by Cabinet before it can operate beyond the initial activities described above. An indicative range of business activities is described at paragraph 2.5 of this report.
- 5.2 In drawing up the Business Plan, robust financial modelling will be undertaken using external financial advice.
- 5.3 The strategic financial objectives of the Council and the definition of commercial return for the purpose of the Project have been agreed by cabinet – see report C/17/79 which was considered by Cabinet on 31 January 2018 (minute 80) and these will be reflected in the Business Plan that will be considered by Cabinet, subject to Cabinet approving the other recommendations in this report. The Delivery Vehicle's Board will need to meet to agree the Business Plan prior to its submission to Cabinet for approval.
- 5.4 In order for the Delivery Vehicle to be considered as a going concern and to be able to operate and pay suppliers, it needs to ensure that it can demonstrate solvency. The Delivery Vehicle business model is likely to have substantial front loading of expenditure in the period when the Delivery Vehicle is undertaking the initial activities to deliver the Project. In order for the Delivery Vehicle to be able to demonstrate an ability to meet contractual commitments the Council may need to provide a formal commitment to fund LLP each year, by way of a working capital facility, including for the initial activities.
- 5.5 It is not the purpose of this report to go through the detail of the Business Plan but that will include more detailed references to:
- the project viability of both the Delivery Vehicle and its individual activities;
 - taxation, including VAT;
 - the potential future financial returns to the Council; and
 - the indirect financial benefits to the Council.
- 5.6 It is envisaged that the Business Plan will be prepared and approved for a five-year period, but subject to annual reviews. The Cabinet will be responsible for approving the business plan. If approval of the business plan entails a departure from the Council's budget then that aspect would have to be approved by full Council.
- 5.7 The Overview and Scrutiny Committee will have an important role to play in commenting on and scrutinising the five year business plan and the annual reviews prior to consideration by cabinet. The intention is to have an early discussion with members of OSC about the business plan, potentially in July 2020.

Impact on the Council

- 5.8 The Cabinet will, of course, have to consider the impact on the Council from the operation of the Delivery Vehicle. It will have to be satisfied that any borrowing can be paid within the requirements of CIPFA's prudential code. Essentially, this means that the Business Plan provides sufficient income to repay the borrowing costs both interest and principal, including Minimum Revenue Provision obligations which ensure that the principal element will be repaid.

State Aid

- 5.9 State aid requirements are such that the interest charged by the Council on any loan facility with the Delivery Vehicle must be at a commercial rate, which is one that is available in the market place and not subject to subsidy. Therefore, from a state aid perspective, the rate that the Council borrows at is not relevant to the rate charged under a loan facility with the Delivery Vehicle. The financing arrangements for any working capital loan facility from the Council to the Delivery Vehicle, including for the initial activities, will be structured to comply with these requirements.

6. INTELLECTUAL PROPERTY

There is an Otterpool Park image consisting of logo, slogan and name in a particular typeface developed for the Council by Pillory Barn. The copyright in these is the Council's. The Delivery Vehicle will be properly licensed in due course to use this intellectual property.

7. NEXT STEPS & TIMESCALE FOR DELIVERY

- 7.1 Subject to Cabinet views, the next steps are:

- Members' Agreement is entered into.
- Necessary resignations/appointments for the boards of the Delivery Vehicle and Nominee Company are arranged.
- Loan facility, if appropriate, for the Delivery Vehicle's working capital requirements is prepared and entered into.
- Funding to support the Delivery Vehicle's working capital requirements is drawn down.
- Service level agreements (as necessary) prepared and entered into.
- Delivery Vehicle becomes the applicant for the purposes of the Planning Application.
- The Delivery Vehicle board meets to prepare and sign off the Business Plan for submission to Cabinet for approval.
- The Business Plan is subject to discussion with members and Cabinet formally considers the Business Plan within the next six months.
- Delivery Vehicle is granted a licence to utilise the intellectual property described in paragraph 6.

8. RISK MANAGEMENT ISSUES

- 8.1 A detailed risk register will be prepared and risks will be managed on an on-going basis and reported to the board of the Delivery Vehicle, to Corporate Leadership Team of the Council, and to Cabinet.
- 8.2 A summary of the 10 highest perceived risks using a combination of probability/likelihood of occurrence and severity of impact on the Council is included below:

Perceived Risk	Likelihood	Seriousness	Preventative Action
LEGAL - The balance between Council control and the Delivery Vehicle's ability to deliver against Business Plan results in the Council ceding too much control.	Low / Medium	High	Detailed definitions and restrictions / material matters on issues where Cabinet / Council approval has to be sought are contained within the Delegations Matrix and limit the powers / authority of the Delivery Vehicle's Board and therefore mitigate against this risk.
FINANCIAL - Breach of EU state aid rules – Council receives a challenge from the private sector.	Low / Medium	High	Legal advice has been commissioned from Browne Jacobson LLP.
FINANCIAL - Adverse impact on General Fund and taxpayer.	Low	High	Impact on the General Fund is a key consideration in the work of officers on the most appropriate model for the Council to finance the Delivery Vehicle as member. This would be controlled via the requirement for annual review of the Business Plan and the funding process.
FINANCIAL - The balance between the financial imperative to keep operational costs to a minimum whilst adequately resourcing the LLP is not managed effectively.	Low	Medium	LLP resourcing has been carefully considered and costs associated with the resourcing have been included in the financial model for the Company.

FINANCIAL – Delivery Vehicle defaults on its financial obligations to the Council.	Low	High	The Council will see and approve the Business Plan and review on an annual basis.
FINANCIAL – The Delivery Vehicle makes losses which fall back to the Council.	Low	High	The Cabinet will review the Business Plan annually and will take early action if failure of the Delivery Vehicle was thought likely.
OPERATIONAL - Conflict of interest over workload priorities of Council and the Delivery Vehicle.	Low	Medium	The Council will retain control over the staffing of the Delivery Vehicle. Council resources will be invoiced to the Delivery Vehicle.
OPERATIONAL - Lack of capacity to manage the Delivery Vehicle's workload.	Low	Medium	Staff resources will be carefully managed and staffing needs will be regularly reviewed, with flexibility retained to provide necessary capacity as required.
OTHER - Conflict of interest for elected members acting as board representatives of the Delivery Vehicle or the Nominee Company.	Low	Medium	Elected members will be subject to the Council's Code of Conduct. Significant interests and Disclosable Pecuniary Interests to be declared at Council meetings where matters involving the Delivery Vehicle are to be discussed. Dispensation could be received through an application to the Audit and Governance Committee to participate in debates but not vote on Council decisions relating to the Delivery Vehicle if the elected members and Monitoring Officer felt that it was necessary.
OTHER - The Council reputation and public perception suffering in	Low	High	Risk assessment regularly reviewed. Communications plan will be developed and maintained to ensure that the Delivery

the event of the Delivery Vehicle's failure.			Vehicle contributes towards a positive view of the Council's services.
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9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

9.1 Legal Officer's Comments (NE)

The statutory powers to undertake the proposals set out in the report are provided by section 1 of the Localism Act 2011 (the general power of competence) and section 111 of the Local Government Act, 1972. A local authority may exercise the general power for its own purpose, for a commercial purpose and/or for the benefit of others.

Section 4 of the Localism Act 2011 requires that where a local authority exercises/uses the general power for a commercial purpose it must do this through a company.

The Council's insurance and indemnity arrangements will need to be extended to cover any actions or inaction of Member and Officer representatives of the LLP pursuant to section 39 of the Local Government (Miscellaneous Provisions) Act 1976, section 265 of the Public Health Act 1875, section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004.

Browne Jacobson provided legal advice to the Council on the corporate structure and governance arrangements for the Delivery Vehicle and will continue to be involved / advise the Council accordingly as and when required.

9.2 Finance Officer's Comments (CS S151)

This report provides outline information regarding the structure, function and initial activities of the Otterpool Park LLP. The paper and appended Members Agreement & Delegations Matrix provide further detail as to the financial governance framework for the LLP. Broadly the details of the proposed Members Agreement and Delegations Matrix are felt to be appropriate but the recommendations provide scope for the Director of Corporate Services to ensure any changes required to these can be made before they are adopted. The detailed financial consideration of the LLP will be more fully considered in the paper outlining the Business Plan for the LLP. This will consider the coming 5 year period. This paper should consider all financial aspects including funding, cash flow, repayment of debt and taxation advice.

Following detailed financial modelling it was established that the scheme is profitable, and has the means to make significant returns to its owners. Members have previously earmarked reserves for the purposes of

delivering Otterpool Park and following the financial modelling, recently agreed a further capital budget of £100 million towards its delivery.

The LLP seeks an initial investment of £1.25m to cover the coming 12 month period. This funding could be made by means of a loan (which would need to consider the implication of State Aid), or could potentially be made by member's equity or a combination of both. Officers are working with advisors to confirm the most appropriate funding mechanism.

9.3 Diversities and Equalities Implications (GE)

There are no diversities and equalities implications arising out of this report.

10. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

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

Appendices to this report

Appendices:

- Appendix 1: [Report C/17/76 – Cabinet 31 January 2018](#)
- Appendix 2: [Members' Agreement including Delegations Matrix](#)
- Appendix 3: [Non – executive independent director specification](#)
- Appendix 4: [Draft skeleton business plan](#)