



Agenda

Meeting: **Cabinet**
Date: **27 May 2020**
Time: **5.00 pm**
Place: **Remote Meeting** - to be streamed live, please see Agenda frontsheet for link.

To: **All members of the Cabinet**

The committee will consider the matters, listed below, at the date and time shown above. The meeting will be open to the press and public and streamed live at bit.ly/YouTubeMeetings

1. **Apologies for Absence**
2. **Declarations of Interest (Pages 3 - 4)**

Members of the Council should declare any interests which fall under the following categories:

- a) disclosable pecuniary interests (DPI);
- b) other significant interests (OSI);
- c) voluntary announcements of other interests.

3. **Minutes (Pages 5 - 10)**

To consider and approve, as a correct record, the minutes of the meeting held on 19 February 2020.

If members have any particular questions on the reports below, it would help the management of the meeting if they could send them in

Queries about the agenda? Need a different format?

Contact Jemma West – Tel: 01303 853369
Email: committee@folkestone-hythe.gov.uk or download from our website
www.folkestone-hythe.gov.uk

by Monday 25th May 2020 to committee@folkestone-hythe.gov.uk. Members can, of course, also raise matters in the meeting.

4. Report by the Local Government and Social Care Ombudsman - Complaint Investigation, January 2020 (Pages 11 - 28)

This report sets out details of an investigation completed by the Local Government and Social Care Ombudsman (Ombudsman) about the lack of support that Mr X alleges he received from the Council when he and his family approached the Council for housing assistance.

5. East Kent Housing - Single System (Pages 29 - 34)

This report gives the background as to the transition of the East Kent Housing Northgate IT system and the approach adopted for this system when the Housing service returns to be delivered by the Council. The report sets out the issues with the system, the approach being adopted and authorization to identify sums to progress the project.

6. Local Development Scheme Update (Pages 35 - 66)

Local Planning Authorities (LPAs) are required to prepare and maintain a Local Development Scheme (LDS) under Section 15 of the Planning and Compulsory Purchase Act 2004, as amended by the Localism Act 2011 and the Housing and Planning Act 2016.

This report seeks approval for the updated Local Development Scheme for 2020-2023.

7. Otterpool Park LLP - Structuring and Initial Activities (Pages 67 - 178)

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").

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

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Minutes

Cabinet

Held at:	Council Chamber - Civic Centre Folkestone
Date	Wednesday, 19 February 2020
Present	Councillors John Collier, Ray Field, Mrs Jennifer Hollingsbee (Vice-Chair), David Monk (Chairman), Stuart Peall, Tim Prater, Lesley Whybrow and David Wimble
Apologies for Absence	Councillors David Godfrey
Officers Present:	Andy Blaszkowicz (Director of Housing and Operations), Cheryl Ireland (Lead Accountant), Amandeep Khroud (Assistant Director), Tim Madden (Director of Transformation and Transition), Susan Priest (Head of Paid Service), Andrina Smith (Chief HR Officer), Charlotte Spendley (Director of Corporate Services) and Jemma West (Committee Service Specialist)

NOTE: All decisions are subject to call-in arrangements. The deadline for call-in is Friday 28 February 2020 at 5pm. Decisions not called in may be implemented on Monday 2 March 2020.

66. **Declarations of Interest**

There were no declarations of interest at the meeting.

67. **Minutes**

The minutes of the meeting held on 21 January were submitted, approved and signed by the Chairman.

68. **Transformation update**

The report gave an update to Cabinet on the Council's Transformation programme as it enters its delivery phase.

Proposed by Councillor Monk,
Seconded by Councillor Peall;

RESOLVED:

That report C/19/65 be received and noted.

(Voting figures: 8 for, 0 against, 0 abstentions).

REASONS FOR DECISION:

Cabinet was asked to agree the recommendations because:-

- (a) FHDC are currently in phase 3 (Implementation) of its ambitious transformation programme. The document provided the conclusions of work through phases 1 and 2 and updated expectations of redesigned Council services and organisational model supported by Cabinet at its meeting in June 2017 and approved by Council at its meeting of February 2018.

The report included details of the future operating model and the supporting organisation model, along with the high-level implementation strategy and governance. It also outlines that by adopting the refreshed ICT Strategy and making an investment in its ICT infrastructure and changing its business operations, the Council can achieve improvements in services for residents and deliver genuine efficiency without cutting services.

69. General Fund Budget and Council Tax 2020/21

The report set out the final General Fund budget and Council Tax requirement for 2020/21, including that part of the local tax covering district and parish services.

The report had also been considered by the Overview and Scrutiny Committee at their meeting on 18 February 2020. Their comments had been circulated to Cabinet Members at the meeting.

Proposed by Councillor Monk,
Seconded by Councillor Peall;

RESOLVED:

- 1. That report C/19/66 be received and noted.**
- 2. That the final 2020/21 General Fund budget, as set out at paragraph 4 of the report, be recommended to Full Council for approval.**
- 3. That a Council Tax requirement for 2020/21 of £13,044,673 be recommended to Full Council for approval.**

(Voting figures: 7 for, 0 against, 1 abstentions).

REASONS FOR DECISION:

Cabinet was asked to agree the recommendations because:

- a) The District Council's General Fund budget and Council Tax requirement must be approved to enable Full Council to set the budget and the council taxes for 2020/21 in accordance with the Local Government Finance Act 1992.

70. **Housing Revenue Account Business Plan Update 2020 - 2050**

The Council is required to produce a comprehensive Business Plan for its housing stock. The Business Plan is focused on improving the quality of the Council's landlord services and sets out the investment priorities for its existing Council housing stock. The document also provides details of the council's new build and acquisition housing programme. In view of policy changes implemented by the Government in 2018 to abolish the HRA borrowing cap, it was possible for the Council to increase its delivery target for new builds and the Business Plan was revised to deliver up to 300 homes by 2024/25. Following further reviews of the HRA financial position, its borrowing capacity and the Council's priorities the Business Plan has been updated to deliver a further 1,000 homes over the 10 year period from 2025/26 to 2034/35. The revised Business Plan also includes capital investment of £10m into existing housing stock. The report provided the details supporting the updated plan.

Proposed by Councillor Prater,
Seconded by Councillor Whybrow; and

RESOLVED:

That recommendation two be amended to read:

"To agree the Council should increase the number of homes delivered through the HRA new build and acquisition programme to 1,200 homes over the period from 2020/21 to 2034/35".

(Voting figures: 8 for, 0 against, 0 abstentions).

Proposed by Councillor Monk,
Seconded by Councillor Peall; and

RESOLVED:

1. **That report C/19/67 be received and noted.**
2. **That Cabinet recommend to Full Council to increase the number of homes delivered through its HRA new build and acquisition programme to 1,200 homes over the period from 2020/21 to 2034/35.**
3. **That Cabinet recommend to Full Council invest £10m into existing housing stock.**
4. **That an update to the text of the HRA Business Plan be considered by Full Council in June.**

(Voting figures: 8 for, 0 against, 0 abstentions).

REASONS FOR DECISION:

Cabinet was asked to agree the recommendations because:

- a) The Council is required by Government to have a comprehensive Business Plan in place for its Housing Stock and other assets within the HRA.
- b) The Council is required to properly plan the repayment of its debt within the HRA. It is essential that it has an effective Business Plan to properly resource its HRA activity.
- c) The Government has announced a number of policy changes in relation to the HRA accounts held by local authorities. It is vital that the council keeps its HRA Business Plan under ongoing review to ensure that it remains fit for purpose. These changes have significantly impacted on the scale of the council's new build and housing acquisition programme.

The meeting was adjourned to allow Full Council to consider the matter prior to the consideration of the item below

71. Housing management options appraisal - outcome of formal consultation

An options appraisal was completed in October 2019, reviewing the delivery of housing management services provided by East Kent Housing (EKH) on behalf of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council. The four councils agreed that the preferred option for future service provision to the four councils' tenants and leaseholders is that it should become an in-house service, subject to consultation. This report sets out the outcomes from the formal consultation exercise undertaken with EKH tenants and leaseholders. It proposes that officers from across the four councils be instructed to negotiate ending the agreement with EKH and to make preparations for the housing management service to be brought in-house.

Proposed by Councillor Monk,
Seconded by Councillor Peall; and

RESOLVED:

1. That report C/19/68 be received and noted.
2. That having noted the results of the tenant and leaseholder consultation, the cost/benefit analysis and the risk analysis, it is agreed that the management of the council's housing stock be brought back in-house.
3. That the Director of Transformation and Transition, in consultation with the Portfolio Holder for Housing, Transport and Special Projects be authorised to negotiate and conclude a termination of the management agreement with EKH as soon as practicable.
4. That the Director of Transformation and Transition, in consultation with the Portfolio Holder for Housing, Transport and Special Projects be authorised to take such decisions as may be necessary to facilitate the

process of bringing the housing service in-house in discussion with the appropriate statutory officers.

(Voting figures: 8 for, 0 against, 0 abstentions).

REASONS FOR DECISION:

- EKH has experienced serious performance problems and health and safety non-compliance issues.
- Tenants and leaseholders have expressed their views clearly, that they would prefer their homes to be managed by the individual councils rather than retain the existing Arms-Length Management Organisation structure.
- It is in the best interests of tenants and leaseholders for the four councils to terminate the management agreement and transfer housing services back in-house.
- The integration of the housing management service with each council's remaining housing services would provide a more transparent and accountable structure for the housing service.

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This Report will be made public on 18 May 2020



Report Number **C/20/01**

To: Cabinet
Date: 27 May 2020
Status: Non-key decision
Responsible Officer: Amandeep Khroud, Assistant Director, Governance and Law
Cabinet Member: Councillor David Godfrey, Cabinet Member for Housing and Special Projects

SUBJECT: Report by the Local Government and Social Care Ombudsman – Complaint Investigation, January 2020

SUMMARY: This report sets out details of an investigation completed by the Local Government and Social Care Ombudsman (Ombudsman) about the lack of support that Mr X alleges he received from the Council when he and his family approached the Council for housing assistance.

REASONS FOR RECOMMENDATIONS:

- a) Officers have fully reviewed the timescale of this case and the assistance provided to Mr X.
- b) In response to the Ombudsman's report, officers have reviewed its Homelessness and Housing Waiting List Services, including the support given to Mr X throughout his contact with the Council.
- c) The Council is drafting a further factsheet for clients, which will be available both online and front of house, advising clients on the role of the Council and clients in the completion of a Housing Options Appraisal.
- d) The Council's Cabinet is required to consider the Ombudsman's report and is required to confirm the action it has taken or proposes to take to the Ombudsman.
- e) The Council is required to accept the findings set out in the Ombudsman's report.

RECOMMENDATIONS:

1. To receive and note report C/20/01.
2. To agree that the Council accepts the findings set out in the Ombudsman's report and will take the action required.

1.0 Background

- 1.1 This report sets out details of an investigation completed by the Local Government and Social Care Ombudsman (Ombudsman) about the lack of support that Mr X alleges he received from the Council when he and his family approached the Council for housing assistance in 2019.
- 1.2 The Ombudsman's report concludes that the Council is at fault and has caused injustice to Mr X. The Ombudsman has concluded the Council should:
- Write to Mr X to apologise for the delays in providing him with assistance with his housing situation.
 - Pay Mr X £100 to recognise the uncertainty and distress this has caused him and his family.
 - Review its processes for handling requests for housing assistance to ensure it deals with cases based on waiting time and urgency.
 - Review resources available to its housing department to ensure it is meeting its duties to people.
 - Place a notice in the local media to advise that it accepts the Ombudsman's findings.

2.0 Response to the Report

- 2.1 The Ombudsman's report and timeline of this case including the outcomes have been fully reviewed by the Housing and Inclusion Manager. The Council's Homelessness and Housing Waiting List Services, including the assistance provided to Mr X throughout his contact with the Council have also been fully reviewed.
- 2.2 It is proposed that the Council should accept the Ombudsman's report and the required actions for the Council set out in the report which are as follows:
- To write to Mr X to apologise for the delays in providing him with assistance with his housing situation.
 - To pay Mr X £100 to recognise the uncertainty and distress this has caused him and his family.
 - The Council will also place an advert in the local media to confirm its response to Ombudsman's report.
- 2.3 The Council will provide a further factsheet for clients, which will be available both online and front of house, advising clients of the need to work closely with the Council to ensure that an effective Housing Options Appraisal process can be provided.

3. RISK MANAGEMENT ISSUES

- 3.1 There are no specific risk management issues arising from this report.

4. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

4.1 Legal Officer's Comments (AD)

The Local Government Ombudsman's powers arise from the Local Government Act 2014 (as amended). They cannot force a Council to comply with their recommendations as they are just that a recommendation not an Order that can be enforced. They can, however, ask a Council to revisit a matter and then invoice the council for their time incurred. The Council therefore need to be aware that by refusing to comply a bill of costs could be raised together with any adverse publicity that may arise. Save for any issues that may arise from the same no further implications as far as Legal are concerned.

4.2 Finance Officer's Comments (LH)

There are no initial financial implications arising from this report.

4.3 Diversities and Equalities Implications (AH)

All applicants approaching the Council for housing assistance are required to co-operate with the Council and provide the necessary information to support their housing application. The Council has reviewed its procedures and provided a further fact sheet which is available to clients approaching the Council for housing assistance.

5. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Adrian Hammond (Lead Housing Specialist)
Telephone: 01303 853392
Email: Adrian.hammond@folkestone-hythe.gov.uk

Appendix 1: Report by the Local Government and Social Care Ombudsman

Appendix 2: Letter from the Local Government and Social Care Ombudsman

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**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Folkestone & Hythe District Council
(reference number: 18 018 663)**

2 January 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X The complainant

Report summary

Housing - Homelessness

Mr X complains about the lack of support he received from the Council when he and his family became homeless.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council should take the following action to remedy the injustice caused to Mr X as a result of the fault we have identified.

- Write to Mr X to apologise for the delays in providing him with assistance with his housing situation.
- Pay Mr X £100 to recognise the uncertainty and distress this caused him and his family.

The Council should take this action within three months of the date of this report.

The Council should also take the following action to improve its services.

- Review its processes for handling requests for housing assistance to ensure it deals with cases based on both waiting time and urgency.
- Review resources available to its housing department to ensure it is meeting its duties to people who are threatened with homelessness and people who are homeless under the 1996 Housing Act (as amended).

The Council should report back to us the outcome of both these reviews, including details of any actions it intends to take, within three months of the date of this report.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. Mr X complains the Council failed to provide him with assistance when he became homeless. Mr X says the Council offered him and his family unsuitable bed and breakfast accommodation which was in a poor state of repair. Mr X says the Council withdrew its support when he declined the accommodation offered and went to stay between various friends.

Legal and administrative background

The law and the Ombudsman

2. We investigate complaints about ‘maladministration’ and ‘service failure’. In this report, we have used the word ‘fault’ to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as ‘injustice’. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

Homelessness law

4. Councils must take reasonable steps to secure accommodation for any eligible homeless person. When a council decides this duty has come to an end, it must notify the applicant in writing. (*Housing Act 1996, section 189B*)
5. Statutory guidance on homelessness says:
“Applications can be made to any department of the local authority and expressed in any particular form; they need not be expressed as explicitly seeking assistance under Part 7 [of the Housing Act 1996]. As long as the communication seeks accommodation or assistance in obtaining accommodation and includes details that give the housing authority reason to believe that they might be homeless or threatened with homelessness, this will constitute an application.”
(*Homelessness code of guidance for local authorities, 2018 paragraph 18.5*)
6. The statutory guidance also says:
“Housing authorities should take particular attention to identify instances where information on an inquiry about a social housing allocation scheme, or an application for an allocation of housing under Part 6, provides reason to believe that the applicant might be homeless or threatened with homelessness. This should be regarded as an application for homelessness assistance.” (*Homelessness code of guidance for local authorities, 2018 paragraph 18.6*)
7. Councils must complete an assessment if they are satisfied an applicant is homeless or threatened with homelessness. The Code of Guidance says, rather than advise the applicant to return when homelessness is more imminent, the housing authority may wish to accept a prevention duty and begin to take reasonable steps to prevent homelessness. Councils must notify the applicant of the assessment. Councils should work with applicants to identify practical and reasonable steps for the council and the applicant to take to help the applicant

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- keep or secure suitable accommodation. These steps should be tailored to the household, and follow from the findings of the assessment, and must be provided to the applicant in writing as their personalised housing plan. (*Housing Act 1996, section 189A and Homelessness Code of Guidance paragraphs 11.6 and 11.18*)
8. A council must secure interim accommodation for applicants and their household if it has reason to believe they may be homeless, eligible for assistance and have a priority need. (*Housing Act 1996, section 188*)
 9. Examples of applicants in priority need are:
 - people with dependent children;
 - pregnant women; and
 - people who are vulnerable due to serious health problems, disability or old age.
 10. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)
 11. Bed and breakfast (B&B) accommodation can only be used for households which include a pregnant woman or dependent child when no other accommodation is available and then for no more than six weeks. B&B is accommodation which is not self-contained, not owned by the Council or a registered provider of social housing and where the toilet, washing, or cooking facilities are shared with other households. (*Homelessness (Suitability of Accommodation) (England) Order 2003 and from 3 April 2018 Homelessness Code of Guidance paragraph 17.32*)
 12. Homeless applicants may request a review within 21 days of being notified of certain decisions including:
 - their eligibility for assistance;
 - what duty (if any) is owed to them if they are found to be homeless or threatened with homelessness;
 - the steps they are to take in their personalised housing plan at the prevention duty stage;
 - giving notice to bring the prevention duty to an end;
 - the steps they are to take in their personalised housing plan at the relief duty stage;
 - giving notice to bring the relief duty to an end;
 - giving notice in cases of deliberate and unreasonable refusal to co-operate; and
 - the suitability of accommodation offered to the applicant after a homelessness duty has been accepted (and the suitability of accommodation offered under section 200(3) and section 193). Applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.
 13. If a person is not happy with a council's decision on review they may appeal to the County Court on a point of law.
 14. There is no right to request a review of the suitability of interim accommodation provided by a Council under section 188 of the Housing Act 1996.

How we considered this complaint

15. We produced this report after examining relevant documents and interviewing the complainant.
16. We gave the complainant and the Council a confidential draft of this report and invited their comments.

What we found

What happened

17. Mr X has been living in a single room in a house as a lodger since 1998. In 2015 Mr X brought his wife from overseas. They later had a child together in 2017 and a second child in 2018. They all continued to live in the single room together.
18. On 8 January 2019 Mr X applied to the Council for housing. An internal Council memo said Mr X stated he and his family would be homeless on 15 January 2019.
19. The Council wrote to Mr X on the same day and provided him with links to websites with more information about finding housing. The Council said if he needed more help, he could contact it by telephone or e-mail.
20. Mr X visited the Council's offices on 4 February 2019 and provided evidence to support his housing application.
21. Mr X e-mailed the Council on 12 February 2019 to say he was living in overcrowded conditions. He said health visitors had written to the Council to say that the accommodation wasn't "liveable". Mr X said he had been trying to contact the Council by telephone but had not been able to get through. He said if he did not hear from the Council by the end of the week he would go to his solicitor or local MP for help.
22. Mr X visited the Council's offices again on 18 February 2019. The Council advised Mr X that his application was "waiting to be looked at" and the Council was working on "information provided in date order". The Council said it would contact Mr X if it needed more information.
23. Mr X visited the Council's offices on 25 February 2019 with a letter from his landlord saying he had to leave the accommodation "in the next few days". Mr X completed a "housing options assessment form".
24. The Council e-mailed Mr X on 25 February 2019. It said it had not been able to speak to his landlord by telephone. The Council told Mr X to ask his landlord for a further seven days notice to allow it to "assess your situation".
25. Mr X phoned the Council on 1 March 2019 to say his family had to leave their accommodation that day. The Council spoke to the landlord who said the family could stay until the following Monday.
26. Mr X visited the Council's offices on 4 March 2019. The Council interviewed Mr X about his housing situation. The Council asked Mr X questions about his wife's right to reside in the UK. Mr X became upset by this. The Council offered to provide Mr X and his family with accommodation whilst it considered if they were eligible for assistance. The Council explained it would need proof of the family's income so it could claim housing benefit for any accommodation it provided. It explained Mr X would have to pay £30 a night for the accommodation if he did not claim housing benefit.

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27. Mr X left the Council's offices and said he did not want any help.
 28. The Council wrote to Mr X on 12 March 2019 to say it could not issue him with a personalised housing plan as he had left its offices during an interview. The Council said it had ended its relief duty to Mr X and his family. The Council explained Mr X could ask for a review of its decision and explained how to do so.
 29. Mr X approached the Council on 18 March 2019 and asked for accommodation. The Council provided Mr X with accommodation in a bed and breakfast.
 30. Mr X visited the Council's offices on 19 March 2019. He said he did not stay in the accommodation as it was dirty. Mr X said there were bloodstains on the bedding and he had found a hypodermic needle. The Council offered to investigate but Mr X left its offices.
 31. The Council spoke to the accommodation provider on the same day. The accommodation provider said the room was clean and provided photographs. The accommodation provider said Mr X had not mentioned finding a needle but had only stayed on the premises for approximately 40 minutes.
 32. The Council wrote to Mr X on 27 March 2019. The Council provided Mr X with a personalised housing plan and explained it was under a duty to help him secure suitable accommodation. The Council explained that Mr X could ask it for a review if he disagreed with his personalised housing plan.
 33. The Council wrote to Mr X on 1 April 2019 to say it had ended its duty to provide him with accommodation under section 188 of the 1996 Housing Act. The Council said this was because it had offered Mr X accommodation at the bed and breakfast "*which fully meets our legal duty*" and it was satisfied "*the offer of accommodation was both suitable and reasonable for you to accept*".
 34. The Council said there was no right to review the decision to end its duty under section 188. The Council explained Mr X could challenge its decision by judicial review and he should contact a solicitor for advice.
 35. The Council wrote to Mr X again on 4 April 2019 to issue him with a warning for "*unreasonably and deliberately refusing to take any steps as outlined in the Assessment and Personal Housing Plan*". The Council said Mr X had not taken any of the steps to secure housing as set out in his personalised housing plan. The Council said Mr X had seven days to take the steps required. This included making contact with the Council to discuss his efforts to find housing and provide up to date information about his whereabouts and living situation on his housing application.
 36. On 23 May 2019 Mr X's representatives e-mailed the Council to ask for a review of its decision of 12 March 2019 to end its duty to Mr X and his family. Mr X's representatives said they were not clear if the warning letter of 4 April 2019 superseded the March decision and said they reserved the right to make submissions on that basis at a later date. The Council did not realise it had received this e-mail until 21 June 2019 when it located it after searching for Mr X's name in an e-mail inbox.
 37. The Council wrote to Mr X's representatives on 5 August 2019 to say it had upheld its decision to end its relief duty to Mr X and his family on review. The Council also said it had reviewed its decision on the suitability of the bed and breakfast accommodation it offered to Mr X and his family. The Council said the "*accommodation was both available and suitable for [Mr X's] household occupation for a short term period of less than 6 weeks*".

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38. The Council says it has no records of other accommodation available on the day Mr X approached. The Council says families generally only stay in bed and breakfast accommodation for up to five days, if at all, before being moved into self-contained accommodation.
39. The Council said it would still provide Mr X with assistance through its “*Rent in Advance Deposit Funds*” if he could find a suitable and affordable private rented property.

Findings

40. We cannot investigate the personalised housing plan or the Council’s decision to end its relief duty to Mr X and his family in this complaint. This is because Mr X has already reviewed the Council’s decision to end its relief duty. Mr X now has a right to appeal to the County Court and we consider it reasonable for him to use that right of appeal.
41. There were delays in the Council providing assistance to Mr X and his family. Mr X first contacted the Council about his situation on 8 January 2019. An internal Council memo says Mr X’s application said he would be homeless on 15 January 2019. The Council wrote to Mr X on the same day advising him how to access its services. It is not clear what advice Mr X was given or what assistance he sought from the Council when he visited its offices on 4 February 2019.
42. However, Mr X asked the Council for assistance on 12 and 18 February 2019. There is no record of the Council attempting to contact Mr X on 12 February. On 18 February the Council told Mr X his case was “*waiting to be looked at*” even though Mr X had told the Council he had been asked to leave his accommodation when he made his application on 8 January 2019 and said he was living in overcrowded accommodation on 12 February 2019. This is fault.
43. On 12 February 2019 Mr X said he was living in one room with his family and had been advised by health visitors that he couldn’t continue living there. There is no evidence the Council considered Mr X’s circumstances at the time. Had the Council done so it seems likely it would have given it enough reason to believe that Mr X was homeless or threatened with homelessness within 56 days.
44. Mr X had already told the Council he was threatened with homelessness when he applied for housing on 8 January 2019. The Council should have revisited this information when Mr X contacted it on 12 February 2019. If the Council had done so it seems likely it would have contacted him to carry out an assessment of his housing situation.
45. Statutory guidance is clear that Mr X was not required to make a formal request for assistance under Part 7 of the 1996 Housing Act and that information provided under Part 6 regarding the allocation of social housing may be enough to trigger the Council’s duties under homelessness legislation. The Council failed to consider the information Mr X provided on 12 February 2019. If it had done so it would have taken steps to arrange to carry out an assessment of Mr X’s housing situation. This may have involved speaking to him by telephone or arranging for him to visit its offices for an appointment. This is because the Council would have had enough information to have reason to believe that Mr X was threatened with homelessness within 56 days.
46. There is no fault in the Council failing to carry out an assessment of Mr X’s housing situation when he made his housing application on 8 January 2019. This is because the Council wrote to Mr X and advised him how to make contact if he

-
- required further assistance. However, when Mr X contacted the Council after being invited to do so it failed to provide him with assistance.
47. The Council had three weeks to provide Mr X with help finding alternative accommodation for his family. However, the Council did not provide Mr X with assistance until he was actually homeless. This means Mr X was left in an uncertain situation and cannot know whether his situation might have been improved if the Council had offered him help sooner.
 48. When the Council did offer Mr X help he left its offices because he was not happy with questions about his wife's eligibility. Council officers were entitled to ask questions about her immigration status. By this point Mr X was faced with the imminent threat of homelessness and was upset about the lack of support he had received to date. However, it was Mr X's decision to refuse to accept the Council's assistance. Therefore, the injustice caused to Mr X as a result of the delays in the Council dealing with his situation is limited to the period 12 February 2019 to 4 March 2019.
 49. The Council says Mr X accused officers of being racist by asking for details of his wife's eligibility. The Council says this constitutes abusive behaviour and we should take this into account when considering the injustice caused to Mr X. Mr X was entitled to express his opinion of the officers' behaviour and officers were entitled to refute that they were acting in this way. The Council has not provided us with any evidence that Mr X was abusive.
 50. The Council provided Mr X with accommodation in a bed and breakfast on 18 March 2019. Bed and breakfast accommodation is not suitable for households with dependent children. However, the law says this does not apply where there is no other accommodation available so long as the family are not placed in the bed and breakfast for more than six weeks.
 51. The Council does not have records of what other accommodation was available on the day it placed Mr X in bed and breakfast accommodation. However, the Council placed other families in bed and breakfast accommodation, and it seems unlikely it would have done so if it had other accommodation available.
 52. However, Mr X may not have required bed and breakfast accommodation at all had the Council intervened sooner to provide him with assistance with his housing difficulties.
 53. There was no fault with the way the Council dealt with Mr X's complaints about the bed and breakfast accommodation. The Council offered to investigate the issues raised by Mr X but he left its offices.

Conclusions

54. The Council is at fault as it delayed providing help to Mr X with his housing situation. Because of this Mr X was left in an uncertain situation and cannot know whether his situation might have been improved if the Council had offered him help sooner.

Recommendations

55. The Council should take the following action to remedy the injustice caused to Mr X as a result of the fault we have identified.
 - Write to Mr X to apologise for the delays in providing him with assistance with his housing situation.

-
- Pay Mr X £100 to recognise the uncertainty and distress this caused him and his family.
56. The Council should take this action within three months of the date of this report.
57. The Council should also take the following action to improve its services.
- Review its processes for handling requests for housing assistance to ensure it deals with cases based on both waiting time and urgency.
 - Review resources available to its housing department to ensure it is meeting its duties to people who are threatened with homelessness and people who are homeless under the 1996 Housing Act (as amended).
58. The Council should report back to us the outcome of both these reviews, including details of any actions it intends to take, within three months of the date of this report.
59. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The Council's responses to our enquiries

60. The law gives us the same powers as the High Court to obtain evidence for our investigations. If a person, without lawful excuse, obstructs us from investigating a complaint we may apply to the High Court to find that person in contempt. (*Local Government Act 1974, section 29(7) & (8)*)
61. The Council has, at times, refused to respond to our enquiries and questioned our authority to investigate parts of the complaint. This resulted in us having to threaten to issue a summons requiring the Council to attend our offices.
62. In this case the Council produced the evidence we requested. However, we should not have had to threaten the Council with a summons in the first place.
63. We would ask the Council to reflect on how it has responded to our enquiries in this case and put measures in place to ensure we receive an appropriate response to any future investigations.

Decision

64. We have completed our investigation as we have found fault causing injustice. The action we have recommended is a suitable to remedy this.

Local Government &
Social Care
OMBUDSMAN

2 January 2020

Ms Susan Priest
Head of Paid Service
Folkestone & Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
CT20 2QY

Our ref: 18 018 663

(Please quote our reference when contacting us and, if using email, please put the number in the email subject line)

If telephoning please contact: Mr McInerney on 0330 403 4293

If e-mailing: d.mcinerney@coinweb.lgo.org.uk

Dear Ms Priest

[REDACTED]

We have now completed the investigation of the complaint by [REDACTED] and enclose a copy of the final report. We are also sending a copy to [REDACTED].

Section 30(3) of the Local Government Act 1974 requires us to report without naming or identifying the complainant or other individuals. The people involved in this complaint are therefore referred to by a letter or job role. You must not disclose any information to third parties that could identify the complainant or other individuals referred to in the report.

We will provide you with a publication date for the report in due course. The publication date is likely to be mid-February 2020. We may distribute copies of the report and a press release in advance of the publishing date, under an embargo. This means the media could have sight of the report and make enquiries before the publishing date, but are expected to withhold publishing anything until after we have published the report.

Section 30 of the 1974 Act requires your Authority to place two public notice announcements in local newspapers/ newspaper websites. To complete your statutory requirements on this matter you should place these announcements within two weeks of us publishing the report. We enclose a specimen public announcement notice at the end of this letter which you may find helpful. Please let us know when you have made this announcement. You should also make copies of the report available free of charge at one or more of your offices.

Our finding is *Report issued: upheld; maladministration and injustice*. Since we have found that [REDACTED] has suffered injustice as a result of fault, under Section 31(2) of the 1974 Act, the report must

be laid before the authority concerned. Please arrange for the report to be considered at either full Council, Cabinet or another Committee with delegated authority and tell us, within three months of receiving it (or a longer period we may agree in writing) the action it has taken or proposes to take. Please let us know by 2 April 2020 when the Authority will consider the report and when we may expect to receive a response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. King', with a stylized flourish at the end.

Michael King
Local Government and Social Care Ombudsman for England

Enc: Final report
Specimen public announcement notice

Folkestone & Hythe District Council

Report of Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman has issued a report following its investigation of a complaint against Folkestone & Hythe District Council. The complaint was about *Housing* matter. The Ombudsman found that there had been fault on the part of the Council, and this had caused injustice to the complainant.

@Folkestone & Hythe District Council has agreed to take action which the Ombudsman regards as providing a satisfactory remedy for the complaint.

@The Council must now consider the report @and tell the Ombudsman within three months (or such longer period as the Ombudsman may agree) what it proposes to do.

Copies of the report will be available for public inspection during normal office hours at [main office address] and at [details of other offices] for three weeks starting on [date]. Anyone is entitled to take copies of the report or extracts from it. Copies will be supplied free of charge.

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This Report will be made public on 18 May 2020



Report Number: **C/20/06**

To: Cabinet
Date: 27 May 2020
Status: Non Key Decision
Director: Tim Madden, Transformation and Transition
Cabinet Member: Councillor David Godfrey, Portfolio holder for Housing, Transport and Special Projects

SUBJECT: East Kent Housing – Single System

SUMMARY: This report gives the background as to the transition of the East Kent Housing Northgate IT system and the approach adopted for this system when the Housing service returns to be delivered by the Council. The report sets out the issues with the system, the approach being adopted and authorization to identify sums to progress the project.

REASONS FOR RECOMMENDATION:

Cabinet is asked to agree the recommendations set out below because:-

- (a) This is a significant element of transitioning the housing service to Council operation and as such requires additional funds to be made available to ensure this happens.
- (b) The timescales involved are such that this provides the most secure means of transferring the system and provide a basis for providing a stable service upon transition.

RECOMMENDATIONS:

Cabinet is asked:

1. To note Report C/20/06.
2. To agree to the additional budget provision being made from the HRA to support the transfer of the system
3. To agree to additional budget of a capital sum of up to £187,000 and ongoing revenue of £82,000 per annum. The exact amounts to be agreed by the Director of Transformation and Transition in consultation with the portfolio holder for Housing, Transport and Special Projects.

1. Background

- 1.1 At its meeting of 19 February 2020, Cabinet agreed to bring the management of the housing service into the council and this was set out in report C/19/68 (<https://www.folkestone-hythe.gov.uk/moderngov/documents/s32656/EKH%20Report%20-%20TM%20version%202.pdf>)
- 1.2 Further to that decision, a significant amount of “discovery” work has been undertaken across a number of areas by all councils to determine the detailed programme which will need to be put into place to ensure a robust and stable transfer of the housing service back into the Council. One of the more complex areas which has been investigated has been the current IT “single system” which is used by EKH and is an integrated Northgate system.
- 1.3 In conducting this work, some of the key findings identified have been:
 - 1.3.1 The single housing management system was implemented with the intention it would be owned and used by a single organisation i.e. EKH, and not four separate councils, although it was a requirement that any data in the system could be separated out if any partner decided to leave the joint housing management arrangement. In practice however, as EKH worked across the council boundaries, it is not clear whether the segregation of data is as clear cut as it may have been and issues may be uncovered as part of a migration that need some data to be realigned.
 - 1.3.2 There has been some considerable development work by Northgate to bespoke parts of the system and the way it operates to suit some of the individual council requirements. As a result what should have been a single system is trying to be four separate systems. This is increasing the cost of deploying the various parts of the solution and the overheads of operating the system as any changes have to be tested against all council requirements. It has also delayed the deployment of some of the modules of the housing management system for all councils that were originally planned.
 - 1.3.3 The current arrangements for support of the system are complex, EKH administer the system on a day to day basis, which in turn is hosted on servers and other hardware provided by East Kent Services (EKS) ICT. The servers that the system runs on are due for replacement and the Northgate software is out of support. Upgrading the system is more difficult as it stands than upgrading a system supporting a single council due to the degree of bespoke work that has been carried out over the last few years.
 - 1.3.4 There are some modules of the system that were originally planned to be part of the single system project that are still waiting for deployment, for FHDC this is mainly the Planned Investment module that allows high value maintenance costs (such as kitchen and bathroom replacements, rewiring etc.) to be predicted and profiled over a long period. As a result some information that could be contained within the single housing management

system is still held in a number of disparate systems which reduces the efficiency both operationally and in terms of forward works planning.

2. Key Issues

2.1 Discussions have taken place between ICT representatives of the four councils and Northgate regarding the best way to bring the system back into a state of support that then gives each council the opportunity to decide by itself the best way to take its Housing Management system forward in the future. A number of options have been considered:

2.1.1 **Option 1 – Upgrade as is.** This option would require EKS ICT to upgrade the hardware currently hosted in one of their data centres and for Northgate to implement a new version of the software. This would require upfront capital investment and as potentially each council may wish to make its own arrangements in the future they may not realise the benefit of that investment in the hardware. This option is complicated by the need to test and retest against the bespoke work that has been done. While FHDC does not use the East Kent Services network the other three partners who do have expressed concerns about the resource and support available for this approach.

2.1.2 **Option 2 – Build 4 separate cloud hosted versions of the system.** This option would require Northgate to set up a new cloud hosted management system for each council and carry out 4 separate migrations. Each council would bear its own costs. Given the timescales it is unlikely that Northgate or council system staff would have the resources to support 4 separate projects running concurrently and it would not be possible to complete all the work by 1st April 2021.

2.1.3 **Option 3 (Preferred by all 4 councils) – Collective migration to a cloud hosted system.** The option that has been proposed that has the greatest chance of success given the timescale and resources is for a staged approach, whereby the current system would be migrated to a Northgate cloud hosted environment as it is. The database would then split into four separate systems, one for each council. Then each would be brought up to the latest version of software. This approach offers better management of available project resources, the ability to share some costs and it is easier to program the timing of the stages as many early activities could be done collectively. The intention would be to have these three stages completed by March 2021. After that each council would effectively have its own Housing Management system in its own control and would have the ability to make future decisions on the long term plans for the system, and its ongoing development and associated costs without being tied into any requirements of the other councils.

2.1.4 **Option 4 – Individual councils make alternative arrangements.** A fourth option of councils seeking to procure and migrate to their own system was also discussed but was discarded early on. A Housing Management ICT system is complex as it mirrors all the functions of a housing department. It is estimated the procurement, deployment, configuration and migration of data from the existing system would take in the region of two years. All the investment in the current Northgate system (believed to be in the region of

£2M) would be lost, there would be no opportunity to share costs, a procurement exercise itself has a cost associated and, as the market for such system is very narrow, Northgate could still be the successful bidder.

2.2 Consideration of the above by officers across all 4 councils has led to the conclusion that Option 3, a collective migration to the cloud, is the preferred solution. This would be staged with outline timings as follows:

- All councils agree the approach and instruct Northgate to begin the process of migrating the system by the end of June at the latest.
- Northgate prepare the servers for 4 separate systems and establish connections to individual authorities by the end of September.
- The current system is collectively migrated to the cloud and tested by November/ December 2020.
- The data is split into individual council systems in January and February 2021.
- Each of the 4 systems is upgraded to the latest version of the software in March 2021, at which point each authority will have its own system under its own control.

This would provide the most timely route to updating the system so it is properly supported and in line with optimum timescales to support the transition back in house.

2.3 The intention would be to ensure a stable system is transferred back to the Council at the earliest opportunity. It would allow FHDC to have control over the system and to be able to determine its own strategy for future system updates and modules. These may or may not be part of the Northgate suit of modules. It would also align the housing system to the council's overall strategy of being a "cloud" based organization which has underpinned the Transformation programme over the last 2 years.

2.4 The transition of the single system to each individual authority is neither easy nor cheap. Discussions have commenced as to the likely level of costs associated with this project and they are potentially significant and at present there is no budget within the HRA to fund these. The costs indicated below are designed to secure the most effective and safe transition of the system to FHDC. Once transferred, FHDC will have control over the effectiveness of the IT and also the strategy as to how to develop the system into the future as well as how it is used to support the service. This is seen as essential in looking at the future running of the housing service

2.5 The indicative costs per Council currently being discussed with the project are set out below:

- Moving the single system to the cloud - £17,000 (one off)
- Splitting the system and move to an individual system for each authority (per Council - £170,000 (one off)
- Ongoing revenue costs once in place - £82,000 (per annum)

Initial discussions with Northgate have indicated that these costs have scope to be reduced and therefore the above represents a higher figure than that which might be the case. As such it is proposed that an additional one off budget of up to £187,000 is agreed in consultation with the portfolio holder for Housing, Transport and Special Projects.

The estimated ongoing costs (£82,000) are also anticipated to provide future benefits through lower associated revenue costs. This will include no servers to manage, timely upgrades and security patches, greater resilience and lower administrative and support costs over a longer period of time. This will also avoid periodic capital expenditure on hardware upgrades. The moving to the cloud also supports the councils introduction of the "My Account" service which is due to be introduced as the next stage of Transformation and will provide for much improved customer and tenants access to services in the future.

- 2.6 For Option 3 to progress it will be necessary to get collective agreement from all parties including Northgate to the project. The option will need the novation of the current agreement from EKH to the individual councils. The councils in conjunction with Northgate will need to determine at which stage this is best completed. Otherwise, a new agreement would require procurement of a new contract. In addition, the current agreement will need to be amended to cover the project specification including responsibilities of each party, delivery timetable, governance and costs.'
- 2.7 Once the proposed system transition is complete, this will enable FHDC to have control over how this is applied and over any future strategy.

3 LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

3.1 Legal Officer's Comments (NE)

There are no legal implications arising directly from this report.

3.2 Finance Officer's Comments (TM)

These are incorporated in the above report. It should be noted there is currently no provision within the HRA for this system transfer.

3.3 Diversity and Equalities Implications (TM)

There are no issues arising from this report.

4. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Tim Madden, Director, Transformation and Transition

Tel: 01303 853371 E-mail: tim.madden@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report: None

This Report will be made public on 18 May 2020



Report Number **C/20/03**

To: Cabinet
Date: 27 May 2020
Status: Key Decision
Responsible Officer: Charlotte Spendley – Director Corporate Services
Cabinet Member: David Wimble - Cabinet Member for the District Economy

SUBJECT: Local Development Scheme 2020

SUMMARY:

Local Planning Authorities (LPAs) are required to prepare and maintain a Local Development Scheme (LDS) under Section 15 of the Planning and Compulsory Purchase Act 2004, as amended by the Localism Act 2011 and the Housing and Planning Act 2016.

This report seeks approval for the updated Local Development Scheme for 2020-2023.

REASONS FOR RECOMMENDATIONS

To ensure that the council have an up-to-date Local Development Scheme for the Core Strategy Review Examination in Public.

RECOMMENDATIONS:

1. To receive and note report C/20/03.
2. To approve the adoption of the Local Development Scheme, which is to have immediate effect.
3. To give delegated authority to the Strategy, Policy and Performance Lead Specialist to make and approve any final changes to the wording and content of the Local Development Scheme following adoption of the Places and Policies Local Plan, and to publish the Local Development Scheme on the Council's website.

1. BACKGROUND

- 1.1 The Planning & Compulsory Planning Act 2004, as amended by the Localism Act 2011, requires each Local Planning Authority (LPA) to prepare and maintain a document setting out the statutory Development Plan for the district; as well as the programme for the preparation and review of the Development Plan Documents (DPDs) that form it. This is known as the Local Development Scheme (LDS).
- 1.2 The LDS is essentially a three-year project plan for preparing DPDs; but it is not a policy document itself. It provides a starting point for the local community and stakeholders to find out what planning documents are being prepared by the council; and outlines the indicative dates when there will be formal opportunities to get involved with the plan making process.
- 1.3 The existing LDS for Folkestone & Hythe was adopted in 2016 and whilst updates have been reported to Cabinet throughout the preparation of the DPDs scheduled; a comprehensive update of the main LDS document is now required. Principally, this LDS sets out the latest timescales for the review of the Core Strategy and the Community Infrastructure Levy (CIL) Charging Schedule.

2. EXISTING DEVELOPMENT PLAN

- 2.1 The Local Development Scheme details the geographical extent of the Folkestone & Hythe District and the current position with respect to the Development Plan for the District. It sets out the DPDs which set out the long-term spatial strategy, as well as a variety of other non-strategic planning policies to manage development within its boundaries.
- 2.2 The Development Plan is what both the planning officers and planning committee consider development proposals against unless material considerations indicate otherwise.
- 2.3 The Development Plan is formed of the following DPDs:
 - Core Strategy Local Plan (2013)
 - Shepway District Local Plan 'Saved Policies' (2013)
 - Shepway District Policies Map (2013)
 - Kent Waste and Minerals Local Plan 2016-30
 - St Marys in the Marsh Neighbourhood Plan (2019)
- 2.4 In addition, a number of supporting Supplementary Planning Documents (SPDs) have also been either been prepared by or adopted by the Council to assist in the implementation of the adopted Local Plan policies. These include the Sandgate Village Design Statement (2020); the Kent Downs AONB Handbook (2006); and Kent Design Guide (2006).
- 2.5 Since, the preparation of the LDS 2016, the only formal adopted change to the Development Plan has been the addition of the St Mary's in the Marsh Neighbourhood Plan in 2019, following a successful examination and referendum.

- 2.6 It is anticipated that the Places and Policies Local Plan (PPLP) will shortly supersede the Shepway District Local Plan 'saved policies'. The Plan is at an advanced stage of preparation and the application of its policies now have significant material weight in the determination of planning applications. The Inspector's final report is expected imminently; and it is hoped that when it is received, the PPLP can be recommended for adoption by the council.
- 2.7 It is requested that delegated authority be given to the Strategy, Policy and Performance Lead Specialist to make a factual update to the LDS once the PPLP has been adopted. This is to maintain an up-to-date LDS that accurately reflects the most up-to-date Development Plan position.

3. THE LOCAL DEVELOPMENT SCHEME 2020-2023

- 3.1 The Local Development Scheme for 2020 – 2023 sets out the progress to date in the preparation of the following Development Plan Documents:
- The Places and Policies Local Plan
 - The Core Strategy Review
 - The Policies Map – supporting the PPLP and CSR

Places and Policies Local Plan

- 3.2 The timetable for the Places and Policies Local Plan (PPLP) shows the different stages of preparation that the Plan has passed through; and that it is now in the final stage of the plan-making process.
- 3.3 Adoption of the PPLP is currently anticipated to be in the summer of 2020, once the final examination report has been received from the Planning Inspector.

Core Strategy Review

- 3.4 The primary focus for the LDS period is the continuing preparation of the Core Strategy Review (CSR).
- 3.5 The Core Strategy Review (CSR) was originally borne out of the Government's requirement that Local Planning Authorities (LPAs) must review their Local Plan(s) at least once every 5 years.
- 3.6 Since the Core Strategy (2013) was prepared (and during the review period) there have been various changes to the National Planning Policy Framework in both 2018 and 2019. The most notable of these changes was in 2018, which introduced a new standard methodology for LPAs to use in order to calculate their local housing requirements. The formula was revised in a further update to the NPPF in 2019.
- 3.7 The purpose of the review was to consider whether the adopted spatial strategy for the District remained relevant. A significant uplift in the district's housing need resulted in the additional proposed strategic allocations in the

form of a new garden settlement at Otterpool; and an extension of the broad location at Sellindge.

- 3.8 The timetable for the preparation of the Core Strategy Review has been updated to reflect its preparation to date; and to reflect its recent submission to the Planning Inspectorate in March 2020 for Examination in Public.
- 3.9 Examination of the CSR is now underway and is anticipated to conclude in the autumn with adoption currently expected to be in November 2020. It ought to be noted that the examination timetable is determined and led by the Planning Inspectorate. Examination news and updates (including timetabling information) will be published on the council's webpage at <https://www.folkestone-hythe.gov.uk/article/273/Core-Strategy-Review-2020>; as and when the council is informed.
- 3.10 The NPPF states that Local Plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound.
- 3.11 An up-to-date LDS is a fundamental element of the Local Plan process and it is a requirement to submit the LDS at submission stage of a Development Plan Document (DPD) to the Planning Inspectorate. Maintaining an up to date LDS is one of the first tests of soundness at the Local Plan examination and it is essential that it is kept under review and updated accordingly.

Neighbourhood Plans

- 3.12 The Council is not aware of any Neighbourhood Plan currently being prepared.

Community Infrastructure Levy

- 3.13 Whilst the Community Infrastructure Levy (CIL) is not a DPD, it is directly linked to the preparation and implementation of the Development Plan; and national planning guidance states that it should be reviewed at the same time as the Local Plan. Therefore, the council considers that it would be useful that information in relation to any proposed revision to the CIL Charging Schedule should be publicly available and included as part of this LDS.

Supplementary Planning Documents

- 3.14 It is not a requirement of the LDS to include the details of any SPDs or other planning documents that the council intends to prepare. However, the council is aware that this timetabling is useful for those stakeholders that have an interest in planning matters and so applicable details will be made available for information purposes through the council's website at <https://www.folkestone-hythe.gov.uk/article/248/Supplementary-Planning-Documents> as and when they are agreed.

4. NEXT STEPS

- 4.1 Subject to the resolution of Cabinet to publish the Local Development Scheme, it is proposed that the documentation will be made available on the Council's website.
- 4.2 The Local Development Scheme will be monitored by officers and the progress towards the production of the Local Plan will be published as part in the Council's Authority Monitoring Report. This is published in December each year.
- 4.3 The reporting of progress against the Local Development Scheme is also a legal requirement of the Planning & Compulsory Purchase Act 2004 (PCPA) (as amended by the Localism Act 2011).

5. OPTIONS

- 5.1 Members have three possible options:
 - a) To adopt the LDS (2020 – 2023) with immediate effect
 - b) To adopt the LDS (2020 – 2023) with amendments
 - c) To reject the LDS (2020 - 2023)
- 5.2 The option of not adopting an up-to-date LDS has been rejected as it is a legal requirement to have an up-to-date LDS which must be submitted at submission stage of a Development Plan Document (DPD) to the Planning Inspectorate.

6.0. RISK MANAGEMENT ISSUES

- 6.1 A full assessment of the risks associated with the preparation of the Development Plan Documents scheduled in the LDS (2020 – 2023) has been set out in Section 8 of the LDS, which is provided in Appendix 1.

7.0. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments

The Local Planning Authority is required pursuant to s15 of the Planning and Compulsory Purchase Act 2004 (as amended) to prepare, revise and make a Local Development Scheme available to the public. This duty by necessity also requires the Council to ensure that the Local Development Scheme is maintained as an up to date document, pursuant to s15 subsection 9A of the Planning and Compulsory Purchase Act 2004 (as amended).

A Local Development Scheme must specify (amongst other matters) the development plan documents which when prepared, will comprise the Development Plan for the area. A Local Development Scheme as correctly stated at paragraph 2.1 of this Report comprises a combination of strategic policies and non-strategic policies and consequently include the Local Plan and supplementary planning documents.

There is a risk that by not ensuring an up to date Local Development Scheme is published and available to the public that the Council will be found to be in

breach of its statutory duties. Approval of the Local Development Scheme is recommended.

7.2 Finance Officer's Comments

There are no financial implications linked to the adoption of the Local Development Scheme 2020 timetable. The Local Plan update costs, which in the main, were incurred in 19/20 have been accommodated within the Planning Policy General Fund budget.

7.3 Diversities and Equalities Implications

There are no equalities implications directly arising from this report

8.0 CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Officer: Adrian Tofts: Strategy, Policy and Performance Lead Specialist
Telephone: 01303 853438
Email: Adrian.tofts@folkestone-hythe.gov.uk

Officer: Timothy Bailey: Planning Policy Specialist
Telephone: 01303 853333
E: timothy.bailey@folkestone-hythe.gov.uk

Appendices:

Appendix 1: Local Development Scheme (2020 – 2023)

Local Development Scheme

2020 - 2023

May 2020



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1. Introduction

- 1.1. The Local Development Scheme (LDS) sets out the key Development Plan Documents (DPDs) the council will produce over the next three years; and which will form part of the Local Plan for the Folkestone & Hythe District. It set out the key milestones and arrangements for their production, the evidence that will support them; and an evaluation of the associated risks.
- 1.2. This LDS replaces the council's previous version, which came into effect in September 2016; and will be kept under review and amended when appropriate.

2. Purpose of the Local Development Scheme

- 2.1. The Planning and Compulsory Act 2004 (as amended by the Localism Act 2011), requires each Local Planning Authority (LPA) to prepare and maintain a Local Development Scheme.
- 2.2. The LDS serves as a useful document for organisations, businesses, developers, member of the public and others with an interest in the future planning of the Folkestone & Hythe District. The LDS has two main purposes:
- I. to provide the starting point for the local community to find out what the Council's (as the LPA) planning policies are for the area, by setting out all the Local Development Documents (LDDs) that already form and supplement the Local Plan; and
 - II. to set out the programme for the preparation of DPDs over a three-year period including timetables indicating when the various stages in the preparation of any particular DPD will be carried out.
- 2.3. Under Section 15 of the above Regulations, it states that the LDS must specify:
- the Local Development Documents which are to be Development Plan Documents;
 - the subject matter and geographical area to which each DPD is to relate;
 - which DPDs (if any) are to be prepared jointly with one or more other LPAs;
 - any matter or area in respect of which the authority have agreed (or propose to agree) to the constitution of a joint committee;
 - the timetable for the preparation and revision of the DPDs; and
 - such other matters as are prescribed.

- 2.4. Following changes in Legislation in 2011 and 2012 (through the Localism Act 2011 and new Town and Country (Local Planning) (England) Regulations 2012), there is no longer a requirement for LPAs to specify the timetables for producing other planning documents such as Supplementary Planning Documents (SPDs), the Community Infrastructure Levy (CIL) and the Statement of Community Involvement (SCI) in the LDS.
- 2.5. However, in respect of CIL which is directly linked to the preparation and implementation of the Local Plan, the council considers that it would be useful that information in relation any proposed revision to the CIL Charging Schedule should be publicly available and included as part of this LDS.
- 2.6. The LDS does not include a timetable for the preparation of individual Neighbourhood Plans as the timing and delivery of these are the responsibility of the 'qualifying bodies' which are generally the parish or town councils.

3. The Development Plan

- 3.1. Folkestone & Hythe District Council's development plan comprises a series of documents which, as a whole, set out the long-term strategic plans for the district, as well as a variety of other non-strategic planning policies to manage development within its boundaries.



Figure 1: Folkestone & Hythe District Boundary

- 3.2. The Development Plan is also what both the planning officers and planning committee consider development proposals against unless material considerations indicate otherwise.

Adopted Development Plan Documents

- 3.3. The statutory development plan for the district is currently made up of the following documents, which are available to view at: <https://www.folkestone-hythe.gov.uk/adopted-development-plan>

- The **Shepway Core Strategy Local Plan (2013)**. The Core Strategy (CS) is the over-arching policy document in the District's Development Plan from which future planning policies and guidance will flow. It sets out the strategic objectives for the district's development until 2031 and also identifies land for development of a strategic nature in the District.
- The **Shepway District Local Plan 'Saved Policies' (2013)** – The Shepway District Local Plan (SDLP) currently supplements the CS with detailed guidance contained within its 'saved' policies. It is to be superseded imminently by the emerging Places and Policies Local Plan (PPLP).
- The **Places and Policies Local Plan (2020)** – The PPLP will form the second part of the development plan flowing from the Core Strategy, making new land allocations and refine development management policies. The PPLP is at an advantaged stage of preparation having undergone its Examination in Public and as such the policies contained carry significant material weight under the NPPF (paragraph 48).
- The **Shepway District Policies Map (2013)** – The Policies Map illustrates geographically the application of the policies in the adopted development plan; as well as designations and constraints.
- The **Kent Waste and Minerals Local Plan 2013-30** – The Kent Minerals & Waste Local Plan (KMWLP) was adopted in July 2016 and sets out the vision and strategy for waste management and mineral provision up until the year 2030. It was prepared for the county by Kent County Council (KCC) in its role as minerals and waste planning authority. It also contains a number of development management policies for evaluating minerals and waste planning applications. (A timetable for the review of the Waste and Minerals Local Plan, the Minerals and Waste Development Scheme (February 2019), is published on KCC's website).
- **St Mary in the Marsh Neighbourhood Plan (2019)** – The Neighbourhood Plan was prepared by St Mary in the Marsh Parish Council with support from the district council, to set a locally specific development framework to guide

development in the parish and now forms part of the development plan for the district.

Supplementary Planning Documents

3.4. Supplementary Planning Documents (SPDs) are designed to expand on policies in DPDs and provide additional detail. Whilst SPDs do not have the status of DPDs, they are a material consideration in the decision making process of relevant planning applications.

3.5. The following SPDs are formal planning policy documents, which are available to view at: <https://www.folkestone-hythe.gov.uk/planning/planning-policy/documents-and-guidance>

- **Sandgate Design Statement (2020)** - The Sandgate Village Design Statement was adopted as a SPD by the Local Planning Authority in 2013 and updated in April 2020. It is applicable to planning applications in the Sandgate Parish Council area.
- **Kent Design Guide (2006)** – The Kent Design Guide covers all forms of development, identifying good design as something that recognises the social, environmental and economic needs of the community in creating vibrant attractive places that are both memorable and contribute to Kent's character.
- **The Kent Downs Area of Outstanding Natural Beauty (AONB) Landscape Design Handbook** - The handbook aims to provide practical, readily accessible design guidance to contribute to the conservation and enhancement of the special characteristics of the AONB as a whole, and the distinctiveness of its individual character areas.

Other Planning Documents

3.6. Other planning policy documents and guidance include:

- The **Statement of Community Involvement (2015)** – The council has prepared a Statement of Community Involvement (SCI) which sets out how the council involves the local community in planning issues, setting out who will be consulted, when involvement should take place and which methods will be used. A copy of the SCI can be viewed at <https://www.folkestone-hythe.gov.uk/about-planning-consultations>

There is a statutory duty to review SCIs every five years from their adoption date, as set out in regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

- The **Community Infrastructure Levy (2015)** - The Community Infrastructure Levy (CIL) is a charge on new floorspace that local authorities can choose to introduce on new development to raise money for a range of infrastructure needs. These include transport, education, community uses, open spaces and leisure facilities. The council adopted its CIL charging schedule and supporting policies on 20 July 2016 and this was brought into effect on 01 August 2016.

The charging schedule is based on an assessment of the costs of planned infrastructure related to planned development and the gap between that cost and the available funding from sources other than CIL. It must also take account of viability considerations.

4. The Plan-Making Process

- 4.1. Local Plans must be prepared with the objective of contributing to the achievement of sustainable development in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended); and the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).
- 4.2. The preparation of the Local Plan is based on a multi-staged process of evidence gathering and testing of proposals, as illustrated by Figure 2. The purpose of establishing an evidence base is to ensure that all future planning policies and decisions are based on robust and up-to-date information.
- 4.3. The 'evidence base' can be made up of the following sources:
 - information provided from statutory organisations, business, developers; and members of the public through consultation.
 - information generated from statutory processes i.e. Sustainability Appraisal.
 - research undertaken to inform a specific topic or issue
 - the Authority Monitoring Report (AMR)
 - data from other published sources e.g. Census.
- 4.4. Statutory processes required that inform Local Plans include: Sustainability Appraisal (SA) to ensure that the social, economic, and environmental considerations are fully taken into account and to allow the testing of reasonable alternatives to proposals; and Habitat Regulations Assessment of the cumulative impact of proposals on internationally designated habitats (principally at Dungeness and the Folkestone-Etchinghill Escarpment).

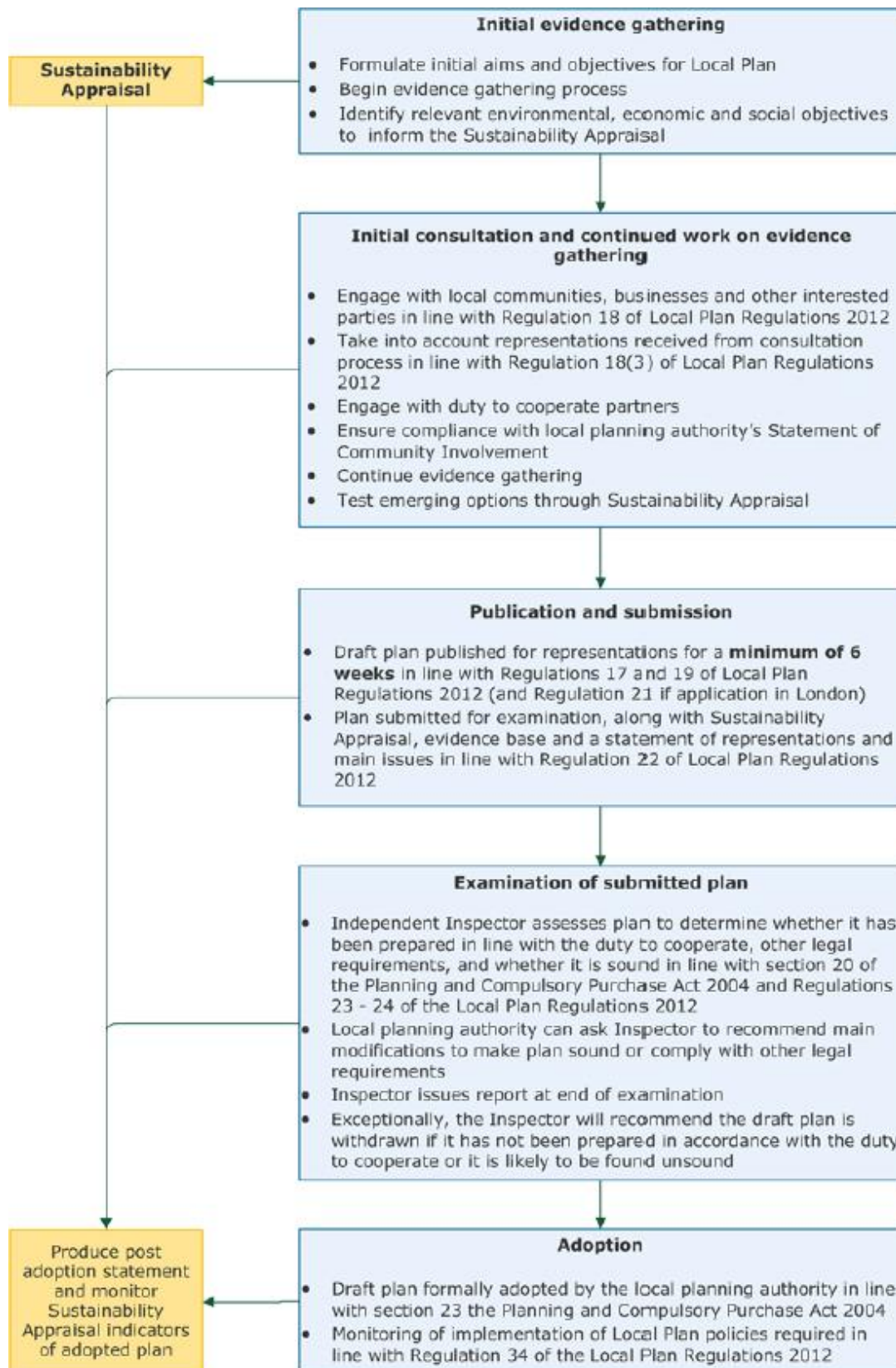


Figure 2: The Plan Making Process

5. Development Plan Documents Profiles

5.1. Folkestone & Hythe District Council are currently preparing three Development Plan Documents:

- Places and Policies Local Plan
- Policies Map
- Core Strategy Review

5.2. As mentioned previously, there is no longer a requirement for LPAs to specify the timetables for producing other LDDs; however the council feels that there is a case for the following document to be profiled alongside the proposed DPDs in the LDS.

- Community Infrastructure Levy Charging Schedule Review

5.3. There is no legislation on how long a charging schedule should apply once adopted; nor is there any duty in the Planning Act 2008 or the CIL Regulations 2010 for the schedule to be reviewed. However, guidance encourages charging authorities to keep their charging schedule and Regulation 123 lists under review.

5.4. During the LDS period, there may be a need for the Council to draft or update other documents including Supplementary Planning Documents and the SCI. This may be to renew existing documents, to take account of changing legislation or national planning policy, or to address particular issues, such as the regeneration of Folkestone town centre. The council is aware that this timetabling is useful so applicable details will be made available for information purposes through the council's website at <https://www.folkestone-hythe.gov.uk/article/248/Supplementary-Planning-Documents> as and when they are agreed.

¹ National Planning Practice Guidance (Paragraph: 005 Reference ID: 12-005-20140306, Revision date: 06 03 2014, withdrawn 15 03 2019)

Places and Policies Local Plan

Description

Title	The Places and Policies Local Plan (PPLP)	
Role / Subject	<p>The Places and Policies Local Plan (PPLP) forms the second part of the Development Plan and follows on from the adopted Core Strategy (2013). The role of the PPLP is to set out how the strategic policies of the Core Strategy, including the scale and distribution of development, will be implemented up to 2031.</p> <p>The PPLP will allocate sufficient land (in addition to the strategic allocations) to meet the outstanding housing and employment needs identified by the CS; as well as economic and environmental designations to support our town centres and natural landscapes to allow appropriate sustainable development to take place across the District. It also sets out general development management policies to guide decisions on planning applications. There is a range of detailed policies - covering design, transport, the natural and historic environment and other topics.</p> <p>The PPLP and its revised development management policies will replace the Shepway Local Plan Review 2006 'saved policies'.</p>	
Coverage	District-wide	
Status	Development Plan Document	
Chain of Conformity	<ul style="list-style-type: none"> • Relevant Planning Acts and Regulations, • National Planning Policy Framework (2012) and Planning Practice Guidance (updated periodically) • Core Strategy Local Plan (2013) 	
Authority Lead	Strategy, Policy and Performance Lead Specialist	
Decision-making Arrangements	CLT, Cabinet, Full Council	
Resourcing	Strategy Team; appropriate staff in other directorates; external consultants. Financial resources allocated in council budget 2020/21.	
Stakeholder Involvement	Consistent with the objectives of the adopted Statement of Community Involvement; and the Duty to Co-operate.	
Monitoring	Strategy Team through preparation of annual Authority Monitoring Report (AMR)	
Timetable	<ul style="list-style-type: none"> • Gathering of Evidence • Consultation on Preferred Options • Consultation on draft Local Plan • Submission to PINS • EiP (inc public hearings)* • Adoption 	<p>Ongoing</p> <p>October / November 2016</p> <p>February / March 2018</p> <p>August 2018</p> <p>September 2018 May 2020</p> <p>July 2020</p>

**Timetable for the examination is determined by the Planning Inspectorate (PINS)*

Policies Map

Description

Title	Folkestone & Hythe District Policies Map	
Role / Subject	<p>National legislation requires Local Planning Authorities (LPAs) to adopt and maintain a policies map that illustrates geographically the application of the policies contained within their adopted development plan.</p> <p>F&HDC's online Interactive Policies Map was adopted in its present form alongside the Core Strategy in 2013. This shows the mapping provisions for the CS and SDLP (2006) 'Saved Policies'. However, the Policies Map must reflect the Local Plan; and as such, the current version must be replaced on adoption of the PPLP. The Policies Map will plot and/or draw all areas that are identified in the CS, PPLP, Neighbourhood Plans and KMWLP, which are subject to particular planning policies i.e. settlement boundaries, site-specific allocations, retail frontages and environmental characteristics etc.</p> <p>The timetable for the drafting, publication and adoption of a revised Policies Map therefore runs in parallel to the stages of preparation of the emerging PPLP.</p>	
Coverage	District-wide	
Status	Supports the adopted Development Plan Documents	
Chain of Conformity	<ul style="list-style-type: none"> • Relevant Planning Acts and Regulations, • National Planning Policy Framework (2012) and Planning Practice Guidance (updated periodically) • Kent Minerals and Waste Local Plan • Core Strategy (2013) & Places and Policies Local Plan • Neighbourhood Plans 	
Authority Lead	Strategy, Policy and Performance Lead Specialist	
Decision-making Arrangements	CLT, Cabinet, Full Council	
Resourcing	Strategy Team; appropriate staff in other directorates; external consultants. Financial resources allocated in council budget 2020/21.	
Stakeholder Involvement	Consistent with the objectives of the adopted Statement of Community Involvement; and the Duty to Co-operate.	
Monitoring	Strategy Team through preparation of annual Authority Monitoring Report (AMR)	
Timetable	<ul style="list-style-type: none"> • Consultation on draft Local Plan • Submission to PINS • EiP (inc public hearings)* • Adoption 	<p>February / March 2018</p> <p>August 2018</p> <p>September 2018 - May 2020</p> <p>July 2020</p>

**Timetable for the examination is determined by the Planning Inspectorate (PINS).*

Core Strategy Review

Description

Title	The Core Strategy Review	
Role / Subject	<p>Legislation requires LPAs to review their plans at least once every five years. Reviews should be completed no later than five years from the adoption of the plan, and take into account changing circumstances affecting the area, or any relevant changes in national policy.</p> <p>The purpose of the review of the adopted Core Strategy Local Plan (2013) is to assess the future levels of need for new homes and employment land over the period to 2036/7 and to provide an appropriate basis for housing, employment land and infrastructure provision. It involves considering if the existing adopted development strategy remains relevant, identifying new site allocations relating to housing and employment together with supporting services and infrastructure.</p> <p>The review's purpose is not to change or remove strategic objectives or policies that remain in accordance with national policy and support sustainable development.</p>	
Coverage	District-wide	
Status	Development Plan Document	
Chain of Conformity	<ul style="list-style-type: none"> • Relevant Planning Acts and Regulations, • National Planning Policy Framework (2019) and Planning Practice Guidance (updated periodically) • Kent Minerals and Waste Local Plan 	
Authority Lead	Strategy, Policy and Performance Lead Specialist	
Decision-making Arrangements	CLT, Cabinet, Full Council	
Resourcing	Strategy Team; appropriate staff in other directorates; external consultants. Financial resources allocated in council budget 2020/21.	
Stakeholder Involvement	Consistent with the objectives of the adopted Statement of Community Involvement; and the Duty to Co-operate.	
Monitoring	Strategy Team through preparation of annual Authority Monitoring Report (AMR)	
Timetable	<ul style="list-style-type: none"> • Gathering of Evidence • Consultation on Preferred Options • Consultation on draft CSR & revised housing requirement • Submission to PINS • EiP (inc public hearings)* • Adoption 	<p>Ongoing</p> <p>March – May 2018</p> <p>Jan – Mar 2019 & Dec 2019 – Jan 2020</p> <p>March 2020</p> <p>March 2020 – October 2020</p> <p>November 2020</p>

**Timetable for the examination is determined by the Planning Inspectorate (PINS).*

Community Infrastructure Levy

Description

Title	Community Infrastructure Levy Charging Schedule Review	
Role / Subject	F&HDC commenced charging the CIL on 1st August 2016. The Community Infrastructure Levy (CIL) is a tariff which allows funds to be raised from new developments towards the cost of infrastructure.	
	<p>Planning Practice Guidance recommends that CIL Charging Schedules should be reviewed at the same time as a Local Plan.</p> <p>The preparation of the Core Strategy Review to 2036/7 with its new proposals for development to meet housing and other needs across the District, including the identification of a new garden settlement at Otterpool and strategic allocation at Sellindge, has triggered the need to review the CIL Charging Schedule.</p> <p>The purpose of the CIL Review is to ensure that land within the site boundary for the new garden settlement is exempt from being CIL liable as financial contributions towards mitigation of the development's impact are to be sought through s.106 agreements.</p>	
Coverage	District-wide	
Status	Other Planning Document	
Chain of Conformity	<ul style="list-style-type: none"> • Relevant Planning Acts and CIL Regulations, • National Planning Policy Framework (2019) and Planning Practice Guidance (updated periodically) • Core Strategy Review & Places and Policies Local Plan 	
Authority Lead	Strategy, Policy and Performance Lead Specialist	
Decision-making Arrangements	CLT, Cabinet, Full Council	
Resourcing	Strategy Team; appropriate staff in other directorates; external consultants. Financial resources allocated in council budget 2020/21 – 2021/22.	
Stakeholder Involvement	Consistent with the objectives of the Statement of Community Involvement (2018) and Duty to cooperate	
Monitoring	Strategy Team through preparation of annual Authority Monitoring Report (AMR)	
Timetable	<ul style="list-style-type: none"> • Gathering of Evidence • Consultation on draft CIL charging schedule • Submission to PINS • Examination in Public* • Adoption 	<p>Up to and including May 2020</p> <p>June-July 2020</p> <p>September 2020</p> <p>December 2020</p> <p>February 2021</p>

** Timetable for examination set by PINS or alternative provider*

6. Project Management Resources

- 6.1. The preparation of the DPDs will be taken forward primarily by the Strategy Team, which has five officers at varying levels primarily dedicated to planning policy work, supported by the Strategy, Policy & Performance Lead Specialist.
- 6.2. The key priority during this LDS period will be the production of Core Strategy Review. This work will be taken forward alongside the team's other responsibilities including supporting neighbourhood plans, the preparation of SPDs, responding to the climate change emergency, implementing the adopted Local Plan, monitoring performance and establishing the housing land supply position as well as performing other statutory duties such as maintaining the Brownfield Land and Self-build Registers and list of Assets of Community Value.
- 6.3. The Strategy Team will be supported by other teams across the council as well as external partners and stakeholders. In addition, external resources may be called upon particularly from Kent County Council in relation to their statutory duties such as highways, education and minerals and waste.
- 6.4. The CSR will need to be underpinned by proportionate evidence which is up to date. The council will use specialist consultants to complete key areas of the evidence base and technical background work where either the necessary expertise is not available in-house or where insufficient resources are available to bring forward the necessary work within the required timescales.
- 6.5. An assessment of the scope of financial resources to produce the identified DPDs and review of the CIL has been undertaken and provision has been made in the council's budget. The council will take every opportunity to minimise the costs associated with the preparation of LDDs.
- 6.6. The council is satisfied at the time of publication that the necessary resources are, or can be, made available to deliver the timetables set out above, having regard to its previous experience of preparing policy documents.

7. Risk Assessment

- 7.1 In preparing the LDS, an analysis of the principal risks associated with updating the DPDs and other key documents, such as the review of the Community Infrastructure Levy, have been undertaken.
- 7.2 Table 1 details perceived risks from a range from local matters, such as changes in staffing levels, to those of national significance including the publication of new Government policy and guidance.

Nature of Risk	Consequence of Risk Occurring	Mitigation
<p>Staff Resources to produce new Local Plan –</p> <p>The loss of key staff as a result of taking another job elsewhere, maternity leave; or long-term sickness etc.</p>	<p>Delay in timetable for delivery of the Local Plan</p>	<p>The council will invest in developing members of staff to improve their career progression and job satisfaction, reviewing working conditions and assessing team morale. The council will also continue to replace staff; or bring in external support if or where appropriate.</p>
<p>Impacts of current Coronavirus pandemic on Strategy team and council support services</p>	<p>Delay in timetable for delivery of the Local Plan</p>	<p>Use of remote working facilities for team meeting and for meetings with council staff and external stakeholders</p> <p>Commissioning of external support if there is significant disruption to council's support services</p>
<p>Changes of National Planning Policy Framework or Practice Guidance –</p>	<p>Alterations and/or additional requirements placed on the form and content of the Local Plan.</p> <p>Preparation of additional 'evidence base'; or re-consultation.</p>	<p>Maintain close monitoring and awareness of any future Government announcements and take on board any necessary changes.</p>

	Delay in timetable for delivery of the Local Plan	
Joint working and duty to co-operate with neighbouring authorities and other organisations -	<p>Key partners and statutory bodies not fully engaging in the process.</p> <p>Delay in timetable for delivery of the Local Plan.</p> <p>Undermine the Plan at EIP if DtC not carried out correctly.</p>	<p>Ensure robust approach to agreeing the briefs for any jointly commissioned evidence base/ studies.</p> <p>On-going liaison will help to ensure that key matters are considered and addressed through the LP making process.</p>
Planning Inspectorate capacity to examine Local Plan – Examination timetable subject to the availability of a Planning Inspector	<p>Delay to the examination of the Local Plan</p>	<p>Close liaison with the Planning Inspectorate in the run up to submission of the Local Plan.</p> <p>Provide advanced notification of submission to help PINs allocate resources appropriately.</p>
Planning Inspector finds that submitted Local Plan is fails the test of soundness.	<p>Alterations and/or additional requirements placed on the form and content of the Local Plan.</p> <p>Preparation of additional ‘evidence base’; or re-consultation.</p> <p>Delay in timetable for delivery of the Local Plan</p>	<p>Ensure robust evidence base underpins policies and spatial approach of the Local Plan.</p> <p>Liaison with Council’s legal specialists and the Planning Inspectorate at key stages.</p> <p>Having due regard to advice published by the Planning Advisory Service (PAS).</p> <p>Informal discussions on a ‘critical friend’ basis throughout process with PAS advisors and others.</p>
Potential third party challenges to the emerging new Local Plan document (including legal challenge when the plan is found sound)	<p>Delays in the next stage of Local Plan development where consultation comments require further consideration of next steps.</p> <p>Delays resulting from a legal challenge whilst legal arguments are considered by the High Court.</p>	<p>Liaison with the Council’s legal specialists at key stages.</p> <p>Commissioning of legal advice from specialist planning barristers if necessary.</p> <p>Ensure robust evidence base underpins policies and spatial approach of the Local Plan.</p>

8. Monitoring and Review

- 8.1 Under regulation 34 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the local planning authority is required to monitor the progress of the LDS as part of a monitoring report.
- 8.2 The Council publishes its Authority Monitoring Report (AMR) to monitor how effectively its policies and proposals are being implemented, and what action might need to be taken to address emerging issues or problems. This includes an assessment of the level of housing completions against housing requirements. It also reports on progress being made in implementing the work programme set out in the Local Development Scheme.
- 8.3 Arising from the Folkestone & Hythe District Authority Monitoring Report, the Council will consider what changes, if any, need to be made to the Local Development Scheme. The Council may bring forward changes to the Local Development Scheme at other times in response to significant new issues or changes in circumstance.

9. Glossary

A guide to the terminology used in this document

Adoption - The final confirmation of a development plan or Local Development Document status by a Local Planning Authority.

Authority Monitoring Report (AMR) - A document produced by the local planning authority providing analysis over the period of the performance review (typically annually) of planning policies and reporting on progress made in producing up-to-date planning policy documents. Previously known as Annual Monitoring Report.

Community Infrastructure Levy (CIL) - A charge levied by the council on new development to fund the provision of infrastructure and wider community benefits. In order to charge the levy, the council must have an adopted CIL Charging Schedule.

Community Infrastructure Levy Charging Schedule – The document which sets out what CIL charges developers are liable to pay in a local authority's area. CIL charges may vary by geographical area (e.g. to reflect different land values) or by development type (e.g. housing, retail or employment development).

Development Plan - This includes the adopted local plans that, together with the Minerals and Waste Plan, will form the development plan for Folkestone & Hythe District.

Development Plan Document (DPD) - A document setting out the council's planning policies and proposals. They are subject to community involvement, consultation and independent examination. A sustainability appraisal is required for each development plan document.

Examination in Public (EiP) - A form of independent public inquiry into the 'soundness' of a submitted Local Plan document which is conducted by an Inspector appointed by the Secretary of State. After the examination has ended the Inspector

produces a report with recommendations setting out how the Local Plan should be amended. Following this the Local Plan may be adopted by the local planning authority (see 'Adoption').

Habitats Regulations Assessment (HRA) - An assessment of the potential effect of development plans and proposals on sites within the Natura 2000 network of sites that are protected under the European Birds and Habitats Directives.

Local Development Document (LDD) - The documents that set out planning policies for specific topics or areas.

Local Development Scheme (LDS) - A timetable for the preparation of local development documents.

Localism Act - The Localism Act has devolved greater powers to local government and neighbourhoods and given local communities more rights and powers over decisions about planning and housing. It also includes reforms to make the planning system more democratic and more effective.

Local Plan - Development plan document(s) setting out the spatial vision and strategic objectives of the planning framework for an area. All development plan documents collectively comprise the Local Plan.

National Planning Policy Framework (NPPF) - The National Planning Policy Framework was first published on 27 March 2012 and revised in July 2018 and February 2019. The framework gives guidance to local councils in drawing up local plans and on making decisions on planning applications to deliver sustainable development.

Planning Practice Guidance - The National Planning Practice Guidance is a web-based resource which brings together planning guidance on various topics into one place.

Neighbourhood Plan - A provision under the Localism Act 2011 gives authorised groups the power to prepare a development plan for their area called a Neighbourhood Plan. This plan could include general planning policies and allocations of land for new development.

Planning Inspectorate (or PINS) - An organisation which processes planning appeals and holds examinations into DPDs or Local Plans.

Saved Policies - The Government has set out procedures for saving adopted local plan policies beyond the period allowed in the Planning Act for saved Local Plans, until they have been replaced by policies in local development documents.

Statement of Community Involvement (SCI) - This is a document which sets out how the council will consult and involve the public at every stage in the production of Development Plan Documents. It also applies to major development management applications. The SCI is not a development plan document.

Spatial Planning - Includes economic, social and environmental issues as well as the physical aspects of location and land use.

Sustainability Appraisal (SA) - A systematic and iterative appraisal process incorporating the requirements of the European Directive on Strategic Environmental Assessment. The purpose of the Sustainability Appraisal is to appraise the economic, environmental and social effects of the strategies in a LDD from the outset of the preparation process.

Sustainable Development - Usually referred to as "development which meets the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland, 1987).

Supplementary Planning Document (SPD) - A Local Development Document which provides additional advice and information relating to specific policy or proposals in a Development Plan Document.

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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.

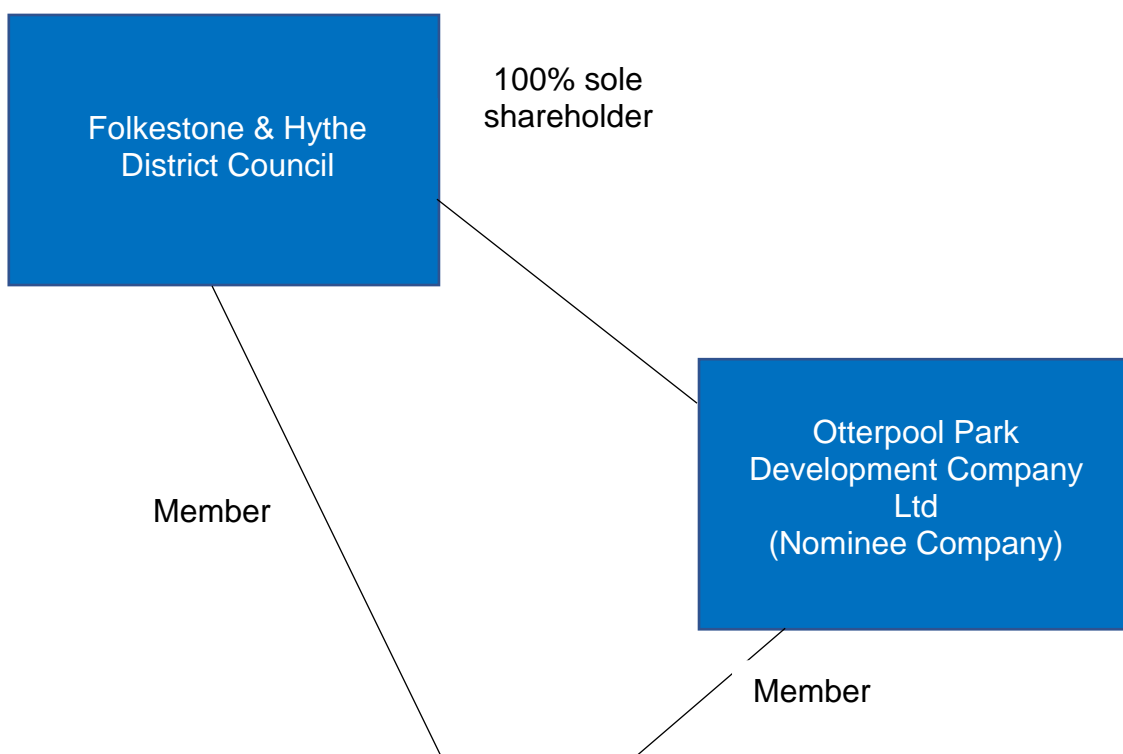
3. GOVERNANCE – THE DELIVERY VEHICLE AND NOMINEE COMPANY

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.



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:

John Bunnett, Director of Development
Telephone: 01303 853263
Email: john.bunnett@folkestone-hythe.gov.uk

Andy Jarrett, Chief Strategic Development Officer 01303 853 429
Telephone: 01303 853402
Email: andy.jarrett@folkestone-hythe.gov.uk

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

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This report includes
a confidential annex.

Report Number **C/17/76**

To: Cabinet
Date: 31 January 2018
Status: Key Decision
Chief Executive: Alistair Stewart
Cabinet Member: Cllr David Monk, Leader of the Council/
Cllr Dick Pascoe, Property Management and
Environmental Health

SUBJECT: DELIVERING OTTERPOOL PARK – LANDOWNER UPDATE

SUMMARY:

This report provides an update to Cabinet on a range of matters relating to the delivery of Otterpool Park. It sets out various options for delivering the council's objectives for Otterpool Park and also makes recommendations that the council should explore, including the option of forming a development company. It also provides an update on the budget for the project.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below because:

- a) The council needs to have a method of delivering its aspirations for Otterpool Park. It is necessary to decide in principle on the favoured option so that further work can be undertaken to finalise the structure.
- b) The council should also consider whether to pursue the option of a development company for other sites.
- c) The recommendations below have resource and financial implications for the Council.

RECOMMENDATIONS:

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.**

1. Background

- 1.1 The Cabinet last received an update on the council's position as joint landowner and promoter of Otterpool Park on 19 July 2017. The report (C/17/25) updated Cabinet on a range of matters including the masterplan work, progress on land acquisition and liaison with Department for International Trade. It sought approval to include costs of land acquisition in the capital programme. At that meeting Cabinet resolved (minute 25):

**1. That report C/17/29 be received and noted.*

2. That the following principles for the development of the Otterpool Park Framework Masterplan be approved to provide a basis for a submission to the Local Planning Authority to support the Core Strategy Local Plan Review and also a basis for preparing an outline planning application:

a) The indicative layout set out in the spatial plan (Appendix A) showing broad location for development, strategic landscaping, housing, and employment and community facilities, subject to responding to comments from the recent community engagement events.

b) A review of the total number of homes in line with feedback from public events and viability advice.

The Otterpool Park Framework Masterplan will then be refined for final agreement by a future Cabinet meeting.

3. That the Head of Strategic Development Projects be authorised, in consultation with the Leader of Council, to enter into a second collaboration agreement with Cozumel Estates.

4. That ongoing liaison with DIT over Otterpool Park as a pilot in the promotion of garden towns to international investors be approved, and delegate authority be given to the Corporate Director Strategic Development to make a submission of further information to DIT, upon consultation with the Leader.

5. That SDC's attendance at MIPIM Cannes in 2018 be endorsed and for officers to work on the detail with Locate in Kent and potentially also with DIT on this event.

*6. That the budget requirement for land acquisition and the need to build in the sums set out in paragraphs 1.2 and 1.3 of the confidential annexe into the capital programme £75k for 17/18; £600k for 18/19 and £3 million for 19/20 to fund the costs of taking the land options be noted.**

- 1.2 This report sets out the current position, and the council's objective in broad terms. It sets out options available to the council (and its partners) to enable the delivery of the project and the achievement of its objectives. It also provides a budget update, and an update on land acquisition (in the confidential annex).
- 1.3 In September 2016 the Council and Cozumel entered into an initial promotion/collaboration type agreement. This agreement envisages that the parties collaborate in assembling the site, securing planning permission and then entering into further agreements relating to the development of the site. As far as the landownership is concerned the council is a major landowner and has, or is in the process of negotiating; options to purchase further land. Its landowner partner, Cozumel Estates Ltd owns or controls the majority of the rest of the land in this area and another major party is seeking to acquire further land in the area. A table in the confidential annex shows the current position. Negotiations on some sites have been protracted, and it may be that the council will have to consider using its compulsory purchase powers. Accordingly agreement in principle is sought by Cabinet if necessary to use these powers. The decision to use CPO would be subject to a separate and detailed report.

2. The council's objectives and "commercial return"

- 2.1 The council's objectives in broad terms are set out in its corporate plan. One of the priorities under the "More Homes" strategic objective is to "Create a new garden town at Otterpool Park". Whilst the council wishes to see the development progress has it also other priorities under the "Achieving Stability" strategic objective. Several priorities are relevant here – namely those that state "Explore alternative income streams including commercial opportunities", "Develop an investment strategy for the longer term benefit of the district" and "Optimise the financial benefit from major developments in the shorter and medium term".
- 2.2 With these corporate objectives as a starting point, a paper has been prepared by the Corporate Director – Organisational Change to set out strategic financial objectives for Otterpool Park. The paper itself is attached as Appendix 1, and the principles themselves are set out below:
- To commit to a long term involvement with the garden town to explore means of generating ongoing revenue streams from commercial, retail and residential elements of the development.
 - To recognise the capital input and to release this value to ensure any borrowing costs are sustainable within the financial parameters of the council.
 - To optimise the resources from the garden town to provide a financial benefit for the whole district.

- To work towards an ongoing financially sustainable model for the new town and to avoid, as far as possible, creating unfunded liabilities.
- To work with private sector and public sector partners to maximise external funding in support of the project.
- To consider at each critical decision point the future financial model with an emphasis on affordability for the council.

2.3 To ensure Otterpool Park will meet this financial imperative the project must be tested at every stage for its financial viability. Major development projects will always need significant upfront investment in planning and construction, but the council must ensure in the longer term that the project is profitable. To do this, the council must agree with its partner Cozumel its definition of acceptable commercial return, i.e. the approach to profit and the minimum threshold necessary for taking Otterpool Park forward. Cabinet approval is sought for a working definition of commercial return as "the value or profit available after meeting all the requirements of the initial outline planning application and future reserved matter approvals and further planning permissions". Each partner can then chose how it spends its share of this profit, which, in the case of the council, may involve providing additional facilities and services for Otterpool Park; reinvesting in Shepway's wider community; supporting the council to deliver existing services or a mixture of all of these. It is important to bear in mind that the council's motive is not profit per se; it has no shareholders, all the money that arises from its involvement in Otterpool Park will be used one way or the other for the public benefit.

3. Possible Delivery Methods

3.1 It is considered appropriate now to consider the options available to the council (and its partners) to enable the delivery of the project and the achievement of its objectives. In making this decision it should be appreciated that the development of Otterpool Park is unlike any other project the council has embarked on in terms of size, complexity and time. The development is likely to take over thirty years and so will span several electoral cycles (both national and local) and several economic cycles. Accordingly the traditional ways that the council delivers projects either through its direct workforce or essentially simple contracts are unlikely to be appropriate. This report considers the various options. This part of the report has been formed by advice from Pinsent Mason solicitors and Arcadis consultants. The council has also liaised with Basingstoke and Deane Borough Council and Hampshire County Council, to learn from their experience of planning and delivering Manydown new community, on land jointly owned by the councils. Manydown is also a government designated garden town.

3.2 The various advantages and disadvantages are set out below and these are assessed against the council's objectives. There are legal and financial issues which will be set out in greater detail in a future report if members wish to pursue the options recommended. It should be noted that there is no delivery method that is prescribed or favoured by the government for garden

towns. It is for the council and its partners to determine the structure. Also, the government is currently consulting on Locally Led Development Corporations. In its consultation response the council has welcomed the move toward local leadership, but given the council and its landowner partner already have control of the land this option is not one that needs to be actively pursued for Otterpool Park.

3.3 There are several possible variants but the key possible structures are described below. These are:-

- The council and other land owners each develop out their own parcels of land within the site;
- The council develops out the site by entering into a sale and purchase agreement to buy Cozumel's land interest (and possibly the interests of other parties);
- The council does not develop but sells its land interest to another party free of conditions and development obligations;
- The council sells its land interest to another party subject to a development agreement;
- The council sells its land interest by means of a conditional land sale agreement with an ability to re-acquire land in the event of failure to meet milestones;
- A contractual joint venture agreement;
- A corporate joint venture vehicle – either limited liability company (limited by shares) or a limited liability partnership.

The council and other land owners each develop out their own parcels of land within the site

3.4 Under this basic option the council obtains planning permission (either for the site under the terms of the collaboration agreement or falling this unilaterally for the parts of the site that it owns) and then develops out those parts of the site that it owns.

3.5 It would be important to ensure that the planning permission obtained and any related planning agreement is structured so as to enable Independent development by each land owner separate of the other.

3.6 The council could carry out the development itself or employ a development manager to develop out in accordance with the terms of a development management agreement.

- 3.7 The council might choose to build itself or act as a master developer and procure the construction of enabling works (i.e. infrastructure etc.) and then sell off parcels to housebuilders/third party developers thereby mitigating development risk and cost.
- 3.8 An extension of the above is that Cozumel or other land owners could each retain their own land interests but appoint the same development manager in respect of their parts of the site to endeavour to procure a "joined up" approach to development or possibly entering into further forms of collaboration agreement in relation to specific parts of the site.

The council develops the site by entering into a sale and purchase agreement to buy Cozumel's land interest (and possibly the interests of other parties)

- 3.9 In order to achieve a unified approach and certainty of development the council could seek to develop the site (or a majority of the site) by buying Cozumel's interest (and possibly other land owner's interest) in the site.
- 3.10 The purchase of land could be conditional on agreeing a master plan and obtaining a satisfactory planning permission for the site. The land might be sold at a fixed price or subject to overage. It may be that the sale and purchase of parcels would be made subject to other conditions such as viability, availability of funding, pre-lets etc.
- 3.11 The council having acquired sufficient parts of the site might either develop itself or enter into a development management agreement and procure development of parcels by third parties as outlined above. Where it develops itself it would need to determine whether to do so in its own name or set up some form of vehicle.

The council does not develop but sells its land interest to another party free of conditions and development obligations

- 3.12 The council simply sells its interest in the site to a third party or to Cozumel who then develops out the site.
- 3.13 If required by the council, a sale could be structured to be conditional on securing a planning permission satisfactory to the council (as landowner) or the purchaser (or both parties) and with obligations to pay clawback or overage possibly once planning permission is obtained and / or once development is completed (to capture uplifts in value).
- 3.14 It could be advantageous for the council to obtain planning permission for the site before a sale, although the permission would not run with the land¹ the fact that planning permission had been granted would give the purchaser considerable comfort that similar permission would be granted. This would help

¹ Regulation 9 of the Town and Country Planning Act General Regs 1992 states that planning permission will not run with the land when the council grants permission to itself.

de-risk the site and also help steer the nature of development and create an immediate uplift in value before sale.

The council sells its land interest to another party subject to a development agreement

- 3.15 The council could sell its land interest to a third party, subject to covenants by the purchaser to obtain a satisfactory planning permission (if not already obtained) and then develop the site within agreed parameters pursuant to a development agreement.
- 3.16 The agreement might be structured such that the third party could only draw down phases of land as and when a satisfactory full planning permission is obtained for each phase and once a phase is drawn down there would be requirements to develop within certain timeframes. The council would have the ability to exercise influence over the progress and quality of the development via the incorporation of control mechanisms in the development agreement (e.g. development obligations, approval of planning application/design/method statements etc.). The council would however have to ensure that the control it has over the development is not such as to bring the European procurement rules in to play, which would impact on value.

Council sells its land interest by means of a conditional land sale agreement with an ability to re-acquire land in the event of failure to meet milestones

- 3.17 Rather than sell its land through a development agreement, the council could enter into a conditional land sale agreement, whereby the purchaser acquires the land interests in the site (by way of freehold purchase or long lease) from the council by way of a conditional purchase contract, in return for a land price with profit share/overage. The council would have limited control in the delivery of the development through approval rights of the planning application, and inclusion of various milestones with ability for the council to terminate if milestones are not met. No positive build obligations would be imposed on the purchaser, to avoid any risk of it being caught by the public procurement rules. Development is in essence incentivised through the ability of the council to buy back the site in the event of development failure or breach of the terms of the agreement at a pre agreed price (possibly at a discount to market value).

A contractual joint venture agreement

- 3.18 The council and Cozumel could enter into a purely contractual joint venture agreement or collaboration agreement to document how they will work together to bring forward the development of the site, setting out in particular the parties' respective contributions to the arrangement (whether land contributions, funding and/or resourcing) and the parties' entitlement to returns. No separate legal entity would be created.

A corporate joint venture vehicle – either limited liability company (limited by shares) ("Ltd") or a limited liability partnership ("LLP")

3.19 A corporate joint venture vehicle would be created that is jointly owned by each of the council and Cozumel (usually on a 50/50 basis) which will in turn procure a developer for the development of the site. Other land owners could also participate and own a share of the vehicle. A possible potential delivery structure based on this model is appended (Appendix 2 - it should be noted that if Kent County Council's bid to the Housing Infrastructure Fund is successful a separate but related governance structure will need to be put in place that incorporates KCC's role as accountable body).

3.20 The vehicle could either be a limited liability company (limited by shares) or limited liability partnership. The corporate vehicle would own the site as each party would contribute their land assets to the vehicle plus any cash to enable it to take forward development activities. Any profits would be distributed to the partners proportionately to the relative investments of each party in the vehicle. The pros and cons of these two alternatives can be considered further at the next stage of work.

4. Which delivery method would be most appropriate?

4.1 There are various advantages and disadvantages to the various options described above. The options should be judged against the council's objectives and priorities described in section 3 of this report. To summarise, these are to ensure a high quality garden town is developed and the council achieves financially the best possible advantage.

The council and other land owners each develop out their own parcels of land within the Site

4.2 The principal advantages are:-

- Straightforward legal process;
- The council will control part of the development directly;
- The council will benefit from all profits / uplift in land values.

4.3 The main disadvantages are:-

- There is no guarantee that other parties will develop their sites or when development will occur. There would be no control over development of the sites of other parties except through the planning process. This would mean the council would not have control of the delivery of aspects of the site that are not on its land but where it has an ambition to deliver, eg employment. This may also affect the ability to apply for public funds for infrastructure in these locations, including the current bid of £281 million to the government's Housing Infrastructure Fund.
- There would be no joined up approach to seeking planning permission and development of the site - as a result the development may be

fragmented with no overall masterplan; any cohesion of the proposed garden town could be lost. This would create significant planning complications, and would be likely to cause delay to delivery.

- No economies of scale in delivering roads and infrastructure etc. would be obtained, nor in the set-up costs of delivering each parcel across the site. If the council began development first, it may need to make significant infrastructure investment itself upfront. Delivery would likely be slowed down rather than speeded up.
 - It is hard to envisage how infrastructure would be funded. S106 negotiations are likely to be longer and very complex to negotiate which parties will fund what and when. In the case of Chilmington Green, Ashford this has taken many years to agree. The council cannot covenant with itself in relation to a planning agreement and therefore would need to work around this issue, possibly involving KCC as enforcing authority.
 - The council would need to take on development risk and the administration and cost of procuring development, which could be considerable and would require significant up-front investment of funds and staff resource.
 - There would be no equalisation of costs and profits over the wider site (unless a collaboration agreement was entered into) and adjoining owners could benefit from land value uplift (i.e. due to the council's works) without contributing to costs.
 - If the land is developed mainly for commercial purposes then the council may need to set up a company to do so which can be costly and time consuming.
- 4.4 It is unlikely that this option would deliver a properly planned garden town. In addition the council would be exposed to significant risks if it sought to develop. The project, or part of it, itself. It does not, at present have the skills to do so and to try to undertake a project of this scale would be beyond its capabilities. There may, however be merit in setting up a council controlled development company and this is discussed more fully in section 7 below.
- 4.5 In addition this option would not be guaranteed to make the council the best financial return. As stated above there may be no economies of scale so increasing the council's costs. Furthermore adjoining land owners could benefit from the council's expenditure without a return to the council. Whilst facilitating development can be one of the roles of the council it should also expect, in appropriate circumstances, to see a return for the council tax and rate payers.

The Council develops out the site by entering into a sale and purchase agreement to buy Cozumel's land interest (and possibly the interests of other parties)

4.6 The principal advantages are the same as those in the first option described above:-

- Straightforward legal process;
- The council will control the development directly;
- The council will benefit from all profits / uplift in land values.

4.7 The disadvantages are:-

- The council may not be able to buy the land from third parties;
- If it could buy the land it would have to finance the purchases;
- The council would take on significant development risks;
- The council has entered into a collaboration agreement with Cozumel – altering its stance now, though legally possible, would go against the spirit of the collaboration agreement and willingness of the parties to work together;
- If the land is developed mainly for commercial purposes then the council may need to set up a company to do so which can be costly and time consuming.

4.8 This option relies on the ability of the council to agree and finance the purchase of further areas of land. If either are not possible the project would be in jeopardy and the council's ability to see a garden town constructed in doubt.

4.9 The council will take on significant risks – even greater than the option described above. The comments on the council's ability to do this are equally valid, if not more so, for this option.

4.10 The uncertainties surrounding this option therefore do not tend to suggest that this would be a viable way for the council to achieve its objectives.

The Council does not develop but sells its land interest to another party free of conditions and development obligations

4.11 The principal advantages are:-

- Once terms of sale are agreed it would be a quick process
- Cheap and relatively risk free
- Overage/clawback will enable the council to share in planning gain and or super profits in the event of success of the scheme. This will also help

ensure "best consideration" is achieved.

- The purchaser of the council's interest would be left to get on with development. It would therefore be a relatively simple commercial structure enabling the purchaser to develop without future constraints.
- Sale to an experienced developer may help maximise the chance of successful development.

4.12 The main disadvantages are:-

- There would be no certainty of delivery or timing of development or the creation of a planned garden town. The council's control over the development would be limited to its planning powers.
- The site may never be developed.
- There would be no direct control of the ultimate identity of parties developing the site or purchasing parts of the site.
- Advice to the council suggests that it would be very difficult to attract a single developer or investor to a site of this scale due to the scale of risk. Developers would usually look for a joint venture arrangement whereby costs and risk can be shared, or for outright purchase of smaller plots that can be developed in the short to medium term. The value of the site at this point in the process would therefore be comparatively low.
- The council is not an investor and therefore will not make profits in the same way as if it were an investor in development.
- No certainty that the Council will sell the land for "best consideration" and therefore this may not be compliant with S123 Local Government Act 1972.

4.13 This option carries less risk than the others but probably will mean that the council does not achieve its corporate objectives in its corporate plan of creating a new garden town at Otterpool Park. The council will receive land value, however once sold the timing of the development would be out of the council's control – the purchaser could merely "land bank" the site and develop it when and if it saw fit. The council's control over the form of the development will, as noted above, be limited to its planning powers and the opportunity to influence the development therefore restricted.

4.14 The council may have to accept a significantly reduced land value for the site and would forego the chance of making profits which would not appear to be the most financially advantageous way of proceeding.

The Council sells its land interest to another party subject to a development agreement

4.15 The principal advantages are:-

- Development agreements are reasonably well understood by the market.
- The council can impose direct controls on the nature and timing and delivery of the development of the site that can be enforced by the council
- If development is achieved through sale of phases of development to the developer then the Council is able to retain some control over development and may be able to structure development so that phases are not sold to the developer until the phase is ready for immediate development.
- The inclusion of an overage/profit share mechanism can give the council a share in the success of the scheme, which will help ensure "best consideration" is achieved.
- The council mitigates risk by passing over the obligation to develop to the developer and the administration/call on resources is significantly reduced.
- A development agreement is a flexible contractual arrangement which may be adapted to suit the intentions of the contracting parties e.g. it can cater for a phased handover of land.

4.16 The disadvantages are:-

- The council would have less control over the planning and development process and will need to comply with the requirements imposed on it in the development agreement.
- Depending on how the agreement is structured the European procurement rules could apply.
- Any sale of the council's interest in the site is likely to be discounted as a result of the development agreement obligations.
- Unless the sale is to Cozumel then the issues around securing a unified approach to development remain.
- A third party developer may not wish to acquire other parts of the site that the council would have been willing to acquire and develop for the benefit of the whole scheme.
- What in practice would happen if there is a significant breach of the development agreement? Are remedies available likely to be enforced or would in reality development just stall?

4.17 The council's experience with the town centre redevelopment showed the limitations of this approach where the form of the town centre shopping centre

as built, differed significantly from the one that was the subject of the development agreement. This was because market conditions changed and both parties had to accept major variations to the final form of the centre. This risk would be magnified in the case of a development of the size and complexity of Otterpool Park where the economic and commercial fate of the developer may change significantly over the long development period due to recession, takeovers etc. Furthermore the value of the council's land will, as noted above be discounted because of the development agreement.

4.18 It is not considered therefore that this option would enable the council to achieve its objectives.

Council sells its land interest by means of a conditional land sale agreement with an ability to re-acquire land in the event of failure to meet milestones

4.19 The advantages of this approach are:-

- Conditional sale agreements are reasonably well understood by the market.
- The council can impose direct controls on the nature and timing and delivery of the development of the site. These controls can be enforced by the council.
- If development is achieved through sale of phases of development to the developer then the council is able to retain some control over development and may be able to structure development so that phases are not sold to the developer until the phase is ready for immediate development.
- The inclusion of an overage/profit share mechanism can give the council a share in the success of the scheme, which will help ensure "best consideration" is achieved.
- The council mitigates risk by passing over the obligation to develop to the developer and the administration/call on resources is significantly reduced.
- A conditional sale agreement is a flexible contractual arrangement which may be adapted to suit the intentions of the contracting parties e.g. it can cater for a phased handover of land.
- Reduced procurement risk provided the contract is structured correctly so that no OJEU process is required as to selection of the developer/purchaser.

4.20 The disadvantages are:-

- Conditional land sale agreements seek to incentivise development through negative obligations so that if milestones are not achieved (i.e. commencing development by an agreed date or failing to build out etc.), then the land that has been transferred by the council is re-acquired. Such agreement cannot contain the same level of detailed positive

obligations as a normal development agreement.

- Often a conditional land sale agreement will only allow termination very many years after initial commencement of development. Accordingly, the land may be "sterilised" for a number of years with little or no development before the council can re-acquire the land.
- If the developer fails to perform its duties would the council in practice have the funds to be able to buy back the land acquired by the developer?

4.21 In addition to the disadvantages above for the previous option, fundamentally this option could leave the land lying fallow for some time. The obligations would be negative in nature which would make the development of a planned settlement that much more difficult. If the developer fails to perform its obligations the council would have to find the monies to buy the land back; with the continuing squeeze on public finances this could be difficult. In the worst case the council could see the land idle with no means to reacquire it. Would such a conditional arrangement depress the price of the land in the first place too?

A contractual joint venture agreement

4.22 The advantages are:-

- It is a flexible contractual arrangement which may be adapted to suit the intentions of the contracting parties. There is the potential to "create" a board of representatives similar to a company.
- Both parties share the costs and the risk in accordance with their respective interests which could be 50/50.
- This option may be more beneficial from a tax perspective to a corporate vehicle, as there would be no land transfers and no payment of stamp duty land tax.
- There would be joint control over delivery of development, which may be more attractive to parties.
- It avoids expense and administration of having to set up corporate vehicles.

4.23 The disadvantages are:-

- The Council has less control over the planning and development process and will need to comply with the requirements imposed on them in the collaboration agreement. The decision-making process would reflect the parties' respective interests.
- Likely to be complex procurement process.

- Complex and detailed contractual arrangements are necessary to manage the unincorporated association and determine when consent of the other party or parties is required. In practice this arrangement would be very difficult to document and would end up having to be tantamount to a collaboration agreement.
- Unlimited liability for participants (in that the parties will be required to contract in their own right).
- As stated above in practice rather than give control to both parties, the joint contractual arrangement would result in each party having to consent to every major step of development which would significantly raise the risk of dispute and possibly devalue their land interests (until development is complete).
- The unincorporated association cannot own land, contract with third parties, employ individuals, etc. The parties would have to undertake this in their own name.
- There is less flexibility to raise finance. Financing is likely to be complex and require cross guarantees².
- It is possible that such a contractual arrangement may be deemed as a partnership (resulting in joint and several liabilities for the parties).
- It can be administratively onerous and expensive when participants join or exit.
- It creates a less transparent profit sharing arrangement than a limited liability partnership or a limited company if the property is held by one of the parties, although there would normally be open book obligations on the party holding the land interests.

4.24 This is a complex arrangement and over a thirty year period it would be difficult, it is considered, to sustain. The robustness of the model is not sufficient for it to be an appropriate vehicle to ensure the development is carried out. In addition there is a risk that the arrangement would devalue the land holdings of the parties.

A corporate joint venture vehicle – either limited liability company (limited by shares) ("Ltd") or a limited liability partnership ("LLP")

4.25 The advantages are:-

- Both the council and Cozumel share the costs and the risk in accordance

² A cross guarantee is a guarantee from each member in a group of companies of the obligation(s) of each other member of the group. It is designed to protect the person taking the guarantee from a situation where assets are moved out of the company that has incurred the liability (usually a loan) and are transferred to group companies putting them beyond reach of the lender if the borrower defaults. If the lender has a cross guarantee, it will be able to recover the money from whichever company in the group has the most assets (and the least debt).

with their respective interests which could be 50/50.

- There will be joint control over delivery of development and a flexible constitution. This can be tailored to suit the requirements of the parties and is flexible enough to adapt to changes in internal and external circumstances.
- A company shares structure has the advantage that the liability of a shareholder is limited to the amount which remains unpaid on their shares (if any). The consideration for their shares may be a nominal amount (for instance £1).
- LLP structure has the advantage also of limiting liability to the amount contributed.
- A company constitutes a separate legal entity. It is independent of its shareholders and can therefore hold property, employ personnel and enter into contracts. Changes in its shareholding do not affect its existence or the status of its contracts (subject to change of control provisions).
- Where either party proposes to exit, this could be effected by a simple share transfer with the property interests remaining in the company, as assets are not required to be transferred on the exit or joining of a shareholder.
- Two basic tiers of involvement at board and member level/shareholder level can be set up, with each tier being capable of further sub-division providing flexibility and scope for accommodating stakeholders and other participants.
- Creates a transparent profit sharing arrangement as both parties have sight of accounts and the day to day management of the company.
- Directors have defined duties to the company to ensure probity in dealings.
- This structure provides considerable flexibility to raise finance through the creation of different types of share and loan capital.
- Dividends are revenue income and will directly benefit the GF
- A company can also create a floating charge over its assets which may assist with raising external finance.
- Unlike other partnerships, an LLP may also create loan capital and security, e.g. floating charges (due to it being a corporate body). This structure provides flexibility to raise finance.
- In the case of a company there is the ability to pay dividends as a means of distributing any profit. This allows more predictable draw down of

payments than the more unpredictable profile of costs and income from some of the other options.

- Companies are tried and tested models for local authority participation.

4.26 The disadvantages are:-

- Depending on ownership percentages the council may lose control over development as well as ownership of its land interest.
- The council loses direct control over the land but retains significant influence through the company or limited liability partnership.
- The company entity creates a lack of tax transparency as there is an intermediate tax layer as the company is itself assessed for tax. This may not be tax effective for the Council (as local authority's income is not taxed in a tax transparent vehicle).
- Directors' duties may be viewed as onerous and can, in limited circumstances, lead to personal liability for breach.
- A company is less flexible than LLPs in terms of management and finances.
- Time consuming and expensive to set up joint venture vehicle and administer. Requires agreement of Cozumel.
- Likely to be complex procurement process.

4.27 Whilst there are technical disadvantages with this option it would appear to be the most suitable to carry through the development and achieve the council's objectives. It will enable a joint and comprehensive approach to taken to the development ensuring an equitable distribution of profits. It provides a robust structure which is likely to be able to endure through the period of the development, and be flexible enough to react to changes in circumstance and parties.

4.28 Whether the corporate joint venture is a limited company or a limited liability partnership would have to be subject to further detailed advice.

5. What is the best option?

5.1 As stated above the options open to the council need to be judged against its objectives which, again in broad terms are to secure the development of a garden town and to obtain the best possible outcome financially for the council.

5.2 Whilst the options all have their advantages and disadvantages it is considered that the corporate joint venture option represents the best way to achieve the objectives.

5.3 In brief:-

- It offers a flexible structure able to adapt to changing circumstances over the period of the development. Options such as a development agreement would be inflexible;
- Changes in parties can be accommodated;
- It enables a comprehensive approach to the development, but still allows SDC to retain and develop specific areas of the site if it so chooses;
- Profit share is transparent and equitable;
- There are financial advantages (see above); in particular that the council will continue to see revenue funding over many years as opposed to a one off capital receipt: and
- It is a tested method for delivering a development, familiar to those who would bid to develop the site. Developers and investors are more likely to support this option, and the market will expect this approach for large scale projects such as this. The reason for this is that developers prefer to share risk and reward for large projects, and in the main do not have long term financial planning or capital that allows them to buy such sites outright. It also brings shared skills, expertise and borrowing capacity, recognising that large and complex projects need a range of investment and delivery partners to work together to be delivered successfully.

Role of the council and degree of control

5.4 With a JV option, the council will retain representation and involvement in decision making as a partner over the long term, so long as it wishes to remain in the partnership or until the development is complete. It would be represented on the JV proportionately to its investment (land and other assets including funds). In setting up the JV, Council Members will be responsible, jointly with the other partners, for setting out:

- Vision for the project;
- Quality of design and placemaking;
- Business plan; and
- Shareholder agreement (this will protect the shareholders' investment in the company; establish a fair relationship between the shareholders and govern how the company is run including decision-making arrangements).

5.5 Cozumel has been consulted on this report and they too favour the corporate joint venture approach.

5.6 In order to facilitate further discussions with Cozumel on this it is recommended that the current Collaboration Agreement be extended by a

year to March 2019.

6. Next steps for delivery of Otterpool Park

6.1 If members agree that the corporate joint venture option is the one to pursue then further detailed financial, commercial and legal advice, including state aid; must be sought before the council commits itself to entering into such an arrangement. The decisions sought by this report do not commit the council to the formation of a joint venture company merely that in principle it is the option to pursue.

6.2 Tenders will be sought for the advice. The estimated cost of legal, financial and commercial advice (specifically to the council, not the collaboration board) is up to £350,000. This figure is based on estimated costs for:

- Legal advice: to include consideration of alternative forms of entity; governance arrangements; funding mechanisms; procurement; contractual terms of the entity and future Development Agreements an strategic planning legal advice; stamp duty; legality/ powers to act; due diligence; (est up to £180,000).
- Financial advice to include: VAT, Corporation tax and SDLT; borrowing/ treasury; financial legal; financial modelling; independent review; loan agreements (est up to £100,000).
- Commercial and delivery: viability assessment; soft market testing; outline business case preparation (est up to £70,000).

6.3 It is recommended that this advice is provided, so cabinet approval is sought for up to £350,000 funding for this purpose.

7. A council development company?

7.1 One of the possibilities canvassed above was for the council to develop the land itself. Although not seen as viable for a project of the scale of Otterpool Park it is considered that for more contained projects, perhaps even parts of Otterpool Park itself, the council should consider exploring the options of forming a development company itself.

7.2 Again detailed advice will have to be sought but it is considered that it would be advantageous to seek advice on this at the same time as seeking advice on the joint venture company. This will avoid two tendering processes and some of the issues involved will be the same.

8. Financial update and Implications

8.1 Cabinet approved funding in June 2016 for planning of Otterpool Park on both the landowner and LPA sides. The estimate for the cost of this work to

December 2019, that is to the point at which the Core Strategy Local Plan has been adopted and outline planning permission determined is:

LPA	£903,800
SDC Landowner	£2,726,900
TOTAL	£3,630,700

The costs of funding this can be met from existing base budget provision (approximately £400,000) and the Otterpool Reserve (£3,200,000) which has been set aside to meet the total costs of activities to the point of the determination of outline planning permission. It should be noted that the costs of delivering the Garden Town, whichever of the options is decided upon, will be subject to a separate financial modelling exercise.

8.2 As a next step Cozumel and the council, and any other future landowners, will need to commit further funds for the project up to the point at which a joint venture (JV) is set up in 2018/2019 (should Cabinet support this as a preferred option). These costs are likely to include:

- Procuring a development partner;
- JV set up costs;
- Preparing reserved matters planning applications;
- Further legal and financial advice; and
- Business planning.

8.3 A detailed report on the viability of the project, long term return to the council and likely future costs will be brought to Cabinet in the spring, following completion of viability work undertaken by Montagu Evans for the Collaboration Board, and Savills for the council.

8.4 Some funds will also be required to support the development of a bid to the government's Housing Infrastructure Fund (HIF), should Kent County Council's Expression of Interest, in partnership with Shepway District Council, be successful³. The cost of this preparatory work has been included within the bid, so should not incur a net loss to the councils.

9. MIPIM Cannes

9.1 As noted above one of the resolutions at the cabinet meeting of 19 July 2017 was to endorse SDC's attendance at MIPIM in Cannes (minute 25 .5). As the

³ KCC submitted a bid for £281M to the HIF in Sept 2017 for early delivery of a range of infrastructure for Otterpool Park.

Department for International Trade is attending MIPIM it will be able to promote Otterpool Park on the council's behalf, so it has subsequently been decided that the council will not attend MIPIM on this occasion.

10. Risk Management Issues

10.1 A summary of the perceived risks are as follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Unforeseen costs mean project or scale of project is unviable	High	Medium	Early assessment of key costs. Reduce scale and/or secure public sector subsidy.
Failure to extend Collaboration Agreement	High	Medium	Work closely with Cozumel Estates Ltd to understand its position; timely commissioning of legal support.
Cost of £350,000 is not adequate for advice necessary	Medium	Medium	Careful consideration of level of advice needed now rather than later. Share cost of advice wherever possible with landowner partner where it relates to both parties.
Market viability	Medium	Medium	Anticipate fluctuations in market and maximize potential in good times. Do not over provide in infrastructure and make sure the market can support the numbers of units built in each phase.
Failure to agree the most appropriate delivery model with landowner partner(s)	High	Medium	Continue dialogue to ensure objectives of all parties are understood.

10.2 As far as the delivery options are concerned the council is being asked to agree in principle to a particular option, there is no commitment to enter into any binding commitment. All of the options outlined have inherent risks, so these will need to be fully explored and set out in the report on the details of the options.

11. Legal and Financial Comments

11.1 Legal Officer's Comments (Nicola Everden)

This report has been prepared in conjunction with legal and also external legal advice from Pinsent Masons. The legal team will continue to provide advice and where necessary obtain specialist legal advice as the project progresses.

11.2 Finance Officer's Comments (Tim Madden)

The financial implications at this stage are set out within the report. It is important to note that the viability work referred to in the report being carried out by Montagu Evans and Savills will provide an estimate of the future financial return to the council. This is a critical piece of work, as it will inform future decisions on timing, up-front investment and strategic decisions as to how the council wishes to optimise the value out of the development. It will also enable the council to develop its longer term strategies as to how to best utilise the resources deriving from Otterpool Park. The definition of acceptable commercial return, set out in paragraph 2.3, represents a reasonable financial parameter for this stage of the development.

The report itself identifies a sum of £350,000 to commission the appropriate professional advice for the most appropriate vehicle for taking the development forward. As this represents the project moving into a delivery phase, it is feasible to fund this expenditure through borrowing as it is of capital in nature. Technical guidance is being sought in order to fully define the required arrangements however for this work approval is sought to fund this through borrowing and to include this in the capital programme.

12. Diversities and Equalities Implications

This report does not raise any specific diversities and equalities implications.

13. Contact Officer and Background Documents

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

Julia Wallace – Otterpool Park Project Manager,
julia.wallace@shepway.gov.uk, 01303 853248

Andy Jarrett – Head of Strategic Development Projects,
andy.jarrett@shepway.gov.uk, 01303 853

Background documents

Appendices

Appendix 1 – Otterpool Park Strategic Financial Objectives

Appendix 2 – Potential Delivery Structure – contractual joint venture

APPENDIX 1: Otterpool Park – Strategic Financial Objectives

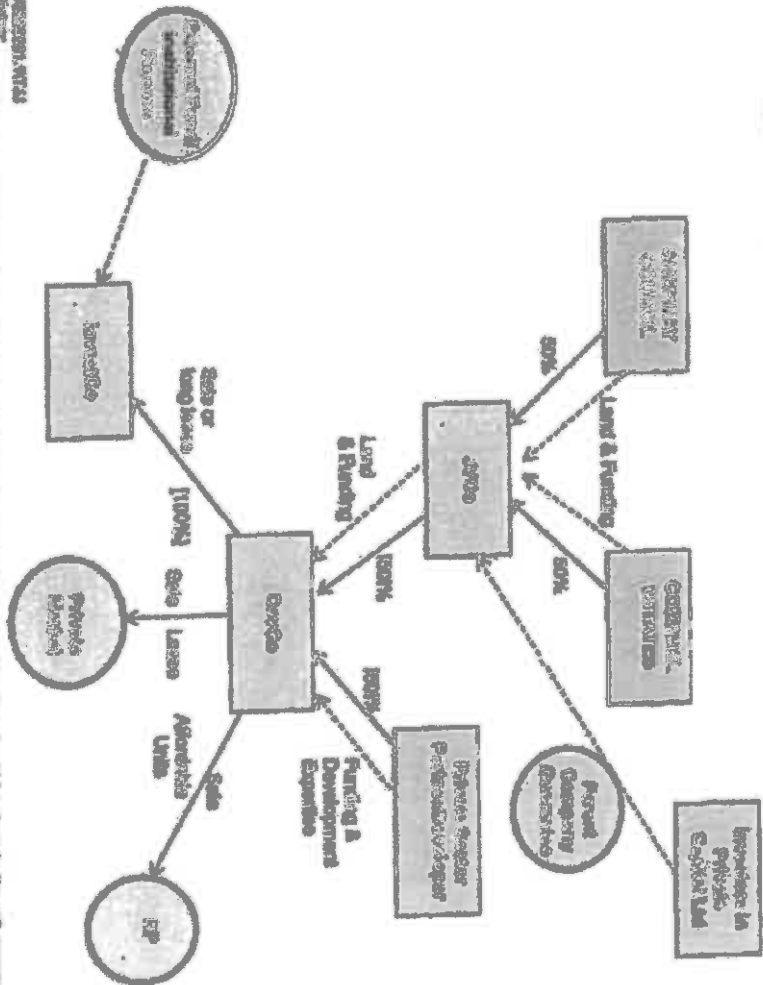
- 1. The purpose of this paper is to set out the strategic financial objectives of the council in relation to the development of Otterpool Park Garden Town. The development of the town is large, complex and will take place over a significant period of time (up to 30 years). As the development proceeds, there will be a number of points at which decisions will need to be made as to the direction the council and the level of its exposure and involvement within the garden town. This will be influenced not only by the status and the nature of the garden town, but also by the financial position of the council at any point in time.**
- 2. There will be a significant amount of financial modelling undertaken in order to determine the commercial return of the development and to manage the financial impact on the council. Much of this work will be iterative and will vary according to a range of factors including those external factors (such as market conditions) which cannot be controlled. Any financial strategy will therefore need to be flexible enough to respond to shorter term fluctuations whilst still giving a longer term horizon to act as a route through the complexities of the development. Appendix 1 shows the types of considerations and options which are possible.**
- 3. At present the council's financial stake within the project is represented by its initial £5 million purchase of the land at Otterpool Park (plus £0.2 million in stamp duty and fees) and an estimated cost of £2.3 million net of other party contributions to achieve outline planning permission. In addition, there will be other significant investment decisions. The process of land assembly will be an expensive one with options being taken out and the provision of infrastructure for a development of this type will be significant. The outgoings of the council will be of a scale not undertaken in recent years and it is therefore important that it is clear as to the underlying financial rationale behind the development.**
- 4. There are key questions which need to be considered when designing the strategic financial objectives:**
 - What is the desire of the council – is it to maximise commercial return or to deliver a quality product with finance being a secondary matter and what is the balance between these two approaches?**
 - Does the council want a significant capital receipt or revenue returns and over what timescales?**
 - How much commercial investment will it wish to have and how much residential and to what extent does the Council wish to share the risk/opportunities with third parties?**
 - What are the longer term sustainability plans for the town?**

- How will the rest of the district benefit from the development?
 - How much is the Council prepared to borrow to facilitate the project?
 - How long is the Council prepared to wait for a positive financial return?
 - What degree of control of the project does the Council wish to retain?
5. The current financial backdrop for the council is one of the availability of historically cheap capital but a medium term revenue shortfall. Any consideration needs to take account of this context but also to be aware of the long term nature of the development. In considering the strategic financial objectives, the following assumptions have been made:
- That a financial return is important to the council
 - That a quality environment is established for the garden town which may conflict with some commercial aspects, but may also raise values there over the longer term
 - The council has a desire to retain a long term stake in the development
 - There is a strong importance attached to the long term sustainability of the council and the development
6. Considering the above, it is suggested the following represent the strategic financial objectives:

- To commit to a long term involvement with the garden town to explore means of generating ongoing revenue streams from commercial, retail and residential elements of the development.
- To recognise the capital input and to release this value to ensure any borrowing costs are sustainable within the financial parameters of the council
- To optimise the resources from the garden town to provide a financial benefit for the whole district
- To work towards an ongoing financially sustainable model for the new town and to avoid, as far as possible, creating unfunded liabilities
- To work with private sector and public sector partners to maximise external funding in support of the project
- To consider at each critical decision point the future financial model with an emphasis on affordability for the council

Appendix 2 – Potential Delivery Structure – contractual joint venture

SHARVAT DISTRICT COUNCIL & COXHEAD ESTATES LTD - OTTERPOOL PASS POTENTIAL DELIVERY STRUCTURE



1 JV Agreement to provide for JVC Co to conclude a 51% agreement that shall entitle JVC Co to enter into a preliminary and an option to acquire the site.

2 JV Agreement to provide for JVC Co to conclude a 51% agreement that shall entitle JVC Co to enter into a preliminary and an option to acquire the site.

3 Obligations on Council and JVC Co to enter into a preliminary and an option to acquire the site.

DATED

2020

(1) THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

(2) OTTERPOOL PARK DEVELOPMENT COMPANY LTD

(3) OTTERPOOL PARK LLP

MEMBERS' AGREEMENT
Relating to Otterpool Park LLP

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THIS MEMBERS' AGREEMENT is made by Deed on

2020

BETWEEN:

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of Civic Centre, Castle Hill Avenue, Folkestone, CT20 2QY ("the **Council**"); and
- (2) **OTTERPOOL PARK DEVELOPMENT COMPANY LTD** (registered number 12158104) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Nominee Company**");

together the "**Members**"; and
- (3) **OTTERPOOL PARK LLP** (registered number OC428493) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Delivery Vehicle**");

together the "**Parties**" and each a "**Party**".

RECITALS:

- (A) The Delivery Vehicle was incorporated in England and Wales as a limited liability partnership on 15th August 2019 under the Act. The Council and the Nominee Company wish to participate as members of the Delivery Vehicle for the purposes of delivering the Otterpool park Garden Town Project ("the Project") which shall (amongst other things)
 - a) Be the planning applicant for the Project delivery.
 - b) If appropriate act as the manager of community infrastructure created as part of the Project.
 - c) Lead and coordinate development activity at the Project site, potentially via subsidiary vehicles.
 - d) Where appropriate, facilitate partnership development arrangements to bring forward housing and employment opportunities at the Project site, including joint ventures with other organisations.
 - e) Where appropriate, hold and manage residential, commercial, agricultural and/or industrial land and buildings at the Project site in advance of, during and following Project delivery (as applicable).
 - f) Lead and coordinate the delivery of such infrastructure works as are necessary as part of Project delivery.
 - g) Commission any necessary professional services relating to either the Council's objectives for the Project and/or the business objectives of the Delivery Vehicle.
 - h) Carry out such trading activities as will be identified in the Delivery Vehicle's Business Plan (which will be subject to periodic update/review/approval)
- (B) In order to facilitate its activities, the Delivery Vehicle may (amongst other things) may take such action as are necessary, conducive or incidental to the furtherance of the objective of delivering the Project.
- (C) The Parties have agreed to execute this Agreement (defined below) to regulate the responsibilities and dealings between them in relation to the conduct of the business, management and affairs of the Delivery Vehicle, and its subsidiaries from time to time.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

This Agreement shall be interpreted in accordance with the provisions of Schedule 1.

2. COMPLETION

On the Effective Date, in relation to the Delivery Vehicle:

- 2.1 the Board shall be formed by the Delivery Vehicle (or shall be deemed to have been formed by the Delivery Vehicle) in accordance with Clause 7;
- 2.2 the Council shall procure that the Council Nominees (note: the nominees are commonly known as "directors") shall each deliver to the Delivery Vehicle a duly signed Letter of Appointment; and
- 2.3 the Nominee Company shall procure that the Nominee Company Nominees shall each deliver to the Delivery Vehicle a duly signed Letter of Appointment;

3. THE PARTNERSHIP AND BUSINESS OF THE DELIVERY VEHICLE AND EACH DELIVERY VEHICLE PARTY

- 3.1 The name of the Delivery Vehicle shall be Otterpool Park LLP or such other name as may be agreed between the Members.
- 3.2 The Council and the Nominee Company shall be Members who are "designated members" of the Delivery Vehicle for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members of the Delivery Vehicle shall not be entitled to any remuneration or reimbursement in connection with their status as designated members.
- 3.3 The Council and the Nominee Company hereby delegate to their respective Nominees from time to time the responsibility for delivering any document on behalf of the Delivery Vehicle which is required to be delivered to the Registrar of Companies in England and Wales in connection with the Delivery Vehicle.
- 3.4 The Delivery Vehicle may from time to time establish subsidiary limited liability partnerships (under and in accordance with the Act) in which the Delivery Vehicle shall be the designated member in addition to a nominee company established by the Delivery Vehicle exclusively for that purpose. The designated members of any such Delivery Vehicle Subsidiary, (and any other Delivery Vehicle Party that is a limited liability partnership from the date of its incorporation) shall not be entitled to any remuneration or reimbursement in connection with their status as designated members of such entities.
- 3.5 The Delivery Vehicle hereby delegates to the Nominees of the board of any such Delivery Vehicle Subsidiary from time to time the responsibility for delivering any document on behalf of such entity which is required to be delivered to the Registrar of Companies in England and Wales in connection with such entity.

4. OBJECTIVES

- 4.1 The following shall be the objectives of the Delivery Vehicle ("**Delivery Vehicle Objectives**"):-
 - 4.1.1 To ensure that the Otterpool Park Garden Town, a settlement that will in time consist of 10,000 dwellings is delivered in accordance with the business plan approved from time to time including but without prejudice to the generality of the following generating the required commercial return to the Members.
- 4.2 The Delivery Vehicle Objectives shall also be the objectives of any subsidiary established by the Delivery Vehicle.

5. **CAPITAL CONTRIBUTIONS AND FUNDING REQUIREMENTS**

- 5.1 The Council is the owner of the entire capital in the Delivery Vehicle as at the date of this Agreement, in the total sum of £1, which has been credited to Council's Capital Account. The Nominee Company has no capital in the Delivery Vehicle as at the date of this Agreement and no Capital Account.
- 5.2 Neither Member shall be required or entitled to provide any additional Capital Contribution to the Delivery Vehicle in addition to the amount set out in Clause **Error! Reference source not found.**, save in circumstances where the Members unanimously agree otherwise. Any agreed additional Capital Contribution shall be made by both Members simultaneously in the same amount and shall be provided on the same terms unless the Members unanimously agree otherwise.
- 5.3 No interest shall be payable on a Member's Capital Contribution.
- 5.4 No Member shall have the right to the return of its respective Capital Contribution save as provided under the terms of Clause 24 (Duration, Termination and Winding Up).
- 5.5 Each Member's liability as a member of the Delivery Vehicle shall be limited to the aggregate amount of that Member's Capital Contribution provided subject to and in accordance with this Clause 5.
- 5.6 The Business Plan shall identify the envisaged funding requirements of the Delivery Vehicle and any Delivery Vehicle Subsidiary.
- 5.7 Save as expressly provided otherwise in this Agreement, no Member shall be obliged to provide any additional Capital Contribution or provide any other funding to the Delivery Vehicle or any Delivery Vehicle Party except without their express prior written consent.

6. **[NOT USED]**

6.1.1 []

7. **CONSTITUTION OF THE BOARD**

7.1 **Constitution and authority of the Board**

- 7.1.1 The Board is hereby constituted by the Delivery Vehicle (acting by its Members) for the purposes of carrying out the Business of the Delivery Vehicle. The Members and the Delivery Vehicle agree to maintain the Board for the duration of this Agreement. The Members and the Delivery Vehicle further agree that the Board shall operate in accordance with this Agreement and the Business Plan.
- 7.1.2 Save to the extent this Agreement expressly provides otherwise, the management and operations of the Delivery Vehicle shall be vested in the Board.
- 7.1.3 Subject to Clauses 7.1.4 and 7.1.5 and the Delegations Matrix, the decision making of the Delivery Vehicle shall be governed by this Agreement, provided that the Board may from time to time delegate to a sub-committee of the Board and/or named individuals, authority to make decisions and/or take action on behalf of the Board (and therefore on behalf of the Delivery Vehicle).
- 7.1.4 Where there is any ambiguity, uncertainty or inconsistency in relation to how any decision of the Delivery Vehicle is to be properly made (in relation to whether it should properly be made by the Members, the Board or otherwise), the matter shall first be referred to the Board for determination, provided that at any time before the Board makes the relevant determination, any Nominee shall be entitled, by notice in writing to the Delivery Vehicle and the other Nominees, to refer such matter to the Council for determination in which case the matter shall be determined by the Council in place of the Board.

7.1.5 Where there is any ambiguity, uncertainty or inconsistency in relation to the Delegations Matrix and the main body of this Agreement, the terms of the Delegations Matrix shall prevail.

7.2 Nominees

7.2.1 The Council shall be entitled to elect and appoint six members to the Board and the Nominee Company one.

7.2.2 Subject to Clauses 7.2.1, 7.2.3, 7.2.4 and 10 each Member is entitled to:-

- (a) remove and replace the Nominees appointed by it and appoint further Nominees at any time;
- (b) appoint persons as alternate nominees to the Board to act as a substitute for any absent Nominee appointed by it (an "**Alternate Nominee**") to do all such things as the absent Nominee would be entitled to do in their capacity as Nominee and to remove or replace any Alternate Nominee appointed by it and, unless otherwise expressly stated or unless the content requires otherwise, subsequent references in this Agreement to a Nominee shall be interpreted as also referring to any Alternate Nominee.

7.2.3 No appointment of a Nominee shall be valid unless that person has accepted and signed a Letter of Appointment or such other terms as the Board may agree from time to time.

7.2.4 Any appointment, replacement or removal by a Member of a Nominee appointed or intended to be appointed by that Member shall be effected by notice in writing to the Delivery Vehicle signed by or on behalf of the relevant Member and, subject to any contrary intention expressed in the notice, shall take effect with effect from that date and time that the notice is delivered to the Delivery Vehicle.

7.2.5 No Nominee shall receive any remuneration or expenses reimbursement from the Delivery Vehicle for its services as a Nominee other than reasonable expenses incurred when carrying out their duties as a Nominee and provided that nothing in this clause shall prohibit the Council from paying or authorising the payment by the Delivery Vehicle of such remuneration as it sees fit to a Nominee.

7.2.6 Unless otherwise determined by the Board, the Board shall have a Chairman and such position shall be occupied either by a Council Nominee or an independent Chairman appointed pursuant to this Clause 7.2.6. The first Chairman shall be appointed at the first meeting of the Board. The Chairman shall not have a second or casting vote. The Parties hereby agree that an independent Chairman may be appointed by way of a unanimous decision of the Board and, in the event that an independent Chairman is appointed, the provisions of this Clause 7.2.6 shall cease to apply for such time as an independent Chairman is so appointed save that it is acknowledged that the independent Chairman shall not be entitled to vote.

7.2.7 The Parties hereby agree that the Nominees shall have a duty of care to act in good faith towards the Delivery Vehicle and to act in the best interests of the Delivery Vehicle and the Business when acting in their capacity as a Nominee.

7.2.8 The Parties hereby agree that the Nominees in acting on behalf of Delivery Vehicle and the nominees in acting on behalf of any Delivery Vehicle Subsidiary shall act in the best interests of the relevant Delivery Vehicle Party on whose behalf they are acting and shall avoid conflicts of interest.

7.3 Delivery Vehicle Parties

7.3.1 The provisions of this Clause 7 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 7 to the Delivery Vehicle shall be construed as being

references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to the nominees on the board of such Delivery Vehicle Party or, where applicable, as being references to directors on the board of a nominee company.

- 7.3.2 The Parties shall procure that the Council Nominees and the Nominee Company Nominees on the Board from time to time shall also be nominees or directors (as applicable) on the board of each Delivery Vehicle Party.
- 7.3.3 For the avoidance of doubt, any reference to a Member in this Clause 7 (insofar as it applies to an Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 7.3.4 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 7 and a nominee company's articles of association, this Clause 7 shall take precedence.

8. BOARD MEETINGS AND RESOLUTIONS

- 8.1 At the first Board Meeting and annually thereafter the Nominees shall agree a programme for Quarterly Board Meetings which shall be supplemented with such additional Board Meetings as may be required to deal appropriately with the business of the Delivery Vehicle or any Delivery Vehicle Party as applicable.
- 8.2 At least 10 Working Days' prior written notice of any proposed meeting of the Board shall be given to each of the Nominees, provided that a shorter period of notice may be agreed by the Nominees. Unless otherwise agreed by all of the Nominees, each such notice shall specify the date, time and place of the meeting (save in those circumstances set out in Clause 8.3.2) and a meeting agenda identifying the matters to be discussed at the meeting and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at a Board Meeting not appearing in the agenda shall not be decided upon unless agreed by all of the Nominees entitled to attend and vote at the meeting.
- 8.3 Unless otherwise agreed by the Board:-
 - 8.3.1 meetings of the Nominees shall be held not less than Quarterly on such dates as they may agree;
 - 8.3.2 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants shall be valid as a Board Meeting provided that at all times at that telephone or video conference (or combination as appropriate) a quorum of the Nominees is able to so participate;
 - 8.3.3 a resolution (which may be in counterparts) in writing (which includes email or other electronic format) signed by two Council Nominees (which, in respect of electronic resolutions shall be by way of electronic signature) entitled to receive notice of and vote at a Board Meeting shall be as valid as if it had been passed at a Board Meeting duly convened and held in person; and
 - 8.3.4 any Nominee is entitled to convene a meeting of the Nominees called in accordance with Clauses 8.1 and 8.2.
- 8.4 The quorum for any meeting of the Board shall be at least two Council Nominees. If there is no quorum within 30 minutes following the start time of the meeting or if there ceases to be a quorum at any time when business is to be transacted during the meeting, the meeting shall be adjourned for 5 Working Days or such other period as the Nominees may unanimously decide;
- 8.5 At any quorate meeting of the Board, each of the Nominees shall have one vote.

- 8.6 Resolutions of the Board shall be passed only by a unanimous vote in favour of the resolution.
- 8.7 Except as otherwise agreed by the Members or the Board pursuant to a resolution of the Members or the Board, all documents, agreements and deeds to be executed by the Delivery Vehicle must be signed by a duly authorised signatory of each Member.
- 8.8 Unless otherwise agreed by all the Nominees, draft minutes of meetings of the Board shall be prepared and sent to each Nominee as soon as practicable after each meeting. Responsibility for the preparation of such draft minutes shall be agreed between the Nominees.

8.9 **Delivery Vehicle Parties**

- 8.9.1 The provisions of this Clause 8 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 8 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party save that any documents, agreements and deeds to be executed by a Delivery Vehicle Party must be duly signed by a member of the relevant Delivery Vehicle Party (as authorised by the relevant Delivery Vehicle Party Board).
- 8.9.2 For the avoidance of doubt, any reference to a Member in this Clause 8 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 8.9.3 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 8 and a nominee company's articles of association, this Clause 8 shall take precedence.

9. **[NOT USED]**

- 9.1.1 []

10. **REMOVAL OF A NOMINEE**

- 10.1 If a Member removes (or is deemed to have removed) a Nominee appointed by it then such Member shall procure that such Nominee vacates office without any claim to the Delivery Vehicle for loss of office or otherwise relating to his removal and the removing Member shall indemnify and hold harmless, to the fullest extent permitted by law, the Delivery Vehicle against any loss, cost, damage, expense or liability suffered or incurred:-

- 10.1.1 by reason of any claim by the vacating Nominee for wrongful or unfair dismissal or redundancy; and
- 10.1.2 in connection with it having been or being a party or having been or being threatened to be made party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative by reason of any of the matters referred to in Clause 10.1.1 above,

provided always that the Delivery Vehicle shall not be so indemnified with respect to any matter resulting from its wilful default, negligence or fraud.

- 10.2 The indemnities contained in this Clause 10 shall continue notwithstanding the termination (in whole or in part) of this Agreement and/or the winding up of the Delivery Vehicle (for any reason whatsoever).

- 10.3 Notwithstanding any other term of this Agreement, a Member shall immediately remove a Nominee appointed by it (by written notice to the Delivery Vehicle and the other Member) if:
- 10.3.1 the Nominee exercises his voting rights in contravention of this Agreement (in which circumstances the Members shall co-operate with each other as appropriate to rectify any adverse consequences of that Nominee's actions or omissions);
 - 10.3.2 the Nominee becomes bankrupt or makes any arrangement or composition with his creditors generally (or any step is taken towards the same);
 - 10.3.3 the Nominee is, or may be, suffering from mental disorder and either:-
 - (a) is admitted to hospital under an application for admission for treatment under the Mental Health Act 1983; or
 - (b) an order is made (by a court having jurisdiction) for the Nominee's detention or for the appointment of a receiver or other person to exercise powers with respect to the Nominee's property or affairs due to the Nominee's mental disorder;
 - 10.3.4 the Nominee resigns from office of Nominee by providing 20 Working Days' written notice to the Delivery Vehicle; or
 - 10.3.5 the Nominee is convicted of any offence of fraud or dishonesty;
- and the relevant Member shall be deemed to have removed a Nominee immediately upon the occurrence of the relevant event listed above.

10.4 **Delivery Vehicle Parties**

- 10.4.1 The provisions of this Clause 10 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 10 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party.
- 10.4.2 For the avoidance of doubt, any reference to a Member in this Clause 10 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 10.4.3 In relation to any nominee company, any reference to a Nominee in this Clause shall be construed as a reference to a Director, and where there is any inconsistency or conflict between the terms of this Clause 10 and a nominee company's articles of association, this Clause 10 shall take precedence.

11. **MEMBERS**

- 11.1 Subject to Clauses 19 (Assignment/Transfer of Interests) and 21 (Default):
 - 11.1.1 a person shall only be admitted to the Delivery Vehicle as a new Member if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence; and
 - 11.1.2 a Member may only resign or withdraw from the Delivery Vehicle (and/or otherwise cease to be a member of the Delivery Vehicle) with the prior written agreement of the remaining Member.

11.2 **Delivery Vehicle Parties**

11.2.1 A person shall only be admitted to a Delivery Vehicle Party as a new member thereof if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence.

11.2.2 A member of a Delivery Vehicle Party may only resign or withdraw from the Delivery Vehicle Party (and/or otherwise cease to be a member thereof) with the prior written agreement of the Members.

12. **MEMBERS' MEETINGS AND RESOLUTIONS**

12.1 Subject to the matters reserved to the Council pursuant to the Delegations Matrix and save to the extent otherwise expressly provided in this Agreement, the Members have vested the management and operations of the Delivery Vehicle in the Board.

12.2 Notwithstanding any other provisions of this Agreement, each Member shall procure (so far as it is legally able) that none of the Consent Matters shall be effected or permitted whether in relation to the Delivery Vehicle or any Delivery Vehicle Party save with the prior written consent of the Council.

12.3 Unless otherwise agreed by the Members acting unanimously, at the first Members' Meeting and annually thereafter the Members shall agree a programme for quarterly Members' Meetings which shall be supplemented with such additional Members' Meetings as may be required to deal appropriately with the business of the Delivery Vehicle or any Delivery Vehicle Party as applicable.

12.4 At any Members' Meeting and additional Members' Meetings (as applicable) the affairs and direction of the Delivery Vehicle shall be discussed and an account of the Delivery Vehicle's Business and progress against the Business Plan shall be given to the Members.

12.5 At least 10 Working Days' prior written notice of any proposed meeting of the Members (in relation to the Delivery Vehicle) shall be given to each Member, provided that a shorter period of notice may be given with the written approval of each Member. Unless otherwise agreed by each Member, each such notice shall specify the date, time and place of the meeting (save in the circumstances set out in Clause 12.9) and a meeting agenda identifying the matters to be discussed and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at the Members' Meeting not appearing in the agenda shall not be decided upon unless each of the Members agrees.

12.6 The quorum for any meeting of the Members shall be all of the Members and there shall be no quorum unless all of the Members are represented by a duly authorised person.

12.7 No business shall be transacted at any Members' Meeting unless there is a quorum.

12.8 Resolutions of the Members of the Delivery Vehicle shall only be passed where each Member votes in favour of the resolution.

12.9 Unless otherwise agreed unanimously by the Members:-

12.9.1 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times a quorum of the Members is able to so participate, shall be valid as a Members' Meeting provided that such medium of communication for the Members' Meeting has been approved unanimously by both Members; and

12.9.2 a resolution in writing (which includes e-mail or other electronic format and which may be in counterparts) signed by each Member (which in respect of electronic resolutions shall be by way of electronic signature) shall be as valid as if it had been passed at a Members' Meeting duly convened and held.

12.10 **Delivery Vehicle Parties**

12.10.1 Subject to Clause 12.10.2, the provisions of this Clause 12 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 12 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party, references to Board shall be construed as being references to the board of such Delivery Vehicle Party; and references to the Delivery Vehicle Business shall be construed as being references to the business of such Delivery Vehicle Party.

12.10.2 For the avoidance of doubt, any reference to a Member in this Clause 12 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party. As set out in the Consent Matters decisions of Members are taken by the Members regardless of whether the relevant decision is to be made by or on behalf of Delivery Vehicle or any other Delivery Vehicle Party.

12.10.3 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 12 and a nominee company's articles of association, this Clause 12 shall take precedence.

13. **[NOT USED]**

14. **MANAGEMENT OF THE DELIVERY VEHICLE'S AFFAIRS**

14.1 **Business of the Delivery Vehicle**

The Members and the Delivery Vehicle shall procure that the business of the Delivery Vehicle shall consist exclusively of the Business.

14.2 **Member Obligations**

14.2.1 Each Member undertakes to the other that, in its capacity as a Member, it shall use its reasonable endeavours (insofar as it is lawfully able by the exercise of its rights and powers) to procure that:-

- (a) it at all times carries out its duties as a Member observing the highest standards of efficiency, economy and integrity;
- (b) it acts in a manner that is consistent with and exercises all voting rights and other powers of control available to it in relation to the Delivery Vehicle and each Delivery Vehicle Party so as to procure (insofar as it is lawfully able by the exercise of such rights and powers) that the Delivery Vehicle and each Delivery Vehicle Party complies with the provisions of any agreements to which it is a party;
- (c) it, the Delivery Vehicle and each Delivery Vehicle Party complies at all times with the Business Plans in all material respects (except to the extent that any of the foregoing contradicts the main body of this Agreement);
- (d) it, the Delivery Vehicle and each Delivery Vehicle Party acts in a manner consistent with achievement of its Objectives (as applicable to such Delivery Vehicle Party, in accordance with the terms of this Agreement);
- (e) it notifies the Delivery Vehicle and each Delivery Vehicle Party immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the Delivery Vehicle and relevant Delivery Vehicle Party (where applicable) and/or the Delivery Vehicle's and relevant Delivery Vehicle Party's (where applicable) business or any arrangement or proposed arrangement between the Delivery Vehicle (or any Delivery Vehicle Party) and any of the Members;

- (f) each Nominee it appoints will, at all times, act in the best interests of the Delivery Vehicle and the Business when acting in its capacity as Nominee and will, at all times, comply with the terms of this Agreement;
- (g) each nominee it appoints to the board of any Delivery Vehicle Party will, at all times, act in the best interests of such Delivery Vehicle Party and its business when acting in its capacity as a nominee and will, at all times, comply with the terms of this Agreement;
- (h) it acts in a manner that shall promote the business of and acts at all times in good faith towards, and co-operates with, the Delivery Vehicle, each Delivery Vehicle Party and the other Members;
- (i) the Delivery Vehicle and each Delivery Vehicle Party maintains true and accurate accounts of all transactions in accordance with UK GAAP, the Act and (to the extent that the same applies to the relevant party) Part 15 of the Companies Act and makes available both draft and final copies of such accounts to Members on reasonable request;
- (j) the Delivery Vehicle and each Delivery Vehicle Party maintains adequate insurance (with a reputable insurer) against risks as determined by the Delivery Vehicle as appropriate including third party liability insurance and otherwise in accordance with Clause 42;
- (k) the Delivery Vehicle and each Delivery Vehicle Party (where applicable) opens the accounts specified in Clause 15 (Financial Matters and Financial Information) in its name with National Westminster Bank plc and that any transactions carried out by the Delivery Vehicle or such Delivery Vehicle Party (as applicable) are carried out through one of these accounts in accordance with the provisions of Clause 15 (Financial Matters and Financial Information);
- (l) the Delivery Vehicle and each Delivery Vehicle Party shall take appropriate action (including, without limitation, pursuing legal proceedings) in the event of negligence or material misconduct on the part of any of its contractors, advisors or agents or any other third party;
- (m) the Delivery Vehicle shall adopt the Business Plan and update the Business Plan at least annually, subject always to Clause 16.1.1 ;
- (n) the Delivery Vehicle and each Delivery Vehicle Party shall not knowingly do anything which does not comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting them, their businesses and the content of the Business Plan;
- (o) any person employed, engaged or contracted by the Delivery Vehicle and each Delivery Vehicle Party complies with the terms of their engagement and (to the extent relevant) the Business Plan;
- (p) the Delivery Vehicle and each Delivery Vehicle Party procures works, equipment, goods and services in accordance with the principles of market testing and competitive process;
- (q) the Delivery Vehicle and each Delivery Vehicle Party shall document its decision-making process and maintain appropriate audit trails for decisions made; and
- (r) the Delivery Vehicle and (to the extent applicable) each Delivery Vehicle Party complies with the Delivery Vehicle Policies in all material respects.

14.3 Delivery Vehicle Obligations

- 14.3.1 The Delivery Vehicle shall comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting the Delivery Vehicle, its Business and the content of the Business Plan.
- 14.3.2 Without prejudice to the provisions of Clause 14.2, the Delivery Vehicle undertakes to the other Parties to this Agreement to use all reasonable endeavours to enforce the terms of any agreements to which the Delivery Vehicle is a party from time to time, save where the Board resolves that to enforce the terms of any such agreement is not in the best interests of the Delivery Vehicle.
- 14.3.3 No payment shall be made by the Delivery Vehicle and no cheque or payment instruction of the Delivery Vehicle shall be signed other than in accordance with the mandates (general or specific) authorised by the Board from time to time and subject to the Consent Matters and the Delegations Matrix.
- 14.3.4 The Delivery Vehicle shall conduct its Business and affairs in a proper and efficient manner for its own benefit:-
- (a) in accordance with the Consent Matters and the Delegations Matrix;
 - (b) in accordance with the Delivery Vehicle Policies;
 - (c) in a manner consistent with its Objectives;
 - (d) in a manner consistent with achieving value for money under its procurement activities; and
 - (e) otherwise in accordance with the terms of this Agreement.
- 14.3.5 The Delivery Vehicle shall at all times exercise its powers and shall use best endeavours to comply with the Business Plan (for the avoidance of doubt including any outlined or detailed planning obligations contained in them) in all material respects (except to the extent that the same contradicts the terms of the main body of this Agreement).
- 14.3.6 The Delivery Vehicle shall, if it requires any statutory or third party approval, consent or licence for the carrying on of its Business in the places and in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain, comply with and maintain the same in full force and effect.

14.4 Delivery Vehicle Parties

- 14.4.1 The Members and the Delivery Vehicle (insofar as they are able by the exercise of their rights and powers) shall procure that each Delivery Vehicle Party shall (from the date of its incorporation) comply with the provisions of Clause 14.3 as if it applied *mutatis mutandis* to each Delivery Vehicle Party, provided that references in Clause 14.3 to:-
- (a) the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party;
 - (b) the Board shall be construed as being references to the board of nominees of such Delivery Vehicle Party;
 - (c) Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party;
 - (d) the Delivery Vehicle's Business shall be construed as being references to the Delivery Vehicle Party's business;

- (e) the Objectives shall be construed as being references to the Objectives of the relevant Delivery Vehicle Party; and
- (f) the Business Plan shall be construed as being references to the Business Plan insofar as they apply to the relevant Delivery Vehicle Party.

14.4.2 In relation to a nominee company, where there is any inconsistency or conflict between the terms of this Clause 14.4 and a nominee company's articles of association, this Clause 14.4 shall take precedence.

14.5 **Delivery Vehicle Authority**

Subject always to the provisions of this Agreement, the Delivery Vehicle shall have full power and authority to carry out all and any of the Objectives of the Delivery Vehicle and do all acts and things which the Delivery Vehicle may in its absolute discretion consider necessary or desirable (including, without limitation, executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the Business.

15. **FINANCIAL MATTERS AND FINANCIAL INFORMATION**

15.1 The Delivery Vehicle shall (and shall procure that each Delivery Vehicle Party shall), in relation to its financial statements, adopt accounting policies and/or principles in accordance with Generally Accepted Accounting Practice in the UK ("**UK GAAP**") or its successors and shall comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) Part 15 of the Companies Act.

15.2 Each of the Members shall be entitled to:-

15.2.1 examine (and take copies of) at any time upon the provision of reasonable notice all documents, information, records, separate books and accounts of any description held by the Delivery Vehicle and each Delivery Vehicle Party and each Member shall be allowed access to the building premises of any Delivery Vehicle Party for these purposes;

15.2.2 be supplied with all information regarding the Business, including (without limitation) monthly management accounts and operating statistics records and other trading and financial information relating to the Delivery Vehicle and the other Delivery Vehicle Parties, in such form as the Members may reasonably require; and

15.2.3 be kept properly informed about the business and affairs of the Delivery Vehicle and each Delivery Vehicle Party.

15.3 The Delivery Vehicle's annual budget for each Accounting Period shall form part of the Business Plan and shall be reviewed by the Board at least every three months.

15.4 The Delivery Vehicle and each Delivery Vehicle Party shall at all times keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its business.

15.5 The Delivery Vehicle shall supply each of the Members with the following information:-

15.5.1 the management accounts for each Delivery Vehicle Party for each Accounting Period forthwith on their completion; and

15.5.2 the audited statutory accounts of the Delivery Vehicle and each Delivery Vehicle Party for each Accounting Period as soon as practicable and, at the latest, by four months after the Accounting Period to which they relate.

- 15.6 Notwithstanding the provisions of Clause 29 (Confidential Information and Freedom of Information):-
- 15.6.1 each Member may disclose information received from the Delivery Vehicle, any Delivery Vehicle Party or a Nominee to its auditors and/or (in the case of the Council), to its external auditors; and
- 15.6.2 the Delivery Vehicle and each Delivery Vehicle Party shall permit all records thereof to be examined and copied from time to time by a Member's auditor and its or their representatives and/or by the Council's external auditors (or their representatives).
- 15.7 Without prejudice to Clause 21 (Default), a Member shall immediately notify the other in writing if it becomes aware of anything which it considers (acting reasonably) is likely to adversely affect its ability to comply with its obligations in accordance with this Agreement.

16. BUSINESS PLAN AND PROGRESS MONITORING

16.1 Business Plan

- 16.1.1 The Board shall, every five years prepare (or procure the preparation of), finalise, agree and circulate a draft Business plan (the 'Initial Business plan') to the "**Approving Person**" being the Council
- 16.1.2 The Board shall annually, prepare (or procure the preparation of), finalise, agree and circulate a draft Further Business Plan to the "**Approving Person**", being the Council.
- 16.1.3 The Approving Persons shall use all reasonable endeavours to seek to agree such draft Further Business Plan (making any amendments they may unanimously agree) and to adopt it as the formal Business Plan within 30 Working Days of the date it is first circulated to the Approving Persons.
- 16.1.4 The draft Further Business Plan circulated under Clause 16.1.2 (with such amendments thereto as may be agreed by the Approving Persons) shall replace the then current Business Plan as the formal Business Plan of the Delivery Vehicle upon the later of:-
- (a) the start of the period to which it relates; and
 - (b) the date of the Approving Persons approval to it in accordance with Clause 16.1.3.
- 16.1.5 Until such time as it is replaced in accordance with Clause 16.1.4, the Business Plan that has most recently been adopted as the formal Business Plan pursuant to Clause 16.1.4 shall continue to be the formal binding Business Plan.
- 16.2 Progress against each Business Plan shall be reviewed at meetings of the Board called in accordance with Clause 8.
- 16.3 For the avoidance of any doubt, any material amendment to the Business Plan shall be effective only if approved by the Council.

17. ACCOUNTS

Current Accounts

- 17.1 The Delivery Vehicle shall establish and thereafter maintain a current account ("**Delivery Vehicle Current Account**") to be utilised by the Delivery Vehicle to hold Delivery Vehicle monies prior to any determination (pursuant to Clause 18) of apportionment of Net Profit.
- 17.2 The Delivery Vehicle shall establish and thereafter maintain an account ledger in the name of each Member ("**Member's Current Account**") and hold the contents of each Member's Current Account

on trust for the relevant Member. For the avoidance of doubt, the Delivery Vehicle shall not be required to open up a separate bank account for each Member.

- 17.3 The Delivery Vehicle shall credit to each Member's Current Account that Member's share of the Net Profits (if any) in accordance with Clause 18 (Receipts and Profits).
- 17.4 For the avoidance of doubt, the only amounts which shall be credited to a Member's Current Account shall be such amounts as the Board determines in accordance with Clause 18 and there shall be no accrual of any amounts constituting the profits of the Delivery Vehicle during the course of an Accounting Period. Any amounts allocated to the credit of a Member's Current Account which are distributed to that Member shall be debited from the balance of that Member's Current Account ledger.
- 17.5 Subject to Clause 18, the Delivery Vehicle may at any time, where approved by the Council, distribute the whole or part of any amounts allocated as standing to the credit of Members' Current Accounts to the Members. Any such distribution shall be made to the Members in amounts pro-rata to the amounts at that time allocated as standing to the credit of their respective Current Accounts.
- 17.6 The Members shall procure that each Delivery Vehicle Party shall establish and thereafter maintain a Current Account and hold the contents of the Current Account on trust for the Delivery Vehicle.

18. **RECEIPTS AND PROFITS**

Delivery Vehicle Receipts

- 18.1 Subject to Clauses 6.6 and 6.12, where the Delivery Vehicle receives Receipts such money shall be applied by Delivery Vehicle in accordance with the following order of priority:-
- 18.1.1 to discharge any third party debt and/or liabilities; and
- 18.1.2 any remaining balance shall be paid into the Delivery Vehicle Current Account.

Delivery Vehicle Profits

- 18.2 Subject to Clause 18.1 the Net Profits of the Delivery Vehicle shall be apportioned between the Members in accordance with the Member Proportions.
- 18.3 The Board shall decide (having taken the advice of the Auditors, if appropriate) not later than 20 Working Days before the beginning of each Accounting Period what amount (if any) of the Net Profits shall be retained by the Delivery Vehicle in respect of:-
- 18.3.1 reserves for general working capital purposes of the Delivery Vehicle (or another Delivery Vehicle Party) for the following Accounting Period; or
- 18.3.2 reinvestment back into the Delivery Vehicle (or another Delivery Vehicle Party) in accordance with the Business Plan,

and each Member's share of the Net Profits (after deducting any retentions as determined by the Board pursuant to Clauses 18.3.1 and 18.3.2) for any Accounting Period shall be paid to that Member or (depending on the cash flow position of the Delivery Vehicle as the Board determines, if appropriate, having taken the advice of the Auditors) allocated to the credit of the relevant Member's Current Account within 30 days after the signing of the annual audited accounts of the Delivery Vehicle for that Accounting Period.

- 18.4 Subject to Clause 18.5, if it is apparent that there has been over-payment of Net Profit to a Member, the amount of such over-payment shall either be carried forward as a debit on such Member's Current Account or, where the Delivery Vehicle so determines, be repaid on demand by the relevant Member in whole or in part (if in part and if there has been over payments of Net Profits to more than one Member, each such Member shall be liable to contribute such proportion of the repayment to be

made pursuant to this Clause 18.4 as is equal to the proportion of the total overpayment received by it).

18.5 The Delivery Vehicle shall not make any Net Profit distribution under this Clause 18:-

18.5.1 unless there is sufficient cash available;

18.5.2 in circumstances where the same would render the Delivery Vehicle insolvent;

18.5.3 in circumstances where, in the reasonable opinion of the Council, the same would or might leave the Delivery Vehicle with insufficient funds to meet any future contemplated obligations or contingencies;

18.5.4 in circumstances where, and to the extent that, a Member requests that the Delivery Vehicle withholds its share of Net Profit until after it requests payment of such amount (in whole or in part) provided that the withheld share of Net Profit shall continue to accrue to the ledger of the Member's Current Account of the relevant Member and shall not delay or otherwise affect distributions to a Member that has not requested any such withholding of their share of Net Profit. Upon a request for payment of a withheld amount by the relevant Member, the Delivery Vehicle shall distribute the requested amount as soon as reasonably practicable (and in any event within 10 Working Days of the request);

18.5.5 in circumstances where, and to the extent that, the same would be to any Member who has committed a Default Event until the earlier of (i) (where the Default Event is capable of remedy in accordance with this Agreement) remedy of the Default Event; or (ii) waiver by the Non-Defaulting Member of the Default Event; or

18.5.6 in a manner which would constitute a distribution in specie.

19. **ASSIGNMENT/TRANSFER OF INTERESTS**

19.1 **General prohibition on transfers**

Save as expressly provided for in this Agreement, a Member shall not sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of all or any part of its rights and obligations under this Agreement, or voluntarily dissolve or voluntarily withdraw or resign as a member of the Delivery Vehicle.

19.2 **Permitted Intra-group transfers**

19.2.1 Notwithstanding any other provision of this Agreement, the Council may at any time transfer the whole (but not part only) of its Member Interest to a Public Sector Body provided that:

(a) prior to any such transfer taking place, the Council shall procure that the transferee shall execute and deliver to the Nominee Company and the Delivery Vehicle a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 4 (Deed of Adherence); and

(b) if the first transferee or any subsequent transferee (in each case being, as at the date of such transfer to it, a Public Sector Body) ceases, at any time thereafter to be a Public Sector Body, the Council (or, where the Council is no longer existing in law, any successor body thereof) shall procure that such entity will, immediately prior to so ceasing, transfer all of the Member Interest held by it to such other Public Sector Body that is nominated by the Council (or its successor, as applicable) subject to the Nominee Company's prior written approval thereto (such approval not to be unreasonably withheld or delayed).

19.3 **Permitted Transfers to a Third Party**

19.3.1 Save as provided in Clause 19.2 or as otherwise expressly agreed in writing by the Members, no transfer of any Member Interest, in whole or part shall take effect:

- (a) in circumstances where the proposed transferee is not resident in the United Kingdom for the purposes of UK taxation;
- (b) to a Prohibited Party; and/or
- (c) in circumstances where the proposed transferee has not executed a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 4 (Deed of Adherence).

19.4 **Residency**

The Members agree and undertake that they shall remain resident in the UK for the purposes of UK taxation and each Member agrees to indemnify and keep the other Member indemnified for any direct loss; liability; cost; claim; and/or expense whatsoever suffered or incurred as a result of any breach of this undertaking.

20. **[NOT USED]**

20.1 []

21. **DEFAULT**

21.1 The following events shall each be a "**Default Event**":-

21.1.1 in the case of the Council only, the Council commits a Material Breach, and such event shall be a "**Council Default Event**";

21.1.2 in the case of the Nominee Company:

- (a) the Nominee Company commits a Material Breach;
- (b) the Nominee Company is insolvent within the meaning of paragraph (1) of section 123 of the Insolvency Act 1986 and for the purposes of paragraph 1(a) of Section 123 of the Insolvency Act 1986 the amount of £750 shall be replaced by £10,000;
- (c) the Nominee Company ceases payment on all or any class of its debts or a moratorium is agreed or declared in respect of its indebtedness;
- (d) the Nominee Company enters into a voluntary arrangement with any of its creditors as is described in the relevant insolvency legislation or any step (including any corporate action, legal proceedings or other procedure or step) is taken with a view to a composition, assignment, reconstruction or arrangement with any of its creditors, or it enters into such composition, assignment or arrangement (other than a scheme of arrangement which is a bona fide business reorganisation not in any way linked or pursuant to any financial difficulty);
- (e) a petition is presented for the winding-up, administration or dissolution (except for the purposes of and followed by a bona fide solvent commercial reorganisation, amalgamation or reconstruction) of the Nominee Company (other than a frivolous or vexatious petition); and
- (f) a liquidator, provisional liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or other similar officer is appointed in respect of any of the assets and/or undertaking or any part thereof of the Nominee Company;

- (g) the enforcement of any security over any material assets of the Nominee Company;
- (h) any litigation, arbitration or administrative proceedings are successfully concluded against (and successfully concluded in this Clause 21.1.2(h) shall mean that the relevant judge, arbitrator or relevant decision making individual or body finds in favour of the claimant) the Nominee Company which in the Council's opinion (acting reasonably) will have a material adverse effect on the activities or business of the Council or the Delivery Vehicle or any Delivery Vehicle Party;
- (i) the Nominee Company is in the reasonable opinion of the Council or the Delivery Vehicle or any Delivery Vehicle Party, determined no longer to be resident in the United Kingdom for the purposes of UK taxation;

and each such an event shall be a "**Nominee Company Default Event**".

21.2 Consequences of a Default Event

Any Member who has committed a Default Event (the "**Defaulting Member**") shall notify the other (the "**Non-Defaulting Member**") as soon as practicable after becoming aware that a Default Event has occurred and unless the Default Event is waived by the Non-Defaulting Member or remedied in accordance with Clause 21.3 or 21.4, the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.3 The Council's opportunity to remedy

- 21.3.1 If a Council Default Event occurs which is capable of remedy (to be determined by the Nominee Company acting reasonably) the Nominee Company will, within 20 Working Days after becoming aware of the Council Default Event serve a written notice on the Council identifying the Council Default Event ("**Nominee Company Grievance Notice**"). The Nominee Company Grievance Notice shall specify that the Council Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the Nominee Company Grievance Notice (the "**Council Remedy Period**").
- 21.3.2 The Council shall not be required to wait until the Nominee Company Grievance Notice is received before attempting to remedy any Council Default Event.
- 21.3.3 Where a Council Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the Nominee Company within the Council Remedy Period the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.4 Nominee Company's opportunity to remedy

- 21.4.1 If a Nominee Company Default Event occurs which is capable of remedy (determined by the Council acting reasonably) the Council will, within 20 Working Days after becoming aware of the Nominee Company Default Event serve a written notice on the Nominee Company identifying the Nominee Company Default Event (the "**Council Grievance Notice**"). The Council Grievance Notice shall specify that the Nominee Company Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the Council Grievance Notice (the "**Nominee Company Remedy Period**").
- 21.4.2 The Nominee Company shall not be required to wait until the Council Grievance Notice is received before attempting to remedy the Nominee Company Default Event.
- 21.4.3 Without prejudice to any other Nominee Company Default Event(s), where a Nominee Company Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the Council within the Nominee Company Remedy Period, the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.5 Remedy on a Default Event

21.5.1 Each Member undertakes to the other that, in circumstances where it has breached any obligation on its part that is specifically set out in this Agreement and:-

- (a) the Delivery Vehicle and/or other Member (as the case may be) has informed it in writing of the relevant breach and the Member in breach has agreed to enter into discussions regarding a resolution of that breach and/or an out of court settlement in relation to it, the Member in breach hereby agrees to co-operate and act in good faith with the other Parties in relation to such discussions and not to unreasonably prolong such discussions; and/or
- (b) the Delivery Vehicle and/or the other Member (as the case may be) has brought a claim against it in respect of such breach, the Member in breach hereby agrees to co-operate and act in good faith in relation to the conduct of such claim (or defence of it) and not unreasonably prolong the litigation process.

22. DISPUTE/DEADLOCK

22.1 Subject to Clause 22.8, if:

22.1.1 the Nominees by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the Delivery Vehicle which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them at a meeting of the Board; or

22.1.2 the Members by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the Delivery Vehicle which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them,

then such matter shall constitute a "**Deadlock Matter**" and within 20 Working Days after the Deadlock Matter first being presented to the Board or the Members (as applicable), either Member may give notice to the other in writing (a "**Deadlock Notice**") setting out, in detail, its position on the Deadlock Matter and proposed course of action. The Members shall use all reasonable endeavours to resolve the Deadlock Matter within 10 Working Days after receipt of the Deadlock Notice.

22.2 In no circumstances shall any Member or any Nominee create or insofar as it is reasonably able to influence the same, permit to be created or subsist, an "artificial deadlock". For the purposes of this Clause 22, an "artificial deadlock" shall be a deadlock caused by any Member or any Nominee, deliberately and without good reason, voting against or failing to consent to an issue or proposal in any case where the approval of the same is reasonably required to enable the Delivery Vehicle to carry on the Business in a manner consistent with this Agreement, the Business Plan and which does not cause any of the Members to incur any additional liabilities, nor diminish or otherwise materially adversely affect their respective interests in the Delivery Vehicle. An "artificial deadlock" shall be deemed not to be a Deadlock Event for the purposes of this Clause 22.

22.3 Referral to Council Senior Officer

22.3.1 If the Deadlock Matter is not resolved to the reasonable satisfaction of either of the Members within 10 Working Days after receipt of the Deadlock Notice then the Deadlock Matter shall be referred to the Council's Senior Officer.

22.3.2 If the Council's Senior Officer resolves a Deadlock Matter referred to them pursuant to Clause 22.3.1, they will as soon as practicable draft and sign a statement setting out the terms of such resolution and serve the same on the Delivery Vehicle. Following receipt of such statement by the Delivery Vehicle, the Nominees shall procure that such resolution is fully and promptly carried into effect.

22.3.3 If the Council's Senior Officer does not resolve the Deadlock Matter within 20 Working Days then the Deadlock Matter shall be referred back to the Members and the provisions of Clause 22.4 shall apply.

22.4 Referral to Expert

22.4.1 If the Members agree the Deadlock Matter is reasonably capable of being determined by an appropriate Expert then it shall be referred by the Members to an appropriate Expert and the provisions of Clauses 22.4.2 and 22.4.3 shall apply. Where the Members are unable to agree whether the matter is reasonably capable of being determined by an appropriate Expert within 5 Working Days of the referral referred to in Clause 22.3.3 Clause 22.5 shall apply, and the Members shall refer the Deadlock Matter to mediation.

22.4.2 The Expert shall act as an independent and impartial expert and not as an arbitrator and shall be entitled to seek and rely upon such other independent professional advice and assistance as he shall in his absolute discretion deem desirable when considering the Deadlock Matter. The Expert shall be required to reach his decision and notify this decision to the Members within 30 Working Days of the date of his appointment or such other date as agreed by both Members in writing. The decision of the Expert (including his decision as to the payment of his fees) shall be final and binding upon the Members without appeal (provided it is notified to the Members within the specified or agreed timescale) and the Members shall implement such decision in relation to the Delivery Vehicle and its Business as soon as reasonably practicable after the Expert informs the Members of his decision.

22.4.3 If the Expert relinquishes his appointment or dies or if it becomes apparent that he shall be unable to complete their duties under their appointment then any Member may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society of England and Wales or the Institute of Chartered Accountants in England and Wales (as appropriate to the subject of the Deadlock Matter) for a substitute to be appointed in the Expert's place (which procedure may be repeated as many times as necessary).

22.4.4 For the avoidance of doubt, the Members shall bear their own costs in respect of the process set out in this Clause 22.4.

22.4.5 The Members agree that matters not suitable for determination by an Expert shall include (but not be limited to) decisions relating to:-

- (a) the Business of the Delivery Vehicle (which is a subjective decision regarding the activities and Objectives of the Delivery Vehicle (and not one of fact) and which shall not be appropriate for third party determination); and
- (b) any decision to adopt, amend or update any Business Plan.

22.5 Mediation

22.5.1 If the Members agree that the Deadlock Matter is not suitable for decision by an Expert or if the Members are unable to reach agreement on this point within 10 Working Days of this matter being first presented to the Members or if the Expert fails to notify the Members of his/her decision within the specified or agreed period as set out in Clause 22.4.2, then the Members shall attempt to settle the Deadlock Matter by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Members, the mediator will be nominated by CEDR. To initiate the mediation a Member must give notice in writing ("**Mediation Notice**") to the other Member requesting a mediation. A copy of the request should be sent to CEDR. The mediation will take place in London, and will start not later than 20 Working Days after the date of the Mediation Notice.

22.5.2 If the dispute is not settled by mediation within 40 Working Days of commencement of the mediation or within such further period as the Members may agree in writing, then the provisions of Clause 22.6 shall apply.

22.6 **Deadlock Event**

22.6.1 If a Deadlock Matter relating to the Delivery Vehicle has been referred to mediation pursuant to Clause 22.5 and the Deadlock Matter has not been resolved within the relevant time period specified in Clause 22.5, then the Deadlock Matter shall crystallise into a "**Deadlock Event**" in relation to the Delivery Vehicle and the provisions of Clause 24 shall apply.

22.7 **Good faith**

Each of the Members hereby covenants with and undertakes to the other at all times to act in good faith towards each other and the Delivery Vehicle and each Delivery Vehicle Party in connection with this Agreement generally and the performance of their respective obligations under it.

22.8 **Matters not giving rise to a Deadlock Matter**

22.8.1 This Clause 22 shall not apply to (and no Deadlock Matter shall arise in relation to):-

- (a) any decision to amend the Objectives; or
- (b) any decision to amend this Agreement;
- (c) any proposed variation to or adoption of the Business Plan,

which in the absence of a unanimous decision to amend, shall remain as drafted.

22.9 **Delivery Vehicle Parties**

22.9.1 The provisions of Clause 22 shall apply *mutatis mutandis* to each Delivery Vehicle Party (save for a nominee company, in relation to which this Clause 22 shall not apply), provided that references in Clause 22 to:-

- (a) the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party;
- (b) Board shall be construed as being references to the board of nominees of such Delivery Vehicle Party;
- (c) references to Nominees shall be construed as being references to the nominees on the board of such Delivery Vehicle Party;
- (d) the Delivery Vehicle's Business shall be construed as being references to the Delivery Vehicle Party's business;
- (e) the Objectives shall be construed as being references to the Objectives of the relevant Delivery Vehicle Party; and
- (f) the Business Plan shall be construed as being references to the Business Plan insofar as they apply to the relevant Delivery Vehicle Party,

provided that any reference to a Member in this Clause 22 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.

23. **[NOT USED]**

23.1.1 []

24. **DURATION, TERMINATION AND WINDING UP OF THE DELIVERY VEHICLE PARTIES**

24.1 The winding up procedure set out in this Clause 24 ("**Winding Up Procedure**") shall apply on the occurrence of any of the following "**Termination Events**":-

24.1.1 a Deadlock Event occurring under Clause 22.6, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group;

24.1.2 any Default Event occurring which is not capable of remedy or is not remedied or waived by the Non-Defaulting Member in accordance with Clauses 21.3 or 21.4, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group;

24.1.3 the insolvency, dissolution or liquidation of any Delivery Vehicle Party (the "**Insolvent Delivery Vehicle Party**") (other than for the purposes of an amalgamation or reconstruction), in which case the Winding Up Procedure shall apply to the relevant Insolvent Delivery Vehicle Party only;

24.1.4 the written agreement of the Members to voluntarily wind up the relevant Delivery Vehicle Party or Delivery Vehicle Parties, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group; and

24.1.5 the thirtieth anniversary of the Effective Date (save in circumstances where, prior to such thirtieth anniversary, the Members agree in writing to extend this Agreement by an additional period of not more than 10 years), in which case the Winding Up Procedure shall apply in respect of the Delivery Vehicle Group.

24.2 **Wind Up Transfers and Winding Up Procedure**

On the occurrence of any Termination Event, each Delivery Vehicle Party and the Members shall procure that, and shall do all such acts and execute all such documents as may be necessary to ensure that the Winding Up Procedure set out in this Clause 24 is followed.

24.3 **Consequences of Termination Events (Deadlock Event)**

24.3.1 Subject to and without prejudice to Clause **Error! Reference source not found.**, on the occurrence of a Deadlock Event, each Member shall have the option to offer to purchase the Member Interest held by the other Member in accordance with the terms of this Clause 24.3.

24.3.2 Within 20 Working Days of the occurrence of a Deadlock Event ("**Deadlock Offer Period**") each Member shall have the right to deposit at the registered office of Delivery Vehicle and addressed to the Board, a Sealed Bid in writing under which that Member shall unconditionally offer to purchase all (but not some only) of the Member Interest held by the other Member at the cash price, payable on completion of the purchase and sale of the relevant Member Interest, stated in the bid.

24.3.3 The Sealed Bids shall be opened by the Board at the expiry of the Deadlock Offer Period or if earlier once each Member has deposited a Sealed Bid at the registered office of the Delivery Vehicle in accordance with Clause 24.3.2.

24.3.4 Subject to Clause 24.3.5, the Member who shall deposit the Sealed Bid which names the highest price within the Deadlock Offer Period shall become bound to purchase and the other Member shall become bound to sell its Member Interest at the price stated in such bid and in accordance with Clauses 24.3.2 and 24.5 and the provisions of Clauses 24.5.4 and 24.6 shall not apply.

- 24.3.5 In the event that a single Sealed Bid is received by the expiry of the Deadlock Offer Period, the price payable shall be the higher of the price stated in the Sealed Bid and the valuation by an Expert pursuant to the provisions of paragraph 24.3.6 (subject to the relevant Member's ability to revoke the offer pursuant to Clause 24.3.7).
- 24.3.6 The Board shall instruct an Expert and shall procure that the Expert shall:
- (a) within 30 Working Days after the expiry of the Deadlock Offer Period determine the Member Interest Value of the relevant Members' Member Interest and notify the Board; and
 - (b) within 5 Working Days of such notification by the Expert, notify the purchasing Member of the Member Interest Value of the relevant Member's Member Interest determined by the Expert pursuant to this Clause 24.3.6.
- 24.3.7 In the event that the Member Interest Value determined pursuant to Clause 24.3.6 exceeds the price stated in the Sealed Bid, the relevant Member shall have 10 Working Days from the notification pursuant to Clause 24.3.6(b) (the "**Revocation Period**") to revoke the offer by serving written notice on the Delivery Vehicle (the "**Revocation Notice**"). If the Revocation Notice is served within the Revocation Period the provisions of Clause 24.3.9 shall apply.
- 24.3.8 The costs of any Expert and any professionals consulted by the Delivery Vehicle pursuant to Clause 24.3.6 shall be borne by the Delivery Vehicle.
- 24.3.9 Where, neither Member exercises the option to purchase the other Member's Member Interest pursuant to this Clause 24.3 or where a Member has revoked its offer to purchase the other Member's Member Interest pursuant to Clause 24.3.7, the Winding Up Procedure set out in Clause 24.5.4 shall apply in respect of the Delivery Vehicle Group.

24.4 **Consequences of Termination Events (Default Event)**

- 24.4.1 Subject to and without prejudice to Clause **Error! Reference source not found.**, on the occurrence of a Default Event which is not capable of remedy or is not remedied or waived by the Non-Defaulting Member in accordance with Clauses 21.3 or 21.4 ("**Default Termination Event**") the Non-Defaulting Member shall have the option to purchase the Member Interest held by the Defaulting Member in accordance with the provisions of this Clause 24.4.
- 24.4.2 If the Non-Defaulting Member wishes to acquire the Defaulting Party's Member Interest it shall give notice in writing of such intention to the Board and the Defaulting Member within 20 Working Days of the Default Termination Event ("**Default Offer Period**").
- 24.4.3 In the event that the Non-Defaulting Member serves a written notice pursuant to Clause 24.4.2, the Board shall instruct an Expert to determine the Member Interest Value of the Defaulting Party's Member Interest and to notify the Board of such determination within 30 Working Days of the date of written notice issued pursuant to Clause 24.4.2.
- 24.4.4 The price payable by the Non Defaulting Party shall be the Member Interest Value determined by an Expert minus a sum equal to ten per cent (10%) of the Member Interest Value so determined, save that where the Termination Event arises pursuant to Clause 21.1.2(h), the deduction of a sum equal to ten per cent (10%) of the Member Interest Value shall not apply.
- 24.4.5 Where, on the occurrence of a Default Event, the Non-Defaulting Member does not exercise its option to purchase the Member Interest held by the Defaulting Member pursuant to this Clause 24.4, the Winding Up Procedure set out in Clause 24.5.4 shall apply in respect of the Delivery Vehicle Group.

24.5 Transfer of Member Interest

- 24.5.1 The price determined pursuant to clauses 24.3 or 24.4 (as applicable) shall be known as the "**Purchase Price**" for the purpose of this Clause 24.5.
- 24.5.2 On completion of a purchase by one Member of another Member's Member Interest:
- (a) the Purchase Price shall be paid by telegraphic transfer to a bank account designated by the relevant Member;
 - (b) duly executed deeds of novation in relation to the relevant Member Interest in the form agreed in writing between the Members shall be delivered to the purchasing Member; and
 - (c) the selling Member shall execute, deliver and do all such other deeds, documents, acts and things as may be necessary in such form as the purchasing Member may reasonably request to complete the transfer and to ensure that the relevant Member Interest passes with full title guarantee and free from any option, lien, charge, equity or other encumbrance and together with all rights and liabilities attaching to the relevant Member Interest at the date of such transfer.
- 24.5.3 The completion of a transfer or novation of a Member Interest (as the case may be) shall take place at the registered office of the Delivery Vehicle, or at such other address as may be agreed between the Members, as soon as reasonably practicable following the date of the determination of the Purchase Price.
- 24.5.4 In circumstances where, pursuant to the terms of this Agreement the Winding Up Procedure shall apply and the option to acquire the Member Interest of the other Member pursuant to Clauses 24.3 and 24.4 is not exercised, the Parties shall procure that (notwithstanding any other term of this Agreement) the following procedure shall apply in respect of the relevant Delivery Vehicle Party or Delivery Vehicle Parties specified in Clause 24.1 (each a "**Winding Up Delivery Vehicle Party**").
- (a) properties already transferred to the Delivery Vehicle Group shall be developed out/completed (or sold if applicable) where possible in accordance with the Business Plan;
 - (b) no further contracts for works or otherwise to third parties will be awarded or entered into save as required to complete such works and realise development proceeds;
 - (c) no further activities or operations of the Winding Up Delivery Vehicle Party shall be conducted except as required pursuant to and in accordance with this Clause 24.5;
 - (d) unless the board of the Winding Up Delivery Vehicle Party agrees otherwise (taking into account the provisions of Clause 24.6(b) and acting in the best interests of the Winding Up Delivery Vehicle Party) the Parties shall use all reasonable endeavours to procure the termination of all other agreements and contracts to which the Winding Up Delivery Vehicle Party is party provided that such termination shall not constitute a breach of the relevant contract; and
 - (e) where the Delivery Vehicle is a Winding Up Delivery Vehicle Party, a Winding Up Practitioner shall be appointed in accordance with Clause 24.6, to ensure that the Partnership Assets shall be distributed in accordance with Clause 24.6 and Clause 25.

24.6 **Winding Up Practitioner's appointment**

24.6.1 **Winding Up of Delivery Vehicle**

Where the Delivery Vehicle is a Winding Up Delivery Vehicle Party, a Winding Up Practitioner shall be appointed in respect of the Winding Up Delivery Vehicle Parties within 30 Working Days of the date upon which Clause 24.1.3 first applies in respect of the Delivery Vehicle, and shall be instructed to wind up the Delivery Vehicle and its Business (and the business of each Winding Up Delivery Vehicle Party) in an efficient manner and to ensure that its Partnership Assets (and those of the other Winding Up Delivery Vehicle Parties) shall be distributed in accordance with Clause 25.

24.6.2 **Other Delivery Vehicle Party Winding Up**

Where any other Delivery Vehicle Party is a Winding Up Delivery Vehicle Party (in circumstances where the Delivery Vehicle is not a Winding Up Delivery Vehicle Party), a Winding Up Practitioner shall be appointed in respect of such Delivery Vehicle Party within 30 Working Days of the date upon the later of the relevant Termination Event first occurs and, if applicable, the date upon which Clause 24.1.3 first applies in respect of such Delivery Vehicle Party, and shall be instructed to wind up the relevant Delivery Vehicle Party and its business (only) in an efficient manner and to ensure that its Partnership Assets shall be distributed in accordance with Clause 25.

24.7 **Consequences of Termination Events (Voluntary winding up or effluxion of time)**

Where a Termination Event arises pursuant to Clause 24.1.4 or 24.1.5, the Parties will take such steps as are reasonably required (including transferring relevant part(s) of the Development Site, if appropriate) to reflect the agreed long term strategy contained in the Business Plan.

25. **DISTRIBUTION OF ASSETS**

25.1 In relation to any return of capital or assets to Members, including, but not limited to, following the completion of the process set out in Clause 24.6 in relation to the Delivery Vehicle or Delivery Vehicle Party, subject to:-

25.1.1 the Act, the Regulations, the Companies Act 2006 and the Insolvency Act 1986; and

25.1.2 the terms of any third party funding;

(save as otherwise agreed in writing by the Members) the Parties shall procure that and the Members shall exercise all voting rights and other powers of control available to them to procure that any such Partnership Assets, capital or assets shall be distributed in the descending order of priority and in the proportions set out in Clause 25.

25.2 The distributions and order of priority in relation to Delivery Vehicle shall be as follows (to the extent not already paid):-

25.2.1 repayment of the expenses of the winding up (if any);

25.2.2 repayment of any third party debt;

25.2.3 distribution to each Member of amounts allocated as being credited to its Current Account;

25.2.4 repayment to each Member of its Outstanding Capital Contribution; and

25.2.5 subject to Clause 25.3, distributions of profits due to the Members pro rata to their Member Proportions.

25.3 For the purposes of section 74 Insolvency Act 1986 as it is applied to limited liability partnerships under the Act and the Regulations no Member is liable to contribute any amount to the assets of the Delivery Vehicle on a winding up to cover any of the matters set out in that section.

25.4 Where a payment is made pursuant to Clause 25.3, the Parties agree that the Termination Event shall not give rise to any other remedy to the Nominee Company, Delivery Vehicle or any Delivery Vehicle Party.

26. **INTELLECTUAL PROPERTY**

26.1 Any Intellectual Property created or discovered by a person while a Member, or employed or engaged by a Member, which is being used or adopted for use by an Delivery Vehicle Party ("**Relevant Intellectual Property**"), shall be disclosed to such Delivery Vehicle Party immediately and shall belong to and be the absolute property of such Delivery Vehicle Party. This does not affect any rights of a Member, who is also an employee of the Delivery Vehicle, under the Patents Act 1977.

26.2 To the extent that the legal title in any Relevant Intellectual Property fails to vest in the relevant Delivery Vehicle Party, the relevant Members agree to hold such rights on trust for such Delivery Vehicle Party. Each Party further agrees to use his reasonable endeavours to do (or procure the doing of) all such acts and execute (or procure the execution of) all such documents as may be reasonably required by each Delivery Vehicle Party (the relevant Delivery Vehicle Party paying any reasonable expenses incurred by doing so) in order to vest the legal title in the relevant Delivery Vehicle Party.

26.3 If requested by an Delivery Vehicle Party (and at its expense), each Member shall give all necessary assistance to such Delivery Vehicle Party to enable it to enforce its Intellectual Property rights against third parties and apply for registration of the rights, where appropriate throughout the world, for the full term of those rights.

27. **[NOT USED]**

27.1.1 []

28. **LOCAL AUTHORITY POWERS**

28.1 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as the local authority or local planning authority or as the highway authority or as any other statutory authority and such rights powers duties and obligations under Statutory Requirements may be as fully and effectually exercised as if it were not party to this Agreement and any approval consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval consent direction or authority given under this Agreement and vice versa.

29. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

29.1 During the term of this Agreement and for a period of 3 years after the termination or expiry of the Agreement for any reason whatsoever (the "**Confidentiality Period**"), the Receiving Party (as defined in Clause 29.2) will:-

29.1.1 keep Confidential Information (as defined in Clause 29.2) confidential;

29.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in Clause 29.2) or in accordance with Clauses 29.2 to 29.5; and

29.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement.

29.2 For the purposes of this Clause 29, "**Confidential Information**" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly

or indirectly) by one Party (the "**Disclosing Party**") to another Party ("**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's operations, processes, plans, proposals or intentions, its tenants (both existing and prospective), customers, existing and potential clients, know-how, design rights, trade secrets, any investment, development business or market opportunities and its business affairs.

- 29.3 During the Confidentiality Period, the Receiving Party may disclose Confidential Information to its employees, its own members, contractors, sub-contractors, agents and advisers (and its Group members) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Agreement and may disclose Confidential Information under conditions of confidentiality to its funders, prospective funders, prospective Members of the Delivery Vehicle, prospective funders of any Delivery Vehicle Party, and prospective purchasers of its or their assets (in each case, to the extent reasonably necessary). In each case the permitted recipient of such Confidential Information shall be known as a "**Recipient**". In this Clause 29.3 "**Group**" shall refer to the Council Group, or Nominee Company Group (as the context shall require).
- 29.4 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a Party to this Agreement.
- 29.5 The obligations contained in Clauses 29.2 to 29.4 shall not apply to any Confidential Information which:-
- 29.5.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 29.5.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
 - 29.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 29.5.4 is required to be disclosed by the relevant Party's audited and published accounts or is required to be disclosed to a tax authority in connection with the tax affairs of the Receiving Party; and/or
 - 29.5.5 is required to be disclosed by law or regulation having force of law or for the purposes of proceedings in any court arbitration or any tribunal or is required by any stock exchange or any or a regulatory authority or body or any Government Department to be disclosed.
- 29.6 The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR. For the purpose of Clauses 29.6 to 29.12 (inclusive) only, Information has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in Section 2 of the EIR as appropriate.
- 29.7 Where the Council receives a Request for Information, to the extent that it comprises Information that the Delivery Vehicle or any Delivery Vehicle Party is holding on behalf of the Council (as deemed by FOIA or EIR as the case may be), the Council shall notify the Delivery Vehicle of the requested Information in writing as soon as practicable and the Delivery Vehicle will:-
- 29.7.1 if necessary to identify and / or locate the Information, as soon as reasonably practicable and in any event within 5 Working Days notify the Council in writing of what reasonable additional information or clarification (if any) is required by it (or any relevant Delivery Vehicle Party) in order to enable the Delivery Vehicle or Delivery Vehicle Party to identify and locate the Information requested (which additional information and / or clarification the Council shall obtain and provide as soon as possible); and

29.7.2 provide the Council with a copy of all such requested Information held by the Delivery Vehicle and / or and Delivery Vehicle Party on behalf of the Council in the form that the Council requires (acting reasonably) (or procure the provision of the same to the Council by an Delivery Vehicle Party, where applicable) as soon as reasonably practicable and within 10 Working Days after the Council's notification or provision by the Council of the requested additional information and / or clarification (whichever is the later).

29.8 Where the Council receives a Request for Information in relation to Information relating to this Agreement, the Nominee Company, the Delivery Vehicle, any Delivery Vehicle Party and/or any of the Project Agreement, (and / or any Confidential Information directly or indirectly provided by any one or more of the Nominee Company, Delivery Vehicle, and / or any Delivery Vehicle Party), the Council shall, where reasonably practicable, provide both Nominee Company and Delivery Vehicle in writing with the relevant details of the Request.

29.9 Following any notification under Clause 29.8, the Nominee Company, and Delivery Vehicle (on its behalf and on behalf of each Delivery Vehicle Party) may make written representations to the Council within a period of 5 Working Days from the date of the Council's notification as to whether or not or on what basis Information requested should be disclosed, and if to be withheld, or redacted, to what extent and on what basis and the Council agrees that it shall consider such representations before making its decision on the relevant Request provided always that the Council shall be responsible for determining at its absolute discretion:-

29.9.1 whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and

29.9.2 whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the Nominee Company, Delivery Vehicle or any Delivery Vehicle Party respond directly or allow its subcontractors to reply directly to such a Request for Information in relation to this Agreement or the Council unless expressly authorised to do so by the Council.

29.10 The Delivery Vehicle shall procure that all Information held on behalf of the Council (whether by itself or any other Delivery Vehicle Party) is retained for disclosure for at least 6 years from the date it is required and shall permit the Council between 9am to 5pm on Working Days and on reasonable prior written notice, to inspect such Information as requested from time to time (or procure the same, in relation to Information held by another Delivery Vehicle Party).

29.11 The Delivery Vehicle shall transfer to the Council any Request for Information in relation to this Agreement or the Council received by the Delivery Vehicle as soon as practicable and in any event within 5 Working Days of receiving it (and shall procure that each other Delivery Vehicle Party shall transfer to the Council any Request for Information in relation to this Agreement or the Council received by it as soon as practicable and in any event within 5 Working Days of receiving it.

29.12 The Delivery Vehicle acknowledges (on behalf of itself and every other Delivery Vehicle Party) that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.

30. **RELATIONSHIPS WITH GROUPS**

30.1 Each Party shall procure that any contracts between (i) the Delivery Vehicle and (ii) the Council Group or Nominee Company (as applicable) shall be made on an arm's length commercial basis and on terms that are not unfairly prejudicial to the interests of any other Party. Each Member undertakes to the other to use all reasonable endeavours to ensure that such terms are negotiated and settled in good faith.

30.2 The Council acknowledges and agrees that any approval consent direction or authority given by the Council pursuant to this Agreement shall be exercised independently from the Council's functions as local planning authority or any other statutory function.

31. **[NOT USED]**

[]

32. **ANNOUNCEMENTS**

32.1 Subject to Clause 32.2, no Member shall make nor send any announcement, communication or circular relating to the subject matter of this Agreement unless such Member has first obtained the other Member's written consent to the form and content of such announcement, such consent not to be unreasonably withheld or delayed.

32.2 Clause 32.1 does not apply to an announcement, communication or circular required by Law or by the rules of any stock exchange or by any governmental authority, in which event the Member required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Members as to the content of such announcement.

33. **NOTICES**

33.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause):-

Council	Attention: Head of Paid Service
Nominee Company	Attention: Director of Place
Delivery Vehicle	Attention: the Chairman of the Board

33.2 Subject to Clause 33.3, any notice or other communication shall be deemed to have been served:-if delivered personally, when left at the address referred to in Clause 33.1.

33.3 If a notice is given or deemed given at a time or on a date which is not a Working Day, it shall be deemed to have been given on the next Working Day.

34. **INVALIDITY AND SEVERANCE**

If any provision of this Agreement is held to be invalid, unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, unenforceable or void.

35. **WAIVER**

35.1 The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

35.2 Subject to the provisions of Clauses 21 and 25.4, the Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at Law.

36. **THIRD PARTY RIGHTS**

Save to the extent expressly set out in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce

any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

37. OBLIGATIONS OF THE DELIVERY VEHICLE

To the extent to which it is able to do so by Law, the Delivery Vehicle undertakes with each of the Members that it shall comply with each of the provisions of this Agreement. Each undertaking by the Delivery Vehicle in respect of each provision of this Agreement shall be construed as a separate undertaking and if any of the undertakings is unlawful or unenforceable, the remaining undertakings shall continue to bind the Delivery Vehicle.

38. [NOT USED]

[]

39. ENTIRE AGREEMENT

39.1 This Agreement and the Business Plan set out the entire agreement and understanding between the Parties. Accordingly this Agreement and the Business Plan supersede and extinguish any heads of agreement or memorandum of understanding or other preliminary documents as between the Parties. It is agreed that:-

39.1.1 no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement;

39.1.2 a Party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy in respect of any misrepresentation (whether negligent or otherwise, and whether made before or in this Agreement) or any untrue statement made by any other Party;

39.1.3 this Clause shall not exclude any liability or remedy for fraud or fraudulent misrepresentation by a Party; and

39.1.4 save as expressly set out in this Agreement or in any other agreement or document referred to in this Agreement, no Party shall owe any duty of care to any other Party.

40. AMENDMENTS

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties, provided that the amendment of any provision of this Agreement solely affecting any of the respective rights or obligations of the Parties or either of them inter se shall not require the agreement of the Delivery Vehicle.

41. FURTHER ASSURANCE

41.1 Each Party will:-

41.1.1 execute any document and do anything; and

41.1.2 use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does anything,

reasonably necessary to implement the terms of this Agreement.

41.2 Where there is any contradiction, ambiguity or inconsistency between any of the following documents referred to in this Agreement they shall be interpreted in the following descending order of priority:-

41.2.1 the Consent Matters;

41.2.2 the Delegations Matrix; and

41.2.3 the then current Business Plan.

42. INSURANCE

From the Effective Date the Delivery Vehicle shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the Delivery Vehicle (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value.

43. SUCCESSORS AND ASSIGNS

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

44. LAW

44.1 This Agreement shall be governed by and construed in accordance with English law.

44.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

45. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

46. PREVENTION OF BRIBERY

46.1 The Nominee Company and the Council:-

46.1.1 shall not commit a Prohibited Act;

46.1.2 warrants, represents and undertakes that it is not aware of any improper financial or other advantage being given to any person working for or engaged by the Nominee Company or the Council as the case may be in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Nominee Company or the Council as the case may be before execution of this Agreement;

46.1.3 shall have and comply with Adequate Procedures; and

46.1.4 shall provide evidence of its Adequate Procedures to the Nominee Company or the Council as the case may be within 30 days of written request.

46.2 The Nominee Company and the Council shall operate and maintain through the term of this Agreement an anti-bribery policy (which shall be disclosable to the Nominee Company or the Council as the case may be within 7 days of written request) to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate.

46.3 If any breach of Clause 46 is suspected or known by the Nominee Company or the Council, that Party must notify the Nominee Company or the Council as the case may be immediately.

- 46.4 If the Nominee Company or the Council notifies the other that it suspects or knows that there may be a breach of Clause 46.1 the notifying Party must respond promptly to related enquiries, co-operate with any investigation of the Nominee Company or the Council as the case may be and allow the Nominee Company or the Council as the case may be to audit books, records and any other relevant documentation on request.
- 46.5 The Nominee Company or the Council may, without prejudice to any other rights and remedies available under this Agreement, terminate this Agreement by written notice with immediate effect to the Nominee Company or the Council as the case may be for breach of Clause 46.1 and recover from the Party in breach any loss suffered arising from such termination. In determining whether to exercise the right of termination under this Clause 46, the Nominee Company or the Council as the case may be shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by an individual or a member of the Nominee Company Group or Council Group not acting independently of the Party in breach. The expression "not acting independently of" (when used in this Clause) shall be construed as acting:-
- 46.5.1 with the authority; or
- 46.5.2 with the actual knowledge
- of any one or more of the directors of the Party in breach, or
- 46.5.3 in circumstances where one or more of the directors of the Party in breach ought reasonably to have had knowledge.
- 46.6 Any notice of termination under Clause 46.5 must specify:-
- 46.6.1 the nature of the Prohibited Act;
- 46.6.2 the identity of the party believed to have committed the Prohibited Act; and
- 46.6.3 the date on which this Agreement will terminate.
- 46.7 Any termination under Clause 46.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Party terminating the Agreement.
- 46.8 Any termination under Clause 46.5 as a result of a breach of Clause 46.1 by the Council shall be a Council Default Event and the provisions of Clause 21 shall apply.
- 46.9 Any termination under Clause 46.5 as a result of a breach of Clause 46.1 by the Nominee Company shall be a Nominee Company Default Event and the provisions of Clause 21 shall apply.
- 46.10 For the avoidance of doubt, the Nominee Company and the Council shall be responsible for the acts and omissions of members of the Nominee Company Group and the Council Group (as applicable) and for the purpose of this Clause 46 any act, default or omission of any such group member shall be deemed to be an act, default or omission of the Nominee Company or the Council as applicable.
- 46.11 Delivery Vehicle will, and the Nominee Company and the Council will use all their powers in relation to Delivery Vehicle to ensure that Delivery Vehicle will:-
- 46.11.1 not do or omit to do any act or thing which would constitute a Prohibited Act; and
- 46.11.2 within 30 days of completion prepare and implement an anti-bribery policy to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate and have in place Adequate Procedures; and
- 46.11.3 comply with the Adequate Procedures and the anti-bribery policy.

EXECUTED AS A DEED by the Parties on the date which first appears in this deed.

[NOTE: EXECUTION BLOCKS TO BE INSERTED]

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:-

"Accounting Date"	means 31 March in each year or such other date as the Members may from time to time agree
"Accounting Period"	means any period of 12 calendar months from and including one Accounting Date up to but excluding the next Accounting Date
"Act"	means the Limited Liability Partnerships Act 2000
"Adequate Procedures"	adequate procedures designed to prevent persons associated with it from undertaking conduct causing it to be guilty of an offence under section 7 of the Bribery Act 2010
"Agreement"	means this deed (including any Schedule or Appendix to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms
"Alternate Nominee"	has the meaning in Clause 7.2.2(b)
"Auditors"	means the auditors of the Delivery Vehicle and Delivery Vehicle Parties from time to time
"Bank"	means the bank of the Delivery Vehicle and Delivery Vehicle Parties from time to time
"Board Meeting"	means any meeting of the board of Nominees in accordance with the provisions of Clause 8
"Board"	means the board of Nominees established in accordance with Clause 7
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued from the relevant government department concerning the legislation
"Business Plan"	means the Initial Business Plan, or any Further Business Plan that has been adopted pursuant to Clause 16.1.4, subject to Clause 16.1.5
"Business"	means the business of the Delivery Vehicle as described in recital (A) and all matters reasonably ancillary to any such matters pursuant to the Delivery Vehicle Objectives
"Capital Account"	means the account ledger maintained by the Delivery Vehicle in the name of a Member against which its Capital Contribution is credited in accordance with Clause Error! Reference source not found. and

	which, shall not require (for the avoidance of doubt, a separate bank account
"Capital Contribution"	means, in respect of a Member, any financial contribution made by that Member to the Delivery Vehicle in accordance with Clause 5
"Chairman"	means the chairman from time to time of the Board or the board of the relevant Delivery Vehicle Party (as applicable) who shall appointed in accordance with the provisions of Clause 7.2.6
"Companies Act"	means the Companies Act 1985 (as amended by the Companies Act 2006)
"Confidential Information"	has the meaning given in Clause 29.2
"Confidentiality Period"	shall have the meaning set out in Clause 29
"Consent Matters"	means the matters reserved for a Council approval in Schedule 3 (Delegations Matrix)
"Council Nominees"	means the nominees appointed by the Council to the Board or the board of the relevant Delivery Vehicle Party (as applicable) pursuant to Clause 7, which may include persons contractually engaged by the Council for this purpose who are neither an officer of the Council nor an elected member of the Council;
"Council Remedy Period"	has the meaning given in Clause 21.3.1
"Council Senior Officer"	means the head of Paid Service;
"Current Account"	in respect of each Member, each Member's Member Current Account ledger (as defined in Clause 17 (Accounts) and which shall not require, for the avoidance of doubt, a separate bank account
"Deadlock Event"	has the meaning given in Clause 22
"Deadlock Matter"	has the meaning given in Clause 22
"Deadlock Notice"	has the meaning given in Clause 22
"Deed of Adherence"	means a deed of adherence in substantially the same form as that set out at Schedule 4 (Deed of Adherence)
"Default Event"	means a Council Default Event or a Nominee Company Default Event as the context so requires
"Defaulting Member"	has the meaning given in Clause 21.2
"Delegations Matrix"	means the document contained in Schedule 3 identifying how certain decisions will be made by the Delivery Vehicle (as amended from time to time in accordance with this Agreement)
"Director"	means a director of a nominee company

"Disclosing Party"	has the meaning given in Clause 29.2
"Delivery Vehicle Current Account"	means the current account to be established by Delivery Vehicle in accordance with Clause 17 (Accounts)
"Delivery Vehicle Group"	means the Delivery Vehicle and any Delivery Vehicle Party
"Delivery Vehicle Objectives"	means the objectives of the Delivery Vehicle as set out in Clause 4.1
"Delivery Vehicle Party"	means the Delivery Vehicle, any nominee company, and each other Delivery Vehicle Subsidiary from time to time (or any such entities as the case may be)
"Delivery Vehicle Policies"	such policies for the Delivery Vehicle and each Delivery Vehicle Party which are adopted by the Delivery Vehicle and each Delivery Vehicle Party from time to time
"Delivery Vehicle Subsidiary"	means a subsidiary or subsidiary undertaking of an Delivery Vehicle Party from time to time and "subsidiary" has the meaning given to it by section 1159 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company
"Effective Date"	means the date of this Agreement
"EIR"	means the Environmental Information Regulations 2004
"Expert"	means:- <ul style="list-style-type: none"> (a) (where a dispute, difference or matter hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law or partnership law or banking law (as applicable) being such Counsel as may be appointed by the Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales; or (b) (where a dispute, difference or matter hereunder concerns a planning matter) a Queen's Counsel practising at the planning bar being such Counsel as may be appointed by the Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales;

- (c) (where a dispute, difference or matter hereunder is in relation to finance) a senior Chartered Accountant having at least 10 years' post qualification experience in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder as may be jointly appointed by the Members (acting unanimously) or, failing agreement, such Chartered Accountant as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Institute of Chartered Accountants in England and Wales;
- (d) ((where a dispute, difference or matter hereunder concerns potential third party funding), a professional adviser, expert or investment banker with at least 10 years' experience of advising borrowers in relation to the commercial aspects of debt funding packages or, failing agreement, such adviser, expert or investment banker as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Institute of Chartered Accountants in England and Wales;
- (e) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the London area as may be jointly appointed by the Members (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder,

and "**failing agreement**" shall for these purposes mean failing any such joint appointment by the Members within 5 Working Days of notice by one Members to the other that the dispute or difference is to be referred to an Expert

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time

"Further Business Plan"

means an updated and or amended version of the Business Plan containing such further information

	and/or detail as is required to progress the Project (or any part thereof) at the relevant time
"Group"	Shall have the meaning given in Section 1161 of the Companies Act 2006
"Indebted Person"	has the meaning given in Clauses Error! Reference source not found. and Error! Reference source not found. (each to be construed as required in each Clause)
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000
"Initial Business Plan"	means the Business Plan adopted pursuant to Clause 16.1.1
"Insolvent Delivery Vehicle Party"	has the meaning given in Clause 24.1.3
"Intellectual Property"	means all patents, trade marks, service marks, goodwill, registered designs, utility models, design right, copyright (including copyright in computer software), semi-conductor, topography, rights, inventions, trade secrets and other confidential information, know how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the works, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights
"Law"	means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which any Party is bound to comply and/or which relate to or affect this Agreement
"Letter of Appointment"	means a letter of appointment of a Nominee or a Director of a nominee company in the form set out in Schedule 5 (Letter of Appointment of a Nominee/Director).
"Material Breach"	means a breach of any of the terms of the this Agreement which is material and/or persistent having regard to all relevant circumstances including, without limitation, the nature of the relationship between the parties to this Agreement the need for each such party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached falls to be performed under this Agreement and the consequences of the breach

"Mediation Notice"	have the meaning given in Clause 22.5.1
"Member Interest Value"	means, in relation to a Member Interest, the price which a third party would pay in the open market to acquire such Member Interest and all other rights and liabilities comprised in the relevant Member Interest, as such value may be agreed between the Members or, in the absence of agreement, as determined by an Expert
"Member Interest"	means the entire legal and beneficial interest a Member has in the Delivery Vehicle from time to time including that Member's rights and obligations under this Agreement and the Finance Agreements
"Member Proportion"	means: Council: 99.9% Nominee Company: 0.1%
"Members' Meeting"	means a duly convened meeting of the Members in accordance with Clause 12
"Members"	(subject to any such persons ceasing to be a Member in accordance with this Agreement) the Council, the Nominee Company and any other persons who may from time to time and for the time being be admitted as Members of the Delivery Vehicle in accordance with the terms of this Agreement
"Net Profits" or "Net Profit"	the profits of the Delivery Vehicle for an Accounting Period as shown in the audited accounts of the Delivery Vehicle after all expenditure and provisions (including the payment of all interest, if any, accrued and payable on moneys borrowed by the Delivery Vehicle and any salaries or drawings paid or payable by the Delivery Vehicle (but, for the avoidance of doubt, before providing for reserves in working capital and re-investment in the Delivery Vehicle)
"Nominee Company Nominees"	means the nominees appointed by the Nominee Company to the Board or the board of the relevant Delivery Vehicle Party (as applicable) pursuant to Clause 6.1.1
"Nominee Company Remedy Period"	has the meaning given in Clause 21.4.1
"Nominees"	means the Council Nominees and/or the Nominee Company Nominees as the context may require
"Non-Defaulting Member"	has the meaning given in Clause 21.2
"Objectives"	means the Delivery Vehicle Objectives
"Offer Period"	has the meaning given in Clause Error! Reference source not found.
"Offer"	has the meaning given in Clause Error! Reference source not found.

"Outstanding Capital Contribution"	means, in respect of any Member, an amount equal to its Capital Contribution less the sum of any repayments of Capital Contributions by the Delivery Vehicle to that Member
"Partnership Assets"	means any property held by the Delivery Vehicle or any of the Delivery Vehicle Parties (as the context shall require) and, for the avoidance of doubt, including any Intellectual Property
"Prohibited Act"	<p>the following constitute Prohibited Acts:-</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence:- <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts relating to this Agreement or any other contract with the Council or Nominee Company (as applicable); or
"Prohibited Party"	<p>means in the remaining Member's absolute discretion a third party that would not be appropriate for that Member to contract with because:</p> <ul style="list-style-type: none"> (a) such party's business or parent's business is substantially concerned with the sale, distribution or manufacture of arms or weapons, tobacco or tobacco related products, alcoholic beverages, gaming or gambling, or pornography; (b) in the case of the Council, such party would not be a fit and proper person for the Council to contract with having regard to the Council being a public sector body;

"Public Sector Body"	means any UK person classified as falling within the public sector for the purposes of the national accounts by the Office of National Statistics or any entity controlled by one or more such persons
"Quarter"	each period from 1 January to 31 March, 1 April to 30 June, 1 July to 30 September or 1 October to 31 December, and "Quarterly" shall be construed accordingly
"Receipt"	means all sums received of whatever nature
"Receiving Party"	shall have the meaning given in Clause 29.2
"Recipient"	shall have the meaning given in Clause 29.3
"Regulations"	means the Limited Liability Partnerships Regulations 2001 as amended by the Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 (in turn as amended by the Limited Liability Partnerships (Amendment) Regulations 2009)
"Relevant Intellectual Property"	has the meaning given in Clause 26.1
"Requests for Information"	has the meaning set out in the FOIA or the EIR as relevant
"Revocation Notice"	has the meaning given in Clause Error! Reference source not found.
"Revocation Period"	has the meaning given in Clause Error! Reference source not found.
"Sealed Bid"	means a bid made in writing and sealed in an envelope
"Statutory Requirements"	means all or any of the following:- <ul style="list-style-type: none"> (a) Acts of Parliament and any statutory instruments, rules, orders, regulations and bye-laws for the time being made under or deriving validity from an Act of Parliament, in each case whether public or private; (b) European directives or regulations and rules; and (c) regulations, rules, orders, codes of practice, notices, policies or bye-laws imposed by any statutory agency, body or authority (whether local, regional, national or European) (a "Regulatory Requirement") but excluding any Regulatory Requirement imposed by the Council unless and to the extent that the Council is required to impose such Regulatory Requirement as a direct consequence of and so as to comply with:- <ul style="list-style-type: none"> (i) a Statutory Requirement falling under (a) or (b) above; or

- (ii) a Regulatory Requirement of any such agency, body or authority other than the Council; and/or
- (iii) a Regulatory Requirement imposed by the Council acting in its capacity as a planning authority (provided it is acting impartially);

and in each case either having the force of law in England and/or with which the Council is required to comply

"Subsidiary"	save where expressly extended or it is stated to the contrary in this Agreement, has the meaning ascribed to it by section 1159 of the Companies Act and includes any limited liability partnership which would fall within that meaning if it were a company
"Termination Event"	means an event listed in Clause 24.1
"Winding Up Delivery Vehicle Party"	has the meaning given in Clause 24.5.4
"Winding Up Practitioner"	means an agreed independent third party appointed by the Members to administer a winding up of the Delivery Vehicle including distributing the assets of the Delivery Vehicle to those entitled and, in the case of a voluntary insolvent winding up, means a liquidator as referred to under section 91 of the Insolvency Act 1986
"Winding Up Procedure"	has the meaning given in Clause 24.1
"Working Day"	means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business with the exception of 24th December to 1st January inclusive which shall never be deemed to be Working Days for the purposes of this Agreement.

1.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:-

- 1.2.1 the headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 a statutory provision includes a reference to:-
 - (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
 - (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement);

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision.

- 1.2.3 except where the context expressly requires otherwise, references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, sub-Clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement;
- 1.2.4 the Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence;
- 1.2.5 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, companies, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity;
- 1.2.6 where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa;
- 1.2.7 the language of this Agreement is English. All correspondence, notices, and information shall be in English;
- 1.2.8 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 1.2.9 the words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed *contra proferentem*;
- 1.2.10 in construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.11 where this Agreement states that an obligation shall be performed **no later than** or **within** or **by** a stipulated date or event which is a prescribed number of Working Days after a stipulated date or event the latest time for performance shall be noon on the last Working Day for performance of the obligations concerned;
- 1.2.12 unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval;
- 1.2.13 unless otherwise specified or the context otherwise requires, a reference to a document, instrument or agreement (including, without limitation, to this Agreement) is a reference to any such document, instrument or agreement as modified, amended, varied, supplemented or novated from time to time and as it may be adhered to by other parties from time to time.

SCHEDULE 2

[NOT USED]

SCHEDULE 3

DELEGATIONS MATRIX

The following are Consent Matters:

1. making any material amendment to the Business Plan or undertaking activities outside the scope of the Business Plan;
2. entering into any contract, liability or commitment (or series of connected contracts, liabilities or commitments) which unless expressly provided for in the Business Plan approved by the Council exceeds £500,000 of the aggregate budgeted expenditure of the Delivery Vehicle and the Delivery Vehicle Parties for the relevant Accounting Period;
3. ceasing to carry on the Business or the carrying on of the Business on any materially reduced scale or the commencement of any new business not being ancillary or incidental to the Business;
4. a material change to the Business;
5. creating any borrowings or other indebtedness or obligation in the nature of borrowings (including obligations pursuant to any debenture, bond, note, loan stock or other security and obligations pursuant to finance leases) except as specifically provided for in the annual budget for the relevant Accounting Period;
6. acquiring, or investing in, another company or business or the incorporation of any Subsidiary under Clause 3.4 (or otherwise);
7. creating any encumbrance (or allowing one to subsist) over all or any part of the business, undertaking, property or assets of the Delivery Vehicle or any of the Delivery Vehicle Parties save as may be otherwise agreed in any Business Plan;
8. giving any guarantee, indemnity or security in respect of the obligations of any other person;
9. entering into or participating in any joint venture, partnership or other profit-sharing arrangement with any person or making any amendment or variation to any such arrangement;
10. amalgamating, merging, consolidating, selling, transferring or entering into a lease or licence which, in any case, materially alters, or in any other way disposes of, all or a substantial part of its business, undertaking, property or assets, whether by a single transaction or series of transactions related or not (save in respect of sales (or equivalent) in pursuit of the Objectives and within the scope of an approved Business Plan);
11. selling or otherwise disposing of any Delivery Vehicle Party;
12. making any change to the accounting policies and principles otherwise than as recommended by the Auditors to comply with generally accepted accounting standards;
13. appointment of and making any change to its Auditors or its accounting reference date;
14. expanding, developing or evolving the Business other than through the Delivery Vehicle or any Delivery Vehicle Party;
15. amending the Members' Agreement;
16. the initiation, conduct, settlement or abandoning of any claim, litigation, arbitration or other proceedings with a quantum (excluding interest and costs) in excess of £50,000 involving the Delivery Vehicle or any of the Delivery Vehicle Parties or any admission of liability by or on behalf of the Delivery Vehicle or any of the Delivery Vehicle Parties in respect of the same;

17. approving any proposal for its winding-up or liquidation save as expressly contemplated by this Agreement or as required by Law;
18. appointing or removing any Nominee otherwise than in accordance with Clause 7; and
19. agreeing to do any of the above.

ACTIVITY	COUNCIL	BOARD
CORPORATE MATTERS		
Approval and adoption of each Business Plan of the Delivery Vehicle (and any amendments/ variations thereto)	Approval	Recommendation
Alteration of the Objectives or the nature/scope of the Business, closing down/commencing any business which is not ancillary or otherwise incidental to the Business of the Delivery Vehicle.	Approval	Recommendation
Taking any action outside the parameters of the Business Plan (unless otherwise specified in this Delegations Matrix).	Approval	Recommendation
Taking any action which would incur expenditure in excess of the annual budget of the Delivery Vehicle	Approval if the relevant amount is equal to or greater than £100,000	Approval if the relevant amount is lower than £100,000
Acquiring, disposing or agreeing to acquire or dispose of any asset of the Delivery Vehicle, any interest in any asset of the Delivery Vehicle (including the exercise or release of any option) or any other land or buildings	Approval if not expressly set out in an approved Business Plan	Approval if expressly set out in an approved Business Plan Recommendation if not expressly set out in approved Business Plan.
Declaring or paying any distribution in respect of profits, assets or reserves of the Delivery Vehicle or in any other way reducing the reserves of the Delivery Vehicle.	Approval if outside the process set out in the Members' Agreement.	Approval if in accordance with process set out in the Members' Agreement. Recommendation if outside of process set out in Members Agreement.
Forming a subsidiary of the Delivery Vehicle, acquiring shares in any other company (subscription or transfer) or any other similar interest in another entity including a limited liability partnership or limited partnership, entering into joint ventures or partnerships or profit sharing arrangement	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not expressly set out in an approved Business Plan.

ACTIVITY	COUNCIL	BOARD
Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the Delivery Vehicle issuing loan capital of the Delivery Vehicle.	Approval	Recommendation
Admitting new Members or the expulsion of any then existing Member (other than in accordance with the provisions of the Members' Agreement).	Approval	
Appointing persons as additional Nominees of the Delivery Vehicle, save where such Nominees are Council Nominees and/or Nominee Company Nominees appointed in accordance with the Members' Agreement	Approval	Recommendation
Approval of statutory accounts and appointment of auditors		Approval
Changing accounting and reporting policies of the Delivery Vehicle		Approval
Granting or entering into any intellectual property license agreement or arrangement concerning the trading names of the Delivery Vehicle or partnership and goodwill attached thereto		Approval
Waiving or delaying the rights of the Delivery Vehicle and/or those of the Delivery Vehicle to be exercised by the Delivery Vehicle under any agreement		Approval
Capitalising, repaying or otherwise distributing any amount standing to the credit, or any reserve, of the Delivery Vehicle.	Approval if outside the process set out in the Members' Agreement.	Approval if in accordance with the process set out in the Members' Agreement. Recommendation if outside the process set out in the Members' Agreement.

ACTIVITY	COUNCIL	BOARD
Making any petition or passing any resolution to wind up the Delivery Vehicle or making any application for an administration or winding up order or any order having similar effect in relation to the Delivery Vehicle or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator	Approval	
Changing the name of the Delivery Vehicle	Approval	Recommendation.
Making any loan or advance or giving credit (other than trade credit in the ordinary course)	Approval if: <ul style="list-style-type: none"> a) not expressly set out in an approved Business Plan; b) the loan or advance is not between the Delivery Vehicle and any subsidiary of the Delivery Vehicle. 	Approval if expressly set out in an approved Business Plan. Approval if the loan or advance is to a subsidiary of the Delivery Vehicle. Recommendation if not expressly set out in an approved Business Plan
OPERATIONAL MATTERS		
Negotiating and approving terms of any material contracts to be entered into by the Delivery Vehicle.	Approval if entry into contract not expressly set out in an approved Business Plan or where potential liability of the Delivery Vehicle is equal to or exceeds £250,000	Approval if entry into contract expressly set out in an approved Business Plan provided potential liability of the Delivery Vehicle is less than £250,000
Approval of concept design		Approval
Submission of any planning application (or appeals) (and material variation and s106 heads of terms)		Approval
Agreeing or carrying out the sale or letting of any part of any Site.	Approval if not in accordance with the Business Plan	Approval if in accordance with the Business Plan
Entering into deeds (easements, wayleave, consents or other impact on title)		Approval
Approving the terms of engagement of a Development Manager (including amendments to those terms) or changing the Development Manager	Approval	Recommendation
Entry into confidentiality agreements		Approval

ACTIVITY	COUNCIL	BOARD
Amendments to contracts		Approval
Appointment of asset valuers and Auditors and approval of valuations		Approval
Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not expressly set out in an approved Business Plan.
Write down of value of any asset of the Delivery Vehicle.		Approval
Writing off debts	Approval if not expressly envisaged by an approved Business Plan and where write down is equal to or exceeds £10,000ar.	Approval if expressly envisaged by an approved Business Plan or where write down is less than £10,000 .
Making any agreement with any relevant authority for tax purposes in relation to the Delivery Vehicle, its's business, assets or undertakings or making a claim, disclaimer, election or consent of a material nature.		Approval
Commencing any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the Delivery Vehicle, except in relation to debt collection in the ordinary course of the business of the Delivery Vehicle		Approval
Entering into any transactions or arrangements of any nature with parties connected with Members or which are not in the ordinary and normal course of business of the Delivery Vehicle and/or which are not on an arm's length basis	Approval	
Terminating any agreements which are material to the Delivery Vehicle Business	Approval if terminating relevant agreement is not expressly set out in an approved Business Plan	Approval if terminating relevant agreement is expressly set out in an approved Business Plan. Recommendation if terminating relevant agreement is not expressly set out in an approved Business Plan.

ACTIVITY	COUNCIL	BOARD
Disposing of a substantial part of the Delivery Vehicle Business and/or partnership assets (i.e. comprising in excess of 5% of the balance sheet surplus credit figure from time to time)	Approval	Recommendation
Making any announcements or releases of whatever nature in relation to the Delivery Vehicle Business		Approval
FINANCE MATTERS		
Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Delivery Vehicle and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Delivery Vehicle or over any capital of the Delivery Vehicle)	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not set out within an approved Business Plan.
GENERAL MATTERS		
Any other matters not covered in this Delegation Policy	Approval	
The making of any charitable donation	Approval if outside of any corporate social responsibility contributions expressly set out in an approved Business Plan.	Recommendation if outside of any corporate social responsibility contributions expressly set out in an approved Business Plan. Approval if expressly envisaged by an approved Business Plan.
Varying the Delegations Matrix or any other Delivery Vehicle Policies.	Approval	Recommendation.

SCHEDULE 4

DEED OF ADHERENCE

THIS DEED is made on

20[]

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of Civic Centre, Castle Hill Avenue, Folkestone, CT20 2QY ("the **Council**");
- (2) **OTTERPOOL PARK DEVELOPMENT COMPANY LTD** (registered number 12158104) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Nominee Company**");
- (3) **OTTERPOOL PARK LLP** (registered number OC428493) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Delivery Vehicle**"),
- (4) the parties listed at (1) to (3) above being the "**Original Parties**"; and
- (5) **[NAME OF NEW PARTY]** a [company / limited liability partnership] registered in [England] ([Company/LLP Number] []) whose registered office is at [] ("**New Party**").

[DN: Parties who have executed earlier deeds of adherence also to be listed.]

1. This Deed is supplemental to the members' agreement (the "**Members' Agreement**") dated [] 2020 and made between the Original Parties (as such Members' Agreement has been amended, varied and/or supplemented).
2. Other words and expressions defined in the Members' Agreement have the same meanings when used in this Deed.
3. The New Party and each of the Original Parties undertake with each other and with any other person who becomes a party to the Members' Agreement after the date of this Deed to be bound by, observe and perform the Members' Agreement as if the New Party had been an original party to the Members' Agreement and was named in the Members' Agreement.
4. The address and details for notices of [name] for the purposes of Clause 33 (Notices) of the Members' Agreement are: []. All of the other terms of the Members' Agreement shall be unamended.
5. This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), are governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).
6. This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

In witness whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

[Execution Clauses to be inserted for Parties to Members' Agreement including those who have executed earlier deeds of adherence.]

SCHEDULE 5

LETTER OF APPOINTMENT OF A NOMINEE / DIRECTOR

[on the headed notepaper of the Delivery Vehicle]

[Name and address of Nominee/Director]

[Date]

Dear []

Terms of your appointment to the boards of Otterpool Park LLP (the "Delivery Vehicle") and Otterpool Park Development Company Ltd("Nominee Co")

1. This letter contains the terms which we have discussed and agreed for your appointment as a [] Nominee on the Board and Director on the Nominee Co Board. Your appointment is made pursuant to and is subject to the terms and conditions set in the Members' Agreement dated [] and made between (1) the Council; (2) the Nominee Company; and (3) the Delivery Vehicle ("**Members' Agreement**").
2. You shall not be entitled to any other fees or remuneration in connection with your appointments to such boards unless expressly agreed in writing by the Council.
3. You shall be expected to attend board meetings and Members' Meetings of each of the Delivery Vehicle and Nominee Co (respectively), as required. You shall receive details of all such meetings in advance.
4. You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Delivery Vehicle and/or Nominee Co and/or any Delivery Vehicle Subsidiary or of any dealings, transactions, or affairs of such party or any client, customer or supplier thereof which comes to your knowledge during the course of this appointment and shall comply with the provisions of Clause 29 (Confidential Information and Freedom of Information) of the Members' Agreement as if it applied to you. You will, however, be entitled to disclose information to the Member appointing you as permitted under the Members' Agreement.
5. The appointment as Nominee/Director shall automatically cease in relation to the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary in the event that:-
 - 5.1 you resign as a Nominee/Director; or
 - 5.2 upon the lodgement or delivery of a notice from the Member(s) removing you as Nominee/Director; or
 - 5.3 in any of the circumstances set out in (and in accordance with) Clause 10 (Removal of a Nominee) of the Members' Agreement.

Without limitation to the paragraphs above, in signing this letter, you acknowledge that your position as Nominee/Director is subject to the terms of and you shall comply with the Members' Agreement and may be terminated as permitted under the terms of the Members' Agreement and that upon such termination you shall vacate your position as Nominee/Director in relation to the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary forthwith without raising any claim whatsoever against any such party in relation to such vacation (otherwise than in respect of any properly incurred and unpaid expenses due to you up to the date you vacate your position as Nominee/Director).

6. On termination of your appointment as Nominee/Director, you agree that you shall promptly return to the Delivery Vehicle Chairman all papers and property of the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary which are in your possession or under your control.
7. Upon request, you agree that you shall promptly enter into a letter addressed to each and every Delivery Vehicle Subsidiary in the form requested by the Delivery Vehicle or such Delivery Vehicle Subsidiary, provided that such form is substantially similar to the form of this letter (amended to the extent necessary).

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at the first board meeting.

Yours sincerely

.....
Signatory, duly authorised
for and on behalf of [xxxx] LLP

.....
Signatory, duly authorised
for and on behalf of [xxxx]LLP

.....
Signatory, duly authorised
for and on behalf of [Insert name of any other Delivery Vehicle Subsidiary in existence at the time]

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a nominee of [xxxx] LLP, [xxxx] LLP, [xxxx] LLP and [Delivery Vehicle Subsidiary/ies].

Signed

Dated

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Appendix 3

Independent Director - Person Specification & Process

The intention is to progress recruitment of the three independent directors to the LLP as soon as practicable following cabinet consideration and decision on the matter. An advert will be prepared and made available via appropriate channels. A panel Chaired by the Leader, with members drawn from Cabinet, will be supported by the Chief HR Officer to shortlist and interview appropriate candidates.

The following list captures the skills and expertise thought appropriate:

- Demonstrable interest in delivering a sustainable, world class garden community;
- Significant experience of working at board level or equivalent in a company, limited liability partnership, public or charitable organisation;
- Independence of mind - the ability to challenge and ask the right questions to further the work of the LLP;
- Ability to represent the LLP and the project at public events, meetings; and
- Can demonstrate significant experience of one or more areas of the following:
 - Planning, design and delivery of award-winning large scale mixed use development;
 - Legal, financial or other relevant experience of successfully delivering multi-million pound infrastructure / housing / new settlement delivery;
 - Successful commercial operations;
 - Business development; and
 - Development and delivery of services related to large scale communities.

It should be noted that a person cannot be appointed if he / she:

- Has been a member or employee of the Council at any time during the last 5 years;
- Is a relative or close friend of a member or officer of the Council;
- Is engaged in any party political activity;
- Has any criminal convictions or be an un-discharged bankrupt; or
- Has any significant business dealings with the Council.

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Otterpool Park– Draft Skeleton Business Plan

Overview

Otterpool Park Garden Town has the potential to bring forward 8,500 – 10,000 houses and flats over the next 30 years. In creating a sustainable community this will be combined with 72,500 sq. m of office and 21,000 sq. m of retail and leisure space supporting jobs and lifestyle. In addition, there will be 6 forms of primary school, a Secondary school, play and sports facilities. In line with Garden Town principles, 50% of the town will be green space. The town will also be developed in line with the Council’s Environmental and Social Agenda.

Currently approximately 90% of the land in the proposed town is under the control of the Council and around 10% of the Land is owned by Homes England.

In achieving this New Town, the LLP will take a standard ‘Master Developer’ role. The following process will be undertaken for each phase of development.

- Land assembly will be completed to buy in land currently optioned from the landowners.
- The LLP will invest in required supporting infrastructure and servicing phase by phase following a ‘just in time model’.
- Parcels of land will then be sold to housebuilders.

Work undertaken over the previous year has demonstrated that there is the potential to generate significant surplus through this process which the LLP can invest in green initiatives, in additional affordable housing, or in other Council priorities.

Objectives

The Objectives of the LLP are:

- To bring forward much needed mixed tenure housing supply for the District
- To create a sustainable community offering a good quality of life to residents with supporting education, employment and leisure facilities.
- To offer a variety of private and affordable residential options for both rent and purchase for people in all stages of life.
- To follow Garden Town principles to create a green environment with minimum environmental impact in construction and occupation.
- To maximise financial returns to the LLP for investment in Council priorities including reinvestment in green initiatives and additional affordable housing.

Phase 1

The first phase of the project will establish the nature of the town, and see, in the order of, 2,000 units being developed over the next 6-8 years, supported by considerable upfront infrastructure investment. The details of those unit numbers, their location, the infrastructure investment, and the commercial and community non-

residential land uses to be developed will be shaped by the project planning due to take place over the next 12 months.

Project Commencement - The next 12 months.

The target is for the first year of the project to realise a number of enabling milestones, including the granting of the first outline planning permission, the finalising of the project plans for phase 1, and the creation of the delivery team that will bring the town forward.

We have set out the key aspects of the project, and the areas for delivery in year 1 along with a broad estimate of year one costs based on our experience of projects of the nature. This results in a year one cost of £1.25 m plus the internal costs of running the delivery team:

Creation of delivery team:

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The project will need access to a broad range of highly specialist professionals with appropriate local experience.

A team will be created that includes:

- Externally recruited staff (assumed as three at Director, Senior Surveyor and Surveyor Level)
- Internally seconded staff
- Appointed professional firms
- Frameworked professional firms for ad hoc appointment

Expertise included in the above will include amongst others:

- Procurement specialists
- Development manager
- Legal advisors
- Planning consultants
- Environmental consultants
- Viability consultants
- Infrastructure advisors
- Cost consultants
- Landscaping consultants
- Urban designers
- Land agents
- Estate Managers / Stewards
- Public relations advisors
- Office support

The first year will require

- Decisions regarding the most cost effective approach to accessing the necessary expertise.
- The creation of job profiles for in house recruitment
- The creation of tender documents for professional services procurement
- Consideration of appropriate framework options
- The recruitment of an in house team and the procurement of external professional services.

Governance and management

A number of decisions will need to be finalised around the governance and management of the LLP and its relationship with the Council:

- Finalisation of Governance structure for LLP
- Agreement on decision making paths and delegations
- Understanding of mechanics of financial draw down
- Set out monitoring and KPI arrangements
- Set out the opportunities and processes for third parties to join LLP
- Formal or informal relationship with other bodies
- Consider the Council and LLP's plan have for long term ownership, and estate management arrangements of town, and start establishment of appropriate bodies
- Consider of the role the LLP or related parties wish to take in direct development.
- Consider of the role the LLP or related parties wish to take in long term investment

Decision making

The direction of the LLP over the first year will need to be defined through a number of key development decisions:

- In what order will the parcels of land come forward
- What land will form Phase 1
- When will supporting land uses be brought forward and where will they be located
- Consideration of option exercising strategy
- Development of a strategy for health, education, and social care with relevant statutory bodies
- Development of strategies around water and utilities provision with relevant bodies
- Development of strategies around environmental priorities, landscaping and habitat creation.

Enhanced investigations

A number of assumptions have necessarily been made in bringing forward the development plans to date, year 1 will see crystallisation of these assumptions through enhanced due diligence and forward planning including:

- Infrastructure:

- Full infrastructure requirement review for the whole town and detailed analysis of market and operational requirement for Phase 1
- Development of full infrastructure program for the Phase 1
- Full infrastructure cost plan review
- Legal:
 - Review of LLP structure and tax planning.
 - Consideration of third party acquisition strategy
 - Estate management / stewardship of land and buildings
 - Consider potential to use CPO powers with regard to third parties
 - Comprehensive land referencing

Management

The first year will see management plans being developed and implemented around

- Estate management / stewardship of land and buildings owned by the LLP
- The future of the castle and the nature of projects required

Planning process

We are anticipating the determination of the outline planning permission by the end of 2020. Following this, and concurrently with this process there will be the continuation of ongoing activities in the first year:

- Due diligence of any issues arising in the decision notice
- Project plan for the discharge of pre commencement infrastructure conditions
- Development of a 'Design Guide' for the town
- Development of infrastructure strategies for each investment type
- Consideration of the timing tenure and quantum of affordable housing provision
- Review of viability of planning obligations

Land Disposal strategy

It is important to engage with the market early and use that engagement to shape project planning to optimise eventual receipts. In year the LLP will need to:

- Appoint a land agent
- Soft market testing of residential land parcels
- Reflection on infrastructure and servicing required to maximise parcel values
- Plan identity and density of the parcels in the phase to maximise the product differentiation in the market including key worker homes, lifetime homes, age restricted accommodation and self-build.
- Early engagement with RP partners
- Soft market testing of commercial and ancillary land uses to optimise delivery strategy
- Consideration of prelet opportunities, and potential to create investment product

Additional Funding

There are a number of potential sources of additional funding for infrastructure development and enabling works. These need to be explored in the first year and then kept under review over the development period. These include:

- Future iterations of the HIF
- Lottery Funding
- Kent County Council Infrastructure funding
- Government Departments for example DfE contributions towards schools
- Homes England relationship
- LEP

Engagement:

There are a number of external stakeholders whose engagement with the project is critical to optimising its success. An engagement strategy needs to be considered for each of the following statutory bodies:

- Network rail
- Utility companies
- Heritage England
- Environment agency
- Environmental bodies such as White Cliffs Countryside Project
- Highways Authority
- Kent County Council
- Parish Councils
- NHS
- DfE
- Other central government departments

In addition an engagement strategy needs to be considered with regard to neighbours, tenants and interested community groups.

Development of Financial Model:

Reflecting on the above actions, the business plan will need to be renewed. This will reflect advances in:

- Details of phase 1 delivery
- Decisions around supporting land uses
- Replanning and recosting of infrastructure
- Market testing of land parcels
- Exploration around third party funding options
- Exploration of RP relationships.

More detailed financial modelling will serve to:

- Further shape decision making,
- Plan cashflow requirements
- Understand debt requirements,

- Inform conversations around allocation of surplus funds against Council priorities.

Risk Analysis

There is unavoidable risk and uncertainty around a scheme of this scale over this timescale. The above work in year 1 will enable the establishment of a risk register to enable the project to understand the potential impact of changes to amongst others:

- Revenue from parcel sales
- Rate of parcel sales
- Changes in costs of infrastructure
- Changes in the cost of borrowing
- Market growth or downturn
- Changes in external funding opportunities
- Changes in Council priorities
- Policy changes around affordable housing
- Policy changes around Environmental requirements

These risks can then be appropriately managed in the context of short and medium term project planning.