

This Report will be made public on 23 November 2020



Report Number **OS/20/09**

**To:** OVERVIEW AND SCRUTINY COMMITTEE  
**Date:** 1 December 2020  
**Status:** Non - executive decision  
**Responsible Officer:** Ewan Green, Director of Place

**SUBJECT:** DRAFT BUSINESS PLAN – OTTERPOOL PARK LLP

**SUMMARY:** This report presents the draft proposed business plan of Otterpool Park Limited Liability Partnership for the Committee's consideration.

**RECOMMENDATIONS:**

1. To receive and note the report.
2. To consider the draft business plan of Otterpool Park LLP and to submit comments on it, if any, to the Cabinet.

## 1. INTRODUCTION

- 1.1 Appended to this report (attached as Appendix 1) is the draft proposed business plan of Otterpool Park Limited Liability Partnership (the LLP). The basis of which was presented to, and considered by, this Committee on 14 July 2020 (see Minute 16 of the meeting of that date).
- 1.2 The draft proposed plan was considered by the Board of the LLP on 13 November 2020 and at a meeting of the owners of the LLP on 17 November 2020. A note of the decisions arising from the LLP Board are included as Appendix 3. The ownership structure of the LLP is shown in paragraph 5.1 of the business plan.
- 1.3 The business plan is being presented to this committee for comments before it is finalised by the LLP and considered by Cabinet on 20 January 2021 for approval. The chairman of the board of the LLP, Mr Luke Quilter, and two of the other directors of the LLP (John Bunnett and Andy Jarrett) will present the business plan and answer the committee's questions. Whilst the draft proposed business plan is in the public domain, certain details which underpin this are commercially sensitive and if members wish to discuss such details it will be necessary to exclude the public from the meeting.
- 1.4 Should members vote to go into private session external advisers, BNP Paribas, will be in attendance to address technical questions. It should be noted that amendments are expected to the plan before it is presented in its final form to Cabinet.
- 1.5 Fundamentally, in presenting the business plan, the LLP will be asking for the council to release funding to it, namely £5 million on 1<sup>st</sup> April 2021 and the facility for a further £70 million over the subsequent 3 to 5 years as required for infrastructure and related investment.
- 1.6 The draw-down of funds will be linked to key milestones contained in a separate detailed Funding Agreement which will be the subject of expert advice to be commissioned by the Director of Corporate Services (the S151 Officer of the Council).
- 1.7 The LLP will be required to enter into this agreement which will be monitored by the Director of Corporate Services (the S151 Officer).
- 1.8 Appendix 1 is not a detailed delivery plan, those are matters for the LLP Board and management. It is a strategic 5 year business plan which will be updated and reviewed annually. It should be considered in the context of the council's ambition, aims and objectives for Otterpool Park, the financial resources council has made available, and ultimately whether it convinces the council that it can be delivered successfully.
- 1.9 This report considers the council's objectives, the role of the LLP, the financial position and the substance of the draft plan.

## **2. BACKGROUND AND CONTEXT OF THE BUSINESS PLAN**

### The Council's Ambition, Aims & Objectives

- 2.1 The Council's aims and objectives for Otterpool Park are set out in a charter which was adopted on 18 October 2017 (see Minute 48 of the Cabinet meeting of that date). The charter is synthesized in the document expressing the council's ambitions for Otterpool Park (see Appendix 4).
- 2.2 As stated the charter aims to ensure that the new garden town is truly sustainable and expands this by focusing on three key elements which will underpin this: economic, environmental and social sustainability. All three elements need consideration, not trading one benefit against the other but building in a way that delivers gains across all three.
- 2.3 In addition to these aspirations, the Council is the local planning authority and is required to facilitate delivery of a minimum of 13,284 additional homes a year over the period 2019/20 to 2036/37 (18 years) to meet the Government's target of 738 new homes a year.

The Places and Policies Local Plan (as adopted by the Council on 16 September 2020) allocates a number of small and medium-sized sites to meet the target, and remaining development on the strategic sites identified in the 2013 Core Strategy (Folkestone Seafront, Shorncliffe Garrison and the New Romney broad location) will also contribute. However, it is clear that this target cannot be met without a substantial contribution from Otterpool Park, and an allocation for the new garden settlement forms the main focus for development in the emerging Core Strategy Review, which is currently the subject of an examination in public.

### The role of the LLP and its relationship with the Council

- 2.4 The LLP was established on 27 May 2020, (see minute 6 of the Cabinet meeting of that date).
- 2.5 The Members' (or Owners' Agreement) governs the administration and activities of the LLP, regulating matters including:
  - business planning;
  - decision-making; and
  - funding, treatment of receipts and distribution of profits.
- 2.6 In particular the Members' (or Owners') Agreement sets out the process for the approval of the LLP's business plan. In basic terms, every 5 years, the LLP submits its draft business plan to the council for approval. Within the 5 year period annual updates will also be prepared and placed before the Council for approval. The scope of these updates will, of course, vary as the scheme progresses through the various stages of delivery.
- 2.7 The main documents and mechanisms governing the relationship between the council and the LLP are:
  - The members' or owners' agreement approved on 27 May 2020;

- A strategic land agreement (see paragraph 4.7 of the business plan and below);
- Loans / members' equity; and
- The business plan itself, including a related Funding Agreement.

Regular meetings (at least quarterly) of the owners with the LLP Board provide opportunity for dialogue and assessment of progress against the business plan, including detailed consideration of financial matters and risk. Attendees at these meetings are the nominated representatives, which include elected Members and the statutory officers of the Council as agreed by Cabinet (see Minute 6 of Cabinet meeting 27 May 2020).

- 2.8 The LLP will act as master developer of the site. As such the LLP will secure planning permission and put in place infrastructure in order that parcels of land can be sold to housebuilders. This will be the main focus of activity and generator of value, i.e. income to the LLP. It is important to remember that the LLP has been established to make a profit, and is governed by the Limited Liability Partnerships Act 2000. This contains a fundamental principle that LLPs may only be used for the carrying on of a lawful business with a view to profit. It has always been the intention that these profit making activities will provide funds back to the council in order to sustain delivery of council priorities and activities across the district. The high level financial position is set out more fully below.
- 2.9 The process whereby land owned by the council is transferred via the LLP, and onwards to housebuilders, will be captured in a separate document of control called a Strategic Land Agreement. Cabinet will be recommended to enter into this agreement in a report to its meeting in January 2021. This Agreement is being developed from separate expert advice from Browne Jacobson and will be subject to close legal and financial monitoring by the statutory officers of the council. Paragraph 4.7 of the business plan sets out at a high level how the strategic land agreement will work, which is basically the concept of land being transferred from the council via the LLP at a point in time where conditions set by the council are met.

#### Financing the development

- 2.10 On 20 November 2019, minute 69 (2) full council resolved:-

*“To make available an additional one hundred million pounds to be drawn down over a period of up to five years to enable the Otterpool Park project to proceed.”*

- 2.11 Since November 2019 work has continued on the development of the business plan and the associated underpinning documents and modelling. For a project stretching over some 30 years or more, it was always anticipated that economic cycles would be a feature of the assumptions underpinning the financial modelling of the project. Sales values are reported to have increased in that period by approximately 5% and build costs have reduced albeit modestly, according to robust national data. In view of the current economic context of COVID-19 recovery, it is however entirely possible that next year sales values may reduce and build costs

may increase and this indeed would be a feature periodically throughout the life of this long term project. However, market forces are expected to ensure that the gap between sales and costs remains broadly constant. Following recent refreshed analysis, the view from our external advisers is that the fundamental business case agreed by council on 20 November 2019 remains sound and this remains a solid basis for considering the drawdown of funds to the LLP at this time. Should members of OSC want to discuss detail that is deemed by officers to be commercially sensitive, members will be asked to go into private session.

### **3. THE BUSINESS PLAN**

#### The Council's Ambition, Aims & Objectives

- 3.1 The business plan includes a draft vision document which sets out the aspirations of the LLP for the development and which captures the essence of the scheme. The vision document draws on a range of council documents, primarily the Charter for Otterpool Park. It was prepared at the same time as the council's restated ambition and, following recent discussion with the owners, the next iteration of the business plan for Cabinet in January 2021 is expected to respond more fully to the matters captured.
- 3.2 The finalised LLP Board vision document will be used, in part, to market Otterpool Park to housebuilders and is designed to distinguish it from other developments.
- 3.3 The benefits of the project to the Council are recognised and set out in section 3.1 and these accurately build upon the aims and objectives set out in the Council's charter.
- 3.4 The three sustainability principles in "the wheel" – environmental sustainability, economic sustainability and social sustainability are supported by details in the business plan and represent the balance that needs to be struck across all three elements.
- 3.5 The infrastructure delivery details in paragraph 4.6 set out the various items of infrastructure necessary to make Otterpool Park a sustainable town, including essential social and community infrastructure such as schools and medical facilities.
- 3.6 The plans for community involvement and development appear advanced and are due for more detailed discussion with the owners – see section 6 "Stakeholders". The expected requirements of the new community are acknowledged and there are plans to ensure that they are met, which is a key part of the overarching Garden Town principles which are endorsed by central government and the Town and Country Planning Association.
- 3.7 The need for the development to contribute towards the district's housing requirement is also outlined in the document. If housing was not planned and is not delivered at Otterpool Park other far more constrained areas across the district would be put under immense pressure to accept more

housing. The plan sets out in section 9 how it is intended that planning permission will be obtained including supporting the housing land allocation at the examination in public. Furthermore the team identified in paragraph 5.4 appear resourced to deliver the planning permissions.

- 3.8 Whilst the Council's ambition, aims and objectives and charter are covered in the business plan, the LLP Board has been asked to provide a more explicit response to the priorities outlined in the draft Corporate Plan 2021-30: Creating Together Tomorrow.
- 3.9 As an example, the final business plan requires to set out the strategic approach to be taken to ensure that the Otterpool Park project will contribute to the key principle of a *Greener Folkestone & Hythe* through the overall creation of a new low carbon town. It should be noted however that it has never been the intention to deliver a zero carbon town in totality. The complexity and challenges of doing so go beyond the stated ambition of the Council at this time. However, the aspiration of the LLP Board and the Council are aligned well to the ambition that the project will include exemplar aspects and developments in this regard.

#### The role of the LLP and its relationship with the Council

- 3.10 The final business plan will set out the strategic approach to delivery of the project, governance of the LLP and its formal relationship with the Council. As mentioned earlier, it will not be a detailed delivery plan per se with, for example detailed Gantt charts, as those are the responsibility of the LLP Board with the executive team.
- 3.11 Members will however appreciate the importance of the business plan in the relationship between the Council and the LLP Board. Once approved the business plan will enable the LLP to deliver the overall plan without, generally, further approvals from the Council including the ability to expend the monies available to it in line with delegations to be agreed by Cabinet and the relevant controls formed from the documents referred to earlier in this report. The Council's Chief Executive and Statutory Officers will continue to ensure that a robust process is put in place to measure progress against targets set out in the business plan and, by doing so, confirm that the council's best interest is being served as the project progresses.

#### Financing the development

- 3.12 Section 7 (The Market) and Section 8 (Finances) set out how the LLP sees the development being funded and the returns.
- 3.13 The business plan states, subject to certain assumptions:-

*"The development has the potential to deliver significant returns... Current modelling suggests that these returns will be over circa 28 years. Pace, and timing of these returns will be dependent on a number of decisions around infrastructure investment, and the timing of market cycles."*

- 3.14 In headline terms the business plan sets out an approach whereby the LLP acting as a master developer and principally, as stated above, funded through land parcel sales would generate around £190 million of profit over the life of the scheme (modelled over a 28 year delivery period). The business plan has taken a prudent approach with regard to the finance modelling and only the first 8,500 homes have been modelled as this reflects the area for which the planning application has been submitted.
- 3.15 The financial projections accord with the financial model on which the council based its decision to create a funding facility on 20 November 2019 (see Minute 69 of the Council meeting of that date).

#### Delivery

- 3.16 The LLP, as noted above, will be requesting the council to release in total £75 million over the next 3-5 years.
- 3.17 Once planning permission is granted the main focus of the LLP will be the delivery of the infrastructure so that land can be marketed to house builders, the marketing of the land and its sale so enabling the LLP to capture land value uplift and make a financial return.
- 3.18 It is considered that whilst the resources necessary to ensure that planning permission is obtained the business plan is less clear on the resources required to ensure that the infrastructure is delivered. Members may wish to explore this further with the LLP Directors.

### **4. RISK MANAGEMENT ISSUES**

- 4.1 The strategic level risks to the business plan are set out in section 12 of the plan. A more detailed risk register, to operational level, has been prepared which the LLP board monitors and updates regularly. Strategic level risks are discussed at the owners' meetings with the LLP Board. Members may wish to explore this further with the LLP Directors.

### **5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

#### **5.1 Legal Officer's Comments**

The main potential legal issues are covered in the body of this report. It is essential that specialist legal is obtained throughout this project.

#### **5.2 Finance Officer's Comments**

The main potential finance issues are covered in the body of this report. It is essential that specialist finance is obtained throughout this project.

#### **5.3 Diversities and Equalities Implications**

The final version of the business plan to be presented to Cabinet will be subject of an assessment on implications for diversity and equalities.

## 6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

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Telephone: 01303 853203  
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The following background documents have been relied upon in the preparation of this report:

**"Exempt by virtue of paragraphs 3 and 5 of part 1 of Schedule 12A Local Government Act 1972 (as amended)."**

### **Appendices:**

- Appendix 1: Draft Business Plan of Otterpool Park LLP
- Appendix 2: Draft Business Plan Appendix - Otterpool Park Vision
- Appendix 3: Decisions of Otterpool Park LLP Board (13 November 2020)
- Appendix 4: Council's Ambition for Otterpool Park