

**SUMMARY HEADS OF TERMS  
SUBJECT TO CONTRACT**

**Otterpool Park Garden Town  
Delivery Vehicle financing & Strategic Land Agreement  
January 2021**

ITEM	DESCRIPTION
<b>KEY TERMS</b>	
1. Project	Otterpool Park Garden Town
2. Council	<p>The District Council of Folkestone &amp; Hythe</p> <ul style="list-style-type: none"> <li>• Sponsor for the Project.</li> <li>• Landowner of large portions of the Project site.</li> <li>• Corporate member of the Delivery vehicle, carrying decisive influence over its decision-making and activities.</li> <li>• Investor in the Delivery Vehicle (see no.5 below).</li> <li>• Lender to the Delivery Vehicle (see nos. 6 &amp; 7 below).</li> </ul>
3. Delivery Vehicle	<p>Otterpool Park LLP</p> <ul style="list-style-type: none"> <li>• The Council's master developer for the Project.</li> <li>• Option-holder in respect of the Council's land interests at the Project site (see no. 8 below).</li> <li>• Recipient of Council investment/lending (see nos. 5 - 7 below)</li> </ul>
<b>DELIVERY VEHICLE FINANCING</b>	
4. General	<p>The Delivery Vehicle's draft Business Plan forecasts an initial funding requirement of up to £70m.</p> <p>That financing is to be split into two separate funding streams:</p> <ul style="list-style-type: none"> <li>• Equity - i.e. capital contributions/equity investment from the Council as member to the Delivery Vehicle (see no.5 below) - being working capital injection to fund the forecasted running costs of the Delivery Vehicle; and</li> <li>• Debt - i.e. debt funding from the Council as lender to the Delivery Vehicle (see no. 6 below) - to finance the Delivery Vehicle's forecasted capital expenditure.</li> </ul> <p>A separate debt facility (i.e. debt funding from the Council as lender to the Delivery Vehicle) may also be utilised to finance Delivery Vehicle acquisitions of land interests within the Project site (see no. 7 below).</p>

ITEM	DESCRIPTION
5. Equity funding	<p>The Council (as member) intends to inject equity into the Delivery Vehicle by way of capital contribution.<sup>1</sup> That investment, on State aid compliant terms<sup>2</sup>, will be treated as working capital and will finance the Delivery Vehicle's running costs in delivering the Project.</p> <p>That capital contribution will provide the Council with an increased equity position - i.e. the equivalent of a shareholding in a company limited by shares - in the Delivery Vehicle.</p> <p>The profile of that financial position for the Council will be different from the proposed debt funding streams described in nos. 6 &amp; 7 below. The Council's liability as a member of the Delivery Vehicle will be limited to the aggregate amount of its capital contributions, so that potential liability will increase as the Council's capital contributions increase.</p> <p>The Council may apply an interest coupon (payable by the Delivery Vehicle) to the capital contribution.</p> <p>The capital contribution will be governed by the Delivery Vehicle's Members' Agreement.</p> <p>To ensure good governance and financial management, it is anticipated that the proposed capital contribution will be injected by the Council in tranches as required in accordance with the Delivery Vehicle's approved Business Plan.</p> <p>The approval of individual tranches will be governed by a mechanism in the Members' Agreement. The Delivery Vehicle will be required to lodge a request with the Council for injection of a further tranche, accompanied by supporting evidence. Separately, regular reporting on progress made against the current approved Business Plan will also be provided for, so that the Council is provided with appropriate scrutiny of the Delivery Vehicle's activities and can be confident that its investment is being correctly applied.<sup>3</sup></p> <p>Where approved, individual tranches of Council investment will each be documented by way of corporate resolutions and board minutes. All Council capital contributions in the Delivery Vehicle will be credited to its capital account.</p>
6. Debt funding - capital expenditure	<p>The Council (as lender) intends to put in place arm's length secured debt facilities to finance the Delivery Vehicle's (as borrower) forecasted capital expenditure for the Project.</p> <p>Such a facility, on State aid compliant terms<sup>4</sup>, will be for a capped amount of forecasted capital expenditure, the parameters of which will be determined in relation to the Delivery Vehicle's approved Business Plan.</p>

<sup>1</sup> The proposed equity investment will be in addition to any initial tranches of working capital invested by the Council to-date.

<sup>2</sup> To be kept under review pending the outcome of the UK's withdrawal negotiations with the European Union.

<sup>3</sup> Further drafting updates to the Members' Agreement are expected to be agreed by way of variation to provide for the mechanisms. It is expected that those amendments will be finalised at the same time as other legal documents described in these heads of terms.

<sup>4</sup> To be kept under review pending the outcome of the UK's withdrawal negotiations with the European Union.

ITEM	DESCRIPTION
	<p>It is expected that a number of facilities (on similar terms) are likely to be put in place throughout project delivery - e.g. in relation to different phases of the Project. It is expected that any such facility would be put in place shortly after the Delivery Vehicle's Business Plan is approved at relevant junctures.</p> <p>Such facility will be governed by a detailed Facility Agreement. The Delivery Vehicle will draw from the facility in tranches, as required for the Project against approved and documented eligible capital expenditure profiles.</p> <p>Each draw down will be subject to detailed mechanisms, checks and balances provided for in the Facility Agreement.</p> <p>The Facility Agreement will be on market standard arm's length terms. Key provisions will include:</p> <ul style="list-style-type: none"> <li>• A maximum facility amount.</li> <li>• The "Purpose" of the loan and "Eligible Expenditure" will be clearly defined.</li> <li>• Prescribed form of drawdown request to be prepared and by the Delivery Vehicle prior to each drawdown, countersigned by a quantity surveyor (or equivalent), with supporting evidence, and submitted to the Council (as lender).</li> <li>• A set of representations and warranties (e.g. re insolvency) will be made by the Delivery Vehicle to the Council at the date of entering into the Facility Agreement and at the date of each drawdown.</li> <li>• The facility will be subject to the usual events of default - e.g. non-payment, incorrect representations/warranties.</li> <li>• The Council will be provided with information/scrutiny rights in relation to the Delivery Vehicle's accounts, financial statements and material changes to the Project. These will be in addition to the Council's similar rights as member of the Delivery Vehicle (as referred to in no. 5 above).</li> <li>• The Council will be entitled to collateral warranties where relevant.</li> </ul> <p>Other conditions precedent are likely to apply to individual drawdowns. In particular where an area of capital expenditure dovetails with a requirement for the Council transfer one of its land interests in the Project site pursuant to the terms of the Strategic Land Agreement. In those circumstances, the satisfaction of the Business Case Condition under the Strategic Land Agreement in relation to the relevant land interest would be a pre-condition to any drawdown under the facility.</p> <p>The facility will be subject to an availability period and a final repayment date. Detailed repayment terms will be determined in due course prior to a Facility Agreement being entered into, but are likely accord with the cash-flow/returns forecasts for the Project. Mechanisms will be included to provide for mandatory/voluntary repayment in specific circumstances.</p> <p>Interest will be applied to the borrowing. The configuration of the interest provisions is likely to be configured on an elastic/rolled-up basis, again to accord with the cash-flow forecasts for the Project.</p> <p>A facility of this kind (i.e. against a profile of agreed capital expenditure) will be secured by way of a debenture (containing fixed and floating charges) over the Delivery Vehicle's assets. That is distinct from the form of security that would be applied to a debt facility put in place for the acquisition of specified assets (see no. 7 below).</p>

ITEM	DESCRIPTION
7. Debt - land acquisitions	<p>Secured debt facilities may also be utilised to finance Delivery Vehicle acquisitions of land interests within the Project site.</p> <p>Again, the Council would act as lender and the Delivery Vehicle under those arrangements where utilised.</p> <p>Distinct from the debt arrangements described in no. 6 above, a template form of Facility Agreement (configured to apply to specific property acquisitions) will be appended to the Strategic Land Agreement, to be utilised where it is agreed that a Delivery Vehicle acquisition of a land interest in the Project site (either from the Council or from a third party), and supported by a facility arrangement of this kind, would benefit the Project.</p> <p>That template form of facility will be on market standard arm's length terms. Given the targeted nature of the facility, it is likely to be shorter form than the type of Facility Agreement utilised for the debt arrangements described in no. 6 above, but they will share some common mechanisms/provisions including:</p> <ul style="list-style-type: none"> <li>• A maximum facility amount.</li> <li>• The "Purpose" of the loan will be clearly defined.</li> <li>• A prescribed form of drawdown request to be prepared by the Delivery Vehicle and delivered to the Council.</li> <li>• A set of representations and warranties (e.g. re insolvency) will be made by the Delivery Vehicle to the Council at the date of entering into the Facility Agreement.</li> <li>• The facility will be subject to the usual events of default - e.g. non-payment, incorrect representations/warranties.</li> </ul> <p>Other conditions precedent are likely to apply to individual drawdowns, in particular (where such a facility is being utilised to support the acquisition of one of the Council's land interests in the Project Site) the satisfaction of the Business Case Condition under the Strategic Land Agreement.</p> <p>Other conditions precedent specific to property acquisitions will also apply, including title due diligence and property valuation.</p> <p>Interest will be applied to the borrowing. The configuration of the interest provisions is likely to be configured on an elastic/rolled-up basis, again to accord with the cash-flow forecasts for the Project.</p> <p>The facility will be subject to an availability period and a final repayment date. Detailed repayment terms will be determined in due course prior to a Facility Agreement being entered into, but are likely accord with the cash-flow/returns forecasts for the Project.</p> <p>Given the targeted nature of its subject matter, such a facility will be secured by way of a legal charge over the asset being acquired.</p>

ITEM	DESCRIPTION
STRATEGIC LAND AGREEMENT	
8. General	<p>The Council currently owns a large proportion of the Project site and holds options to purchase further considerable areas of it.</p> <p>Given the scale and variety of delivery outcomes encompassed within the Project, the land arrangements between the Council (as landowner) and the Delivery Vehicle (as master developer) need to be as flexible as possible. A Strategic Land Agreement entered into between the Council and the Delivery Vehicle is anticipated</p> <p>The Strategic Land Agreement will provide the Delivery Vehicle with a call option over the Council's land interests in the Project site.</p> <p>That call option will be flexible as to:</p> <ul style="list-style-type: none"> <li>• when and how it is exercised by the Delivery Vehicle - it is anticipated that it will be exercisable on multiple occasions, in relation to different land interest on each occasion as the Project requires; and</li> <li>• the outcome of the option being exercised - it could trigger a transfer from the Council to (i) the Delivery Vehicle, (ii) a subsidiary of the Delivery Vehicle or (iii) a nominated third party.</li> </ul>
9. Exclusivity/option price	<p>It is anticipated that the Strategic Land Agreement will effectively provide the Delivery Vehicle (as master developer) with an exclusive position in relation to the development of the Project site.</p> <p>That exclusivity is likely to attract a value/premium and it is therefore expected that entry into the Strategic Land Agreement will be for consideration, being payment of an option price by the Delivery Vehicle to the Council.</p> <p>The option price is to be determined by reference to an independent valuer to satisfy the Council's duty to obtain best consideration.</p>
10. Management and maintenance of Project site	<p>The medium/long term nature of the delivery programme for the Project means that certain land interests within the Project site will not be required by the Delivery Vehicle for development for considerable time following entry into the Strategic Land Agreement.</p> <p>The Strategic Land Agreement will therefore also govern the respective roles and responsibilities of the Council and the Delivery Vehicle in relation to the management and maintenance of the Project site during the interim period before a transfer of specific land interests is required by the Delivery Vehicle for Project delivery.</p> <p>Accordingly, a form or service level agreement will be encompassed within the Strategic Land Agreement to govern the Delivery Vehicle's roles and responsibilities in that capacity.</p> <p>An access licence will also be included to provide the Delivery Vehicle with necessary access to the Project site for those purposes.</p>

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11. Third Party Access	<p>During the interim period before a transfer of specific land interests is required for Project delivery, the Delivery Vehicle will undertake pre-development activity at the Project site.</p> <p>Accordingly, the Strategic Land Agreement will also append a form of access licence to be utilised where the Delivery Vehicle requires the Council to grant access to an appointed third party for the purposes of pre-development activity.</p>
12. Exercise of the option	<p>The Strategic Land Agreement will include mechanisms for how the call option (described in no. 8 above) is to be triggered by the Delivery Vehicle when parts of the Project site are required for Project delivery.</p> <p>That mechanism will incorporate a written notice procedure and will be subject to various pre-conditions (see nos. 13 - 16 below). Those pre-conditions will be capable of waiver by unanimous agreement between the Council and the Delivery Vehicle, as all of them may not always be relevant to a particular transaction.</p> <p>Exercise of the option by the Delivery Vehicle will trigger a property transaction in relation to a part of the Project site, which will be contractually documented.</p> <p>Accordingly, the Strategic Land Agreement will append appropriate forms of transactional documents (e.g. form of building licence, forms of property transfer(s)) to be utilised/finalised where applicable.</p>
13. Pre-condition - <i>title &amp; vacant possession</i>	<p>The Delivery Vehicle (and potentially a nominated third party purchaser dependant on the circumstances of the transaction) will need to satisfy themselves as to title and vacant possession of the part of the Project site that is being transferred pursuant to the Strategic Land Agreement.</p>
14. Pre-condition - <i>planning</i>	<p>An outline planning permission for the Project is currently being determined.</p> <p>Specific phases of the Project are likely to require further detailed planning consents prior to development, which it may be sensible to arrange prior to land interests being transferred pursuant to the Strategic Land Agreement.</p>
15. Pre-condition <i>valuation</i>	<p>In respect of any property transfer pursuant to the Strategic Land Agreement, the Council (as landowner) will need to have regard to its duty to obtain best consideration.</p> <p>Accordingly, all transfers will be subject to a valuation carried out by an independent valuer.</p>
16. Pre-condition - <i>business case</i>	<p>Within the parameters of the current approved Business Plan, it is anticipated that a specific detailed business case will be prepared by the Delivery Vehicle, and then agreed with the relevant Council representative(s), in relation to each property transaction entered into pursuant to the Strategic Land Agreement.</p> <p>The content of a business case will be directed by the proposed outcomes for the relevant transaction but, in all circumstances, is likely to address the following:</p> <ul style="list-style-type: none"> <li>• development outcomes;</li> <li>• projected returns;</li> <li>• funding strategy; and</li> </ul>

ITEM	DESCRIPTION
	<ul style="list-style-type: none"> <li>• risk register.</li> </ul> <p>The funding strategy will be a key linkage between the Strategic Land Agreement and the Delivery Vehicle financing arrangements described above.</p> <p>Depending on the particulars of the specific business case, the funding strategy may need to provide for the means by which the Delivery Vehicle is to acquire a particular land interest and/or how other capital expenditure is to be financed.</p> <p>In each case, accordingly, the business case condition will act as a condition precedent to both (i) the property transaction pursuant to the Strategic Land Agreement and (ii) the means by which the Delivery Vehicle is financing the property acquisition and/or other related capital expenditure.</p> <p>Similarly dependant on the relevant particulars at-hand, the business case may also need to provide comfort as to the contractual mechanisms under which the specified development outcomes are to be secured. For example, how will design requirements be imposed on a third-party housebuilder taking a transfer of part of the Project site.</p>
17. Option agreements	<p>A strategy as to how the various land options which the Council is holding in relation to considerable parts of the Project site are to be encompassed within the Strategic Land Agreement (if at all) is to be determined.</p> <p>A number of options may be available to the Council, including:</p> <ul style="list-style-type: none"> <li>• exercising the options and taking ownership of the relevant land interests;</li> <li>• extending the options; or</li> <li>• assigning the benefit of the options to the Delivery Vehicle.</li> </ul> <p>The various options are governed by different terms and there are different implications to each of the strategies above.</p>
TAX	
18. Tax	<p>High-level strategic tax advice will be procured in relation to the transactions and mechanics described in these heads of terms.</p> <p>Nonetheless, tax analysis will remain ongoing throughout Project delivery, with the tax implications of individual financing arrangements and land transactions analysed on a case-by-case basis.</p>
PROJECT RETURNS	
19. Returns	<p>Given the scale and variety of delivery outcomes encompassed within the Project, the proposed arrangements described in these heads of terms have been designed to be flexible and to facilitate a variety of delivery models.</p> <p>Accordingly, Project returns may ultimately be received (and development profits realised) in a number of different ways.</p> <p>It is anticipated that (unless there is a good reason to the contrary) the majority of the Project site in the Council's ownership will be transferred from the Council to the Delivery Vehicle for Project delivery, at the appropriate juncture and subject to the mechanisms in the Strategic Land Agreement (see nos. 8 - 16 above).</p>

ITEM	DESCRIPTION
	<p>For such land interests held by the Delivery Vehicle, any Project returns would be received (and development profits initially realised) in the Delivery Vehicle, or a subsidiary of the Delivery Vehicle, then subsequently distributed to the Council (as member).</p> <p>How the Council (as member) receives its profit share will be a function of the mechanisms in the Members' Agreement and the Business Plan for the Delivery Vehicle.</p> <p>Project returns could be received by the Delivery Vehicle (and development profits realised in the Delivery Vehicle) in a number of different ways.</p> <ul style="list-style-type: none"> <li>• straight land sale - consideration paid to the Delivery Vehicle could comprise a mixture of deposit, purchase price and overage;</li> <li>• development agreement with a third party developer - the form of consideration paid to the Delivery Vehicle could be similar to a straight land sale or more sophisticated;</li> <li>• self-delivery - either in the Delivery Vehicles or a subsidiary of the Delivery Vehicle - returns/profits ultimately realised via capital receipts (e.g. unit sales) or other revenue streams (e.g. rental income); or</li> <li>• joint venture with a third party - either in the Delivery Vehicle or a subsidiary of the Delivery Vehicle - returns/profits ultimately realised via capital receipts (e.g. unit sales) or other revenue streams (e.g. rental income).</li> </ul> <p>An exception to the above would be where, pursuant to the Strategic Land Agreement, the Council is directed by the Delivery Vehicle to transfer a land interest direct to a third party (for tax reasons or otherwise. In that scenario, returns would be directed straight to (and development profits realised by) the Council.</p>

# Council

Delivery Vehicle Business Plan

*Funding*

*Land*

*Funding*

*Equity*

*Debt (capex)*

*Debt (land acquisition)*

Members' Agreement

Business Case

Facility Agreement(s)

Strategic Land Agreement

Facility Agreement(s)

# Delivery Vehicle