

This Report will be made public on 15 November 2022

Report Number **C/22/60**

To: Cabinet
Date: 23 November 2022
Status: Key Decision
Responsible Officer: Ewan Green, Director of Place
Cabinet Member: Cllr David Monk, Leader of the Council

SUBJECT: OTTERPOOL PARK EDUCATION PROVISION

SUMMARY: This report presents the approach by which it is proposed to deliver the education provision for Otterpool Park new garden town development. The report sets out the strategic principles which will underpin the approach and the role of the Otterpool Park Education Trust. The report also sets out a proposal to make an application for the first primary school at Otterpool Park to be a free school.

REASONS FOR RECOMMENDATIONS:

Cabinet agreement is required for the establishment of Otterpool Park Education Trust and for Otterpool Park LLP to become a member and guarantor of the Trust. Cabinet agreement is also required to submit an application to Government for the creation of a free school.

RECOMMENDATIONS:

1. To receive and note Report C/22/60.
2. To agree in retrospect to the establishment Otterpool Park Education Trust.
3. To agree in retrospect to Otterpool Park LLP becoming a member and guarantor of Otterpool Park Education Trust.
4. To agree that Otterpool Park Limited Liability Partnership, through the Otterpool Park Education Trust, submit an application to establish the first primary school at Otterpool Park as a free school.
5. To note that Cabinet will be updated once the outcome of the application for a free school is known.

1. BACKGROUND

- 1.1 The approved Otterpool Park Limited Liability Partnership (LLP) Business Plan sets out a high-level overview of the way in which education provision may be brought forward. Please refer to:

<https://www.folkestone-hythe.gov.uk/moderngov/documents/s39494/Appendix%20Otterpool%20Park%20Business%20Plan%202022%20low%20res%20version.pdf>

- 1.2 Chapter 9 of the Business Plan (“Planning Strategy”) describes the approach to the delivery of community facilities and education provision:

COMMUNITY FACILITIES DELIVERY

Education provision within new schools is no longer the responsibility of the local education authority. It needs to go through a procurement process led by the county council, with the final decision on the provider sitting with the Regional Schools Commissioner. The alternative is for school proposals to be submitted to the national free schools programme (though this relies on the timing of future ‘waves’ of the programme, each with its own deadline). It is advisable for the LLP to build relationships with academy trusts it feels meet its aspirations, to set out its vision and encourage successful bids for each school.

However, another potential option is for the LLP to set up its own academy trust that would run all the Otterpool Park schools (if successful in the bidding process). This would ensure, for example, that schools have a strong role in the community, with shared facilities. A complementary range of education facilities could be coordinated across the town, with each school having its own specialities, thus ensuring the sum of education is greater than its parts. The LLP is seeking advice from education specialists on this and intends to consider this as an alternative option.

- 1.3 The education provision envisaged in the Business Plan will provide facilities for the first residents of Otterpool Park and their families. All schools at Otterpool Park, it is intended, will align with the overall vision for the garden town and the Education Vision and Strategy mentioned in the Business Plan.
- 1.4 The first primary school will be at the heart of the first phase of Otterpool Park. It is intended that it will be the first education and community-orientated building in place, providing a clear intent that this type of provision is considered as important as residential development, ensuring those moving to Otterpool Park gain a clear understanding of the type of facilities that will be available to them from the outset.
- 1.5 To assist the delivery of the education vision and strategy an Otterpool Park Education Committee has been established. This is an informal group established by Otterpool Park LLP, not a Committee of the Council. It comprises a range expert educationalists and advisors with operational and strategic experience and expertise to guide the establishment of the education provision.

2. Options for Education Provision

2.1 There are two routes available when establishing the first Primary School for Otterpool Park:

1. Basic Needs / Free School Presumption Process

When the local authority deems a new school necessary, which is usually triggered once 350 homes are built, they will write a specification for the school and run a bidding process for prospective sponsors to respond to through an application. The Local Authority would assess the bids and make a recommendation to the Regional Director (formerly the Regional Schools Commissioner) on behalf of the Secretary of State for Education for approval.

This option does not allow for the primary school to provide for the very first residents of Otterpool Park. There would be no influence by OPLLP on the decision to who is selected to operate the school meaning the vision of Otterpool Park cannot be safeguarded.

2. Free School Wave 15

The establishment of OPET as an independent body allows it to submit an application to the next Free School Wave 15 to run the first Primary School at Otterpool Park when it opens. The Department for Education (DfE) will determine the application and whether the school can open as a single academy trust.

This option allows for the opening and running of the school from the earliest opportunity, therefore providing for the first residents of Otterpool Park.

The Government's White Paper 'Opportunity for All' outlines that the Department for Education will expect the provision to grow and become a Multi Academy Trust (MAT) over time, to share capacity across the system and unlock the benefits of operating at an increased scale. All MAT's are expected to have a minimum of ten schools under them by 2030.

2.2 Given the above, Otterpool Park Education Committee considered the three options below for the delivery of the education provision for the new town: -

1. Establish a new MAT for Otterpool Park specifically for the schools developed within the new town:
2. Establish a MAT for Otterpool Park but seek to include those schools in the local area that are not yet part of a MAT.
3. Do nothing - the first primary school is built at Otterpool Park and the Regional Schools Commissioner runs the free school, the presumption in this process is that existing MATs will apply as sponsor.

2.3 After considering the risks and issues it was decided to pursue option 2.

- 2.4 Should the Free School Application be deemed as an unviable option by the Department for Education the free school presumption process will be put in place and run by the Regional Director as outlined in point 2.2 above.

Otterpool Park Education Trust

- 2.5 Advice was taken from education legal specialists, PHP Law, to determine what legal structure would best enable OPLLP to create and deliver its educational vision for the schools that will be constructed at Otterpool Park Garden Town over the next 30 years. An education trust was recommended as the most appropriate structure.
- 2.6 Following this advice Otterpool Park Education Trust (OPET) was formed with OPLLP as one of the guarantors. It is very similar in structure to a MAT. The Trust governance structure is in line with DfE recommendations with up to 5 members and 9 directors.
- 2.7 The Trust Certificate of Incorporation together with the Articles of Association are attached as the Appendix. As will be seen the Articles are in the approved form for use by schools. OPET has six members, Andrew Jarrett, Luke Quilter, Simon Fisher, Sue Soan Lindsay Gallagher (added by special resolution after formation of the Company) and Otterpool Park LLP.

The present directors are; Jennifer Hollingsbee, Nicola Hurst, Tamasin Jarrett, Thomas Cullen, Wesley Carroll and Tim Hulme. The directors will

- Ensure clarity of vision, ethos and strategic direction
 - Hold executive leaders to account for the educational performance of the organisation and its pupils, and the effective and efficient performance management of staff
 - Oversee the financial performance of the organisation and making sure its money is well spent.
- 2.8 Otterpool Park Limited Liability Partnership (OPLLP) is represented on the board of OPET and the other Directors have joined as they too believe in the value of implementing the vision of Otterpool Park through the education delivery.
- 2.9 The key functions of the OPET are to:
- To design the education vision for Otterpool Park
 - To develop and submit the Free School Wave 15 application (see below)
 - To act as the guiding mind and sponsor of the free school trust and ensure that education is delivered in accordance with the Otterpool Park education vision
 - To oversee the growth of the free school trust and conversion to a multi academy trust at the appropriate time; and
 - If OPLLP consider it appropriate, to be a fund raising and grant holding body for the promotion of the education vision at Otterpool Park in general and the Otterpool Park MAT in particular
- 2.10 Ultimately the main objective of OPET is to establish a MAT for the new town to provide the following benefits:

- To reduce the financial risks to the local education authority and the Department for Education by being financially responsible for the capital and initial operating costs of the schools
- To safeguard and deliver the educational and community vision of Otterpool Park
- To provide better outcomes for pupils through an outstanding and innovative curriculum
- To be at the heart of the community, break down inherently traditional barriers between communities and education providers and for the schools to be at the heart of their communities from the outset.
- To create an exemplary model for outstanding education design and provision approach
- To act as a flagship school for environmental standards, bettering current output specification sustainability standards, providing an operationally efficient building
- To allow each school to approach education in an innovative and creative way by providing a different learning focus for each school e.g., food, land-based curriculum, sports, arts, technology
- To allow for future growth of education provision at Otterpool Park with cohesion and sharing of facilities between the individual offers of the schools
- Streamlined transition for children between nursery, primary and secondary school by including the Early Years Strategy.

2.11 Establishing an education trust would enable an application to the Free School Wave. When later schools are completed, or local schools show an interest in joining, the free school academy trust could be converted to a MAT, these schools would then join the Otterpool Park Multi Academy Trust. This includes the option for a partnership with an existing MAT.

Application to Free School Wave 15 Programme

2.12 It is proposed that an application is made to establish the first primary school as a free school. When future schools are ready to be built, the original free school academy trust would be converted into a MAT and the later constructed schools would join this MAT. The application needs to be submitted by 30 November 2022. The process is described in Appendix 1 provided by the consultants engaged for the project.

Otterpool Park LLP Board Recommendation

2.13 The Members' Agreement underpins the governance arrangements between the Council and Otterpool Park LLP. One of the provisions of the Members' Agreement requires approval of the Council to the following: -

“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.”

2.14 Although the preparatory work for education provision in Otterpool Park is outlined in the business plan there is no specific authority to form a separate education trust. The Business Plan refers to a “potential option”

and whilst the potential option has been pursued in accordance with the plan due to an oversight the necessary approval to actually set up the trust was not sought.

2.15 Accordingly, the LLP Board has resolved to seek approval from the Council for the direction and actions that have been embarked on as only the intention to consider the option of a MAT was mentioned in the Business Plan. This approval should have been sought in advance, but it should be noted that:

- The LLP’s liability is limited to a guarantee (£10)
- The work undertaken to date is exploratory in pursuance of the business plan objectives
- No binding commitments have been entered into so there are no liabilities and;
- From a financial and taxation perspective Otterpool Park Education Trust will be dormant until FY24/25.

2.16 The LLP Board recommendations are therefore that the Council should approve not only OPLLP becoming a member of OPET but also to agree that OPLLP should through the Education Trust pursue the application to establish the first primary school as a free school by submitting an application to the Free School Wave 15 by the deadline at of 30 November.

3. RISK MANAGEMENT ISSUES

3.1 Risk at this stage is outlined in the table below:

Perceived Risk	Likelihood	Seriousness	Preventative Action
Council does not agree an approach to education provision	Low	High	Proposed approach aligns with the Otterpool Park strategic position as outlined in the 2022-23 approved 5 year business plan.

4. LEGAL/FINANCIAL AND OTHER POLICY MATTERS

4.1 Legal Officer’s Comments (NM)

There are no legal implications arising directly from this report. External legal advice has been sought in relation to the most appropriate structure for the delivery of education at Otterpool Park and that this should be by way of an education trust.

4.2 Finance (LW)

At this stage there are no direct financial implications or binding commitments for the Council arising from this report. It is noted a further report will be made to Cabinet once the outcome of the application for a free school is known.

4.3 Diversities and Equalities Implications (GE)

There are no equality and diversity issues directly arising from this report. The establishment of the Otterpool Park Education Trust (OPET) is essential for shaping the vision of future education provision and the wider sense of place within this new community.

4.4 Climate Change Implications (OF)

There are no implications arising directly from this report.

5. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Ewan Green, Director of Place
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The following background documents have been relied upon in the preparation of this report:

None.

Appendix Otterpool Education Trust Certificate of Incorporation and Articles of Association.