

This Report will be made public on 10 October 2023



Report Number **C/23/50**

To: Cabinet
Date: 18th October 2023
Status: Key Decision
Responsible Officers: Dr Susan Priest - Chief Executive
Ewan Green - Director of Place
Cabinet Member: Cllr Jim Martin - Leader of the Council and Cabinet Member for Otterpool Park and Planning Policy

SUBJECT: OTTERPOOL PARK: STRATEGIC DIRECTION, FUNDING AND DELIVERY

SUMMARY: This report presents an update on Otterpool Park (following cabinet report C/22/109). The report details outcomes of the governance, finance, and management reviews to ensure the successful continuation of this important significant project. Recommendations cover the strategic direction, funding, and future delivery of the project.

REASONS FOR RECOMMENDATIONS: The resolution to grant outline planning permission on 4 April 2023 signalled that the Otterpool Park project is moving into a new phase of development which will represent a significant increase and change to the current scale and focus of activities for the Council and Otterpool Park LLP.

At this stage it is therefore appropriate, and good practice, that the Council fully considers the strategic direction, funding, and delivery of the project in order to ensure that the vision for a sustainable new garden town at Otterpool Park is successfully delivered.

With due diligence carried out on the Otterpool Park draft updated Business Plan, it has become clear that continuing to fund Otterpool Park to the level previously agreed presents a level of risk that the Council is unable to mitigate to a tolerable position. Therefore, the financing and delivery structure of the Otterpool Park project and OPLLP needs to change.

With positive progress across the project continuing to be made, this report seeks agreement for the council to explore potential strategic partnership options in order to continue delivering Otterpool Park while reducing the Council's financial exposure, securing appropriate skills and expertise to accelerate project delivery and, while doing so, suggests a focus of investment to guide the coming 12-18 months of project activity in a Transition Plan.

RECOMMENDATIONS:

- 1. To receive and note report C/23/50.**
- 2. To note the governance review and that relevant reports will continue to be provided to the Owners' Committee and to Audit & Governance.**
- 3. To note the changed economic context and operating environment which requires the Council to amend the delivery approach, mitigating the potential financial and delivery risks associated with the Otterpool Park project.**
- 4. To agree the outcomes of a strategic funding and delivery review, and the need to attract external funding, expertise and capacity to deliver the project.**
- 5. To agree that the Council explores third-party investment (public and/or private sector) on a joint venture basis, reporting the outcome to Cabinet for further consideration and decision.**
- 6. To agree the key principles under which the Council shall seek to explore a joint venture partner, as set out in section 5.**
- 7. To note that OSC proposed a Task & Finish group to review any emerging joint venture proposals before returning to Cabinet for further consideration and decision.**
- 8. To agree the outcomes of the Leader's management review requiring focused Council investment and activity over the coming 12-18 months, as set out in section 7.**
- 9. To agree that continued investment by the council to support OPLL over the coming 12-18 months is approved by the S151 officer, in consultation with the Leader, and as expressed in a Transition Plan, noting that this will be within the overall budget Council has already set aside for the project and reported to Council through appropriate budget reports.**

1. BACKGROUND

1.1 Otterpool Park, a new garden town, will be central to shaping a sustainable future for the District. It is recognised as a priority within the Council's Corporate Plan 2021-30 'Creating Tomorrow Together' and will make a significant contribution to achieving positive outcomes for:

- Service Ambition 1: Positive community leadership
- Service Ambition 2: A thriving environment
- Service Ambition 3: A vibrant economy
- Service Ambition 4: Quality homes and infrastructure.

1.2 The initial strategic framework for the project is detailed in the approved Charter for Otterpool Park. Please refer to:
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4383&Ver=4>

1.3 The vision for Otterpool Park is:

To deliver a next generation garden town of up to 10,000 homes that will provide sustainable living and a healthy economy: provide the best quality of life for existing and future residents and respond to local land scape and character.

Please refer to: <https://www.otterpoolpark.org/vision/>

1.4 The Council's long-term commitment to developing a new community and strategic role in land assembly has led to the Council owning or having options on 90% of all land needed to deliver Otterpool Park (aside from a 10% land holding owned by Homes England).

1.5 Projected financial returns from Otterpool Park underpin the Council's Medium Term Financial Strategy (MTFS), aiming to improve the financial sustainability of the Council and providing a long-term source of income to reinvest in the district and improve services to all residents.

1.6 Otterpool Park LLP (OPLLP) was established in May 2020 with the principal objective of acting as master developer for the delivery of the project. The LLP is a wholly owned company of the Council. The Members' Agreement establishing Otterpool Park LLP sets out the decisions which the LLP can take and those that require consent of the Council.

Please refer to:

<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4766&Ver=4>

1.7 The Planning and Licensing Committee (4 April 2023) resolved to grant outline planning permission for Otterpool Park. Please refer to:
<https://www.otterpoolpark.org/amended-outline-planning-application-approved/>

- 1.8 Phase one of the project focuses on the creation of a new town centre and a new public park - Castle Park, adjacent to Westenhanger Castle. It will provide the first new homes, as well as commercial and retail spaces. Services that will be delivered for the first residents of Otterpool Park; the first primary school, health and community facilities and open green spaces centered around the racecourse lake. Please refer to:
<https://www.otterpoolpark.org/vision/masterplan-phase-one/>
- 1.9 The Members' Agreement establishing Otterpool Park LLP sets out the process for the approval of its business plan. This requires that every 5 years OPLLP submits its strategic business plan to the Council for approval. Within the 5-year period annual updates are also prepared and placed before the council for approval.
- 1.10 The first strategic 5-year business plan was approved by the Cabinet of the Council on 20 January 2021. Please refer to:
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4860&Ver=4>
- 1.11 The first annual update of the Business Plan was approved by Cabinet on 26th January 2022. Please refer to:
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=142&MId=4950&Ver=4>
- 1.12 The Council is predominantly the sole funder of OPLLP. As at February 2023 the total agreed funding for Otterpool Park is £119M comprising:
- Land Acquisition £44M
 - Working Capital £75M
- 1.13 The Council's Medium Term Capital Programme includes provision for loan funding currently up to £75M (as above) from the Council to Otterpool Park LLP to support the project. Interest is charged at 3% above the rate that the Council can borrow from the PWLB.
- 1.14 The intention is for loan and its interest to be repaid from the proceeds OPLLP generate from selling serviced plots of land to the housing developers over the life of the project. Please refer to:
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=122&MId=5144&Ver=4>
- 1.15 The current funding level agreed by the Council for Otterpool Park is up to £119M (consisting of £44M for land acquisition and £75M for working capital). To date spend is circa £63M. Currently the annual interest charge incurred by the Council on this borrowing is circa £400k.
- 1.16 In addition, Minimum Revenue Provision (MRP) is charged on Council capital expenditure which is funded by borrowing and starts in the financial year after the expenditure. The current minimum level of MRP on Otterpool Park borrowing is £1.2M annually and must be accounted for in the Council's General Fund revenue budget.

2. CURRENT POSITION

- 2.1 The second annual update of the Business Plan was submitted by the LLP in February 2023. Through this the OPLL Board requested that the Council increase its loan facility by an additional £80M to £199M to cover peak debt requirements.
- 2.2 The additional £80M funding request comprised of £49M for accelerated land acquisitions and £31M for inflationary cost pressures on infrastructure provision.
- 2.3 The draft Business Plan presented the Council with a significant level of delivery and financial risk that had not previously been considered. The scale of the funding requested is at a significantly increased scale than the current level of funding approved by the Council which had not previously been considered in the Council's Medium Term Financial Strategy (MTFS), nor Medium Term Capital Programme (MTCP).
- 2.4 For example, interest charges and MRP would both rise significantly if this level of borrowing was agreed. Ahead of any income generated from land sale receipts, the annual funding requirements of the LLP at the peak debt position in 2029/30 is estimated at £9.5M per year which would have to be funded by the Council through the General Fund.
- 2.5 In April 2023, Cabinet agreed that Officers undertake a financial assessment of the draft updated Business Plan (with input from external specialist advisors), including a risk analysis and consideration of alternative funding options which may be available to the Council and / or OPLL. Homes England continues to support the Council by providing advice on delivery and strategic funding options.
- 2.6 It was intended that the outcome of this work would support Members' decision making. Please refer to:
<https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CIId=142&MIId=5140&Ver=4>
- 2.7 Subsequently, and ahead of the full due diligence being completed, an initial assessment by the Council's S151 Officer considered that neither the original full funding agreement (of £119M), nor the additional increased investment OP LLP requested (of £199M), are now affordable to the Council.
- 2.8 In coming to this assessment it is important to recognise that over the past 3 years, and since the Council agreed funding for the project, that several major external factors (e.g. significantly increased PWLB rates, extreme and on-going UK inflationary pressures, and a COVID global pandemic) have significantly impacted the operating context and the ability to continue with the original delivery method and funding allocation from the Council.
- 2.9 Continuing to fund Otterpool Park to the level previously agreed presents a level of risk that the Council is unable to mitigate to a tolerable position.

Therefore the financing and delivery structure of the Otterpool Park project and OPLLP needs to change.

- 2.10 Taking the above into account, the Leader of the Council and Cabinet Member for Otterpool Park and Planning Policy requested that a management review be undertaken to support the Council's decision making on the best way to continue supporting Otterpool Park.
- 2.11 The Leader also made it clear that the Council remains firmly committed to ensuring the success of the project and continuing to deliver Otterpool Park.
- 2.12 A broad range of due diligence and financial assessments have now been carried out supported by external specialists Local Partnerships and KPMG and they form part of the overall management review covering:
 - Overall strategic direction of the project;
 - Council and OPLLP preparedness for the delivery phase;
 - Financial controls and budget monitoring;
 - Forecast spend;
 - Assessment of deliverability and funding risk to the Council;
 - Options to address the level of funding required to deliver the project; and
 - Focus of OPLLP management actions in the coming 12-18 months and associated budget requirements.
- 2.13 In carrying out this due diligence and financial assessment a range of critical factors have been considered:
 - Governance and organisational capacity of both the Council and Otterpool Park LLP;
 - International and UK economic conditions and forecasts;
 - Public sector operating environment;
 - Otterpool Park LLP financial model and approach to delivery;
 - Council's Medium Term Financial Strategy (MTFS);
 - Affordability - including assessment of Minimum Revenue Provision (MRP), Public Works Loan Board (PWLB) rates, impact on General Fund (revenue consequence of capital borrowing);
 - Financial controls, approvals and oversight of projected and actual spend; and
 - Assessment and mitigation of both delivery and financial risks to the Council.
- 2.14 In lieu of an updated Business Plan being agreed, the LLP was asked to develop a Delivery Plan for an 18-month period to April 2025, focused on essential activity to maintain positive momentum with a robust cashflow and clear milestones.
- 2.15 The LLP submitted a Delivery Plan on 12th Sept 2023, and this continues to be assessed as part of the Council's overall budget development and updated MTFS through the autumn period. Through the Delivery Plan OPLLP is seeking funding of £68.2M. This level of funding would take

spend above the current approved £119M and potentially bind the Council into further spending commitments post the 18 month period.

- 2.16 The management review has therefore now concluded that a far more modest sum for ongoing works should be allocated to OPLLP, deemed sufficient for only essential activity set against a streamlined Transition Plan, approved by the Council's S151 officer in consultation with the Leader. See Section 7 for more detail.

3. GOVERNANCE REVIEW (Refer to Appendix 1)

- 3.1 The Council proactively commissioned Local Partnerships to conduct an in-depth Governance Review as the OPLLP was set to embark on a new phase of different activities delivering the project. The review focused on both OPLLP and the Council in order to understand where there are opportunities for improvement in governance, and what lessons can be learned from elsewhere.

- 3.2 In summary the review found that:

- The vision for a high-quality garden town and the commitment to sensitive and meaningful place-making is well understood. Both the OPLLP and Council officers and politicians share a similar view of its continuing importance to the area.
- The high-level vision needs to be backed up by a shared and sufficiently detailed understanding of what is needed to deliver OP with clarity on responsibilities, and what consultation or approvals are needed from whom.

- 3.3 In order to address aspects of governance in moving to deliver the project and mitigate risk to OPLLP and the Council, the review recommends:

- Strengthening the Council's governance and oversight, improving clarity around the objectives and mechanisms for how the Council holds OPLLP to account;
- Strengthening the governance and project oversight by Cabinet / Committees and bolstering support for the Shareholder role;
- Ensuring that Statutory Officers and the Shareholder role have appropriate support and visibility for a project of this scale and nature;
- Ensuring that the Council has sufficient client-side operational capacity and capability to provide robust scrutiny, in particular relating to finance and property;
- Governance improvements for the OPLLP board to ensure it has the capability, maturity and time to make robust decisions for the project, providing appropriate scrutiny of OPLLP staff, budget, risk and strategic delivery matters; and

- Strengthening the rigor of business planning and risk management processes.
- 3.4 The Council and OPLLP have started to implement the recommendations via an agreed joint Action Plan. Progress delivering the Action Plan will be reviewed by the Council's internal audit team (carried out by East Kent Audit Partnership) and reported to Members via the Owners' Committee and Audit and Governance Committee.
- 3.5 Steps to strengthen operational governance arrangements have been put in place through a Joint Operations Board to ensure that the Council and OPLLP senior leadership teams are sighted on all key matters. A joint approach to risk is being developed to ensure that all key risks are understood, tracked and managed effectively with appropriate processes for escalation and / or mitigation in place.
- 3.6 An Interim LLP Board Chair has been appointed by the Leader and Cabinet has agreed additional capacity to enhance the Board with additional skills and expertise.
- 3.7 If Cabinet agrees that officers explore a strategic partnership to deliver the project (see section 5), then relevant governance considerations will be taken into account, drawing on this best practice learning as future delivery proposals are developed.

4. FINANCIAL ASSESSMENT & DUE DILIGENCE (Refer to Appendix 2)

- 4.1 A robust assessment of the Otterpool Park financial model has been undertaken with support of KPMG and other advisors to the Council. The scope of this work covered:
- An assessment of the robustness of the proposed 2023-24 Business Plan, and 18-month Delivery Plan to April 2025.
 - A review of the supporting advice from OPLLP advisors.
 - A review of the assumptions made within the business plan, and their sensitivity to market changes.
 - Analysis of the Minimum Revenue Provision (MRP) implications of the current funding and delivery strategy, particularly in respect of the necessary further land transactions and enabling infrastructure works.
 - A headline assessment of alternative funding and delivery options to mitigate risk.
- 4.2 A report from KPMG on the outcome of the financial assessment of due diligence is attached as Appendix 2 and recommendations are:

- In the long term Otterpool Park remains a very profitable scheme, but in the short term peak debt and capital requirements presents a level of risk that is not acceptable nor affordable to the Council.
- Significant contextual factors have impacted on the project over the last 12 months which necessitates a revised approach to funding and delivery.
- The Council should consider alternative structures that reduces the Council's exposure to delivery and funding risk, considers MRP affordability, and satisfies its financial return profile (i.e., an upfront receipt is secured with a profit share at later stages).
- Alternative financing and delivery structures should be considered with a focus on the potential to attract a public or private joint venture partner at strategic site-wide level.
- The Council identifies changes to amend the delivery model - to lower the Council's risk and funding requirement, prioritising early payment to the Council for land with the benefit of planning, and including sources of third-party expertise, skills and funding capacity.
- The Council is required to meet its duty to ensure a best value return from public investment in the site to date. Therefore, any joint venture proposal needs to be assessed alongside the potential return which may be realised from disposing of the Council's land interest with the benefit of outline planning consent in full or in part.
- Any potential joint venture would need to mitigate delivery and financial risk for the Council.
- The Council assesses how infrastructure is delivered, identifying the most appropriate delivery approach for each category of infrastructure. Each element of works should be considered whether it is essential for action now, whether it can be transferred to a third party, or whether it can be deferred.
- The Council to continue working with Homes England to seek financial support for enabling works, on the basis of economic benefit derived from the project as a whole.
- The Council's funding and risk appetite needs to be more clearly specified, and ensure it is clearly communicated to the OPLL Board.

5. EXPLORING THE POTENTIAL OF A STRATEGIC JOINT VENTURE PARTNER

- 5.1 It is proposed that the Council explores the potential for a joint venture to bring third party funding, skills and expertise to support continued delivery

of Otterpool Park. The broad principles on which this should be based are proposed as:

- A Joint Venture (JV) between the Council and third party on a strategic, site-wide basis;
 - The JV partner to demonstrate a track record of facilitating development at scale, and a commitment to delivering the vision for Otterpool Park;
 - The JV partner to share the role, risk and responsibility as Master Developer for the whole site;
 - The Council retaining a significant stake - preferably 51% control;
 - The JV partner makes a financial contribution to costs already incurred by the Council;
 - The JV agreement to release an early capital repayment to the Council;
 - Future profit / returns to be on a shared 'risk and reward' basis; and
 - Delivery and financial risk to the Council mitigated to an acceptable level of tolerance.
- 5.2 Exploring the market for a suitable partner will be undertaken within the parameters set out in the Council's procurement policy framework.
- 5.3 Specialist advisors will continue to work with officers through this process and the OPLLP Leadership Team will be involved to ensure that their knowledge and experience of the project is fully considered.
- 5.4 Homes England has agreed to support the Council to find an appropriate Joint Venture Partner with continuing dialogue around ongoing Government support for the project.

6. OVERVIEW AND SCRUTINY COMMITTEE

- 6.1 The Overview and Scrutiny Committee received a report and presentation on Otterpool Park at its meeting of 26 September 2023. Please refer to: <https://folkestone-hythe.moderngov.co.uk/ieListDocuments.aspx?CId=437&MId=5234>
- 6.2 The report, presentation and appendix covered the key matters in relation to the strategic direction, funding and delivery of Otterpool Park and emerging recommendations for Cabinet.
- 6.3 The Committee members raised various issues including the importance of selecting the right joint venture partner; the aspirations and achievability of sustainability while recognising the financial restrictions; and asked questions about the members' ongoing role in effectively scrutinising proposals with limited technical expertise.

- 6.4 They also discussed balancing the risk and reward of the project; timescales in terms of mitigating the extreme risk detailed in the Corporate Risk Register; the impact of delays on the district's housing supply; and whether the council will continue to consider joint venture partnerships for individual phases of the project.
- 6.5 A full discussion was held and while they noted and supported the recommendations to Cabinet, they also proposed that a Task & Finish group be established (subject to cabinet agreeing to explore a potential JV), so they could contribute to any future reporting and decision-making by Cabinet on the matter. Cabinet is asked to note and welcome this proposal.

7. OPLLP FOCUS OF ACTIVITIES - TRANSITION PLAN

- 7.1 The approved strategic 5 year business plan for Otterpool Park remains in place and sets the overall direction for OPLLP. As the project transitions into a new phase of development, much detailed work continues between the senior teams of the OPLLP and the Council to establish the necessary level of spend and activity required to maintain an appropriate level of momentum. In the absence of an approved Delivery Plan a management review, led by the Leader, has concluded that in the short-term, i.e., the next 12-18 months while a strategic partner is considered, the project should continue with *only* essential activities relating to: (1) land acquisition; (2) planning; and (3) key infrastructure design.
- 7.2 In addition, a detailed review of the OPLLP's projected spend forecast has concluded that while a JV partner is considered, only *minimal spend on essential items* should be incurred so that the risk of any abortive work is reduced as it is reasonable to assume that a JV site-wide partner would want to review the intended delivery approach, sequencing and corresponding investment profile.
- 7.3 While this transition period may lead to a slowing down of certain activities in the short-term, the benefits to the council from firm foundations on which delivery can proceed at pace thereafter should not be forgotten nor underestimated. It is considered that this approach is in the best interests of the Council and will ultimately ensure the continued successful delivery of Otterpool Park.
- 7.4 As the Council's budget for 2024/25 continues to be built and decisions made through the autumn, it is recommended that the Council's S151 officer, in consultation with the Leader, allocates a modest amount of funds to support only necessary essential activity and this is expressed in a Transition Plan 2023-25. As the Council has already agreed an overall budget for OP, the amount would be contained within the overall remaining allocation and will be reported through the appropriate budget reports and monitoring processes through the autumn / winter period.
- 7.5 OPLLP has developed a local presence with many strong relationships so is well positioned to communicate effectively with all relevant partners to convey the clear intention of the Council to continue delivering the project,

albeit at a more moderate pace in the short term while a strategic JV partner is secured and delivery arrangements confirmed.

8. RISK MANAGEMENT ISSUES

8.1 The Corporate Risk Register has been updated with an escalated risk to reflect the Council's current position in relation to Otterpool Park. This recognises that achieving the resolution to grant planning approval is a significant milestone and moving into the next phase with a significantly changed context brings substantial financial and delivery risks for the Council.

8.2 The risk is assessed as **extreme** and requires mitigation. Please refer to Risks C2 and C3 in the Corporate Risk Register: <https://folkestonehythe.moderngov.co.uk/documents/s44924/110923%20Corporate%20Risk%20Register.pdf>

8.3 A summary of the Corporate Risk Register risk mitigation is outlined in the table below. Steps have already been taken to implement actions which strengthen the Council's governance and oversight of both the project and OPLL, as recommended in the governance review. In addition the proposed Transition Plan will mitigate financial risk and financial exposure to a tolerable level for the Council by minimising spend against a budget forecast to be agreed and monitored by the S151 Officer.

Perceived risk	Seriousness	Likelihood	Preventative action
Delivery of Otterpool Park	Severe	Likely	<p>Governance Review completed by independent consultant. Improvement actions identified in a joint Council and OPLL Governance Action Plan.</p> <p>A joint Council OP LLP Risk Register will be developed to ensure that risks are fully understood and mitigation monitored and reported effectively.</p> <p>Funding Agreements to be concluded and agreed in line with delegations.</p> <p>Phased Delivery Strategy being developed as part of due diligence on potential land transactions.</p>

			<p>An assessment of future delivery options, affordability & and due diligence on the project funding model is underway.</p> <p>Recommendations arising from this will be considered by OSC and Cabinet.</p> <p>Pending agreement on future delivery a Delivery Plan 2023-25 will be developed by OP LLP which sets out key milestones and budget required.</p> <p>A Clienting Framework will be put in place to ensure that delivery actions and decisions are identified and monitored on a regular basis.</p>
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9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

9.1 Legal Officer's Comments (AK)

There are no legal implications arising directly from this report. The report identifies that specialist advisors will need to work with the officers in the procurement of a potential JV partner which will ensure that the procurement process is correctly and legally followed. Legal advice must be sought throughout this project. In addition, the existing Assurance Framework will need to be kept updated as this project progresses.

9.2 Finance Officer's Comments (LM)

All relevant financial information and assessment is contained in the body of the report and appendices.

9.3 Diversities and Equalities Implications (EG)

There are no equality and diversity issues directly arising from this report.

9.4 Climate Change Implications (EG)

There are no climate change issues directly arising from this report.

10. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

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

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Appendices:

Appendix 1
Local Partnerships Governance Review

Appendix 2
KPMG Analysis and Key Commercial Considerations Related to Otterpool Park