

COUNCIL MEETING – 4TH OCTOBER 2018

AGENDA ITEM NO. 5

ESTABLISHING THE RUSHMOOR DEVELOPMENT PARTNERSHIP (RDP)

A report from the meeting of the Cabinet held on 18th September, 2018

1. INTRODUCTION

- 1.1 In May 2018 Cabinet approved the establishment of the Regenerating Rushmoor programme to drive the regeneration of both Aldershot and Farnborough. That report explained that the Council was also in the process of selecting an Investment Partner (IP) to work alongside the Council to bring forward projects within the programme.
- 1.2 In July 2018 Cabinet considered report CEX1802 and resolved that Hill Investment Partnership Limited (Hill) should be approved as the Council's preferred investment partner to support the delivery of the Regenerating Rushmoor Programme and that due diligence should proceed alongside the establishment of a Shadow Partnership Board and Shadow Investment Team.
- 1.3 That work is now reaching its conclusion, the draft documentation has been prepared and officers and advisers are content that the Council is in a position to formally establish the partnership. The remainder of this report sets out a reminder of the process to date, what will be required to establish the partnership, how it will work and how the Council will ensure good governance.

2. DELIVERING REGENERATION THROUGH A LIMITED LIABILITY PARTNERSHIP

- 2.1 During the development of the regeneration programme, the Council identified that it would need to bring in substantial expertise in order for it to deliver a number of schemes within the programme, particularly the more complex town centre sites. In addition, Cabinet identified the potential opportunity to secure revenue income as opposed to a capital receipt from some or all of its development opportunities. In order to do this the Council needed to be prepared to take more of a share of development risk to secure a greater share of financial reward. Following advice, the Council identified that the best way to achieve the balance between delivery of regeneration at pace, achieving a financial return and mitigating risk was to enter into a form of joint venture partnership with an experienced private sector partner, known as an investment partnership, and structured as a Limited Liability Partnership (LLP).

2.2 By adopting this approach, the Council felt it would be able to advance the redevelopment of some of the more challenging sites quickly, and for the purposes of the initial partnership, the following sites were identified and included in the specification for the selection process:

- Union Street East, Aldershot
- Civic Quarter, Farnborough
- Parsons Barracks, Aldershot,
- Union Street West car park, Farnborough

2.3 As the Council was not procuring works and services, the establishment of an Investment Partnership was not deemed to require observance of procurement procedures, but, for the purposes of transparency, a competitive OJEU compliant selection process was undertaken to ensure best value being obtained, the details of this were set out in the July report to Cabinet.

2.4 Following the conclusion of the evaluation & selection process Hill Investment Partnership was identified as the Council's preferred partner.

3. ESTABLISHING THE PARTNERSHIP

3.1 Since July, work has been undertaken to develop the necessary legal agreement and other documentation which will enable and support the operation of the LLP. This work is being undertaken by a range of council officers and the Council's legal advisors, Freeths. The documentation includes:

- LLP Members Agreement
- Power of Attorney
- Loan Note deed(s)
- LLP security agreement (Debenture)
- Loan Note Exchange Agreement

3.2 Details of the purpose of each of these documents is set out in Appendix 1. The draft members agreement is attached separately as Exempt Appendix 2. It is recommended that subject to the Council's decision to enter into the partnership the Legal Services Manager/Corporate Legal Manager be authorised to enter into the formal arrangements in 3.1 on behalf of the Council to enable and support the operation of the partnership.

3.3 The Rushmoor Development Partnership (LLP) will then be established. The LLP will be 50:50 controlled by the Council and Hill, with a nominal £100 investment. It is proposed that the Chief Executive be authorised to act as Shareholder on behalf of the Council. The LLP will not be a public sector body for public procurement or accounting purposes.

4. OVERVIEW OF HOW THE RUSHMOOR DEVELOPMENT PARTNERSHIP (RDP) WILL OPERATE

4.1 The RDP will be overseen by a Board comprising of representation from both the Council and Hill. Each organisation has a single vote. Decision making is by consensus, this means that if there is not agreement between the parties, then no decision is made. All major decisions are to be made

by the Board which will initially consist of 3 Council representatives and 2 Hill representatives.

- 4.2 It is recommended that the Council's nominations to the Rushmoor Development Partnership (RDP) Board are as follows;
- Leader of the Council
 - Major Projects & Property Portfolio Holder
 - Executive Director
- 4.3 The RDP will be managed on a day to day basis by an Investment Team which will deal with more day-to-day matters related to projects and have 3 representatives from the Council. It is recommended that the Council's nominations to the Rushmoor Development Partnership (RDP) Investment Team are as follows;
- Executive Head of Property & Regeneration
 - Regeneration Delivery Manager
 - Project Accountant, Financial Services
- 4.4 A breakdown of the proposed different tasks and responsibilities of the Council, RDP Board and Investment team are attached at Appendix 3.
- 4.5 An initial business plan will be developed which will set out the individual schemes (projects) to be taken forward. This will need to be approved by the Council, Hill and the RDP Board. The business plan will consist of one or more schemes each of which will need to be appraised and agreed. This will include a valuation of any council land going into the scheme. Either party can veto whether a scheme proceeds or not, once it has been appraised. Assuming both parties are in agreement, at the appropriate time the Council will transfer land to the RDP to enable schemes to be taken forward on the basis that the value of that land will be repaid by recovery of sums due under a "loan note" on completion of the scheme. In addition, the Council can choose to invest further into a scheme, but is not obliged to do so and this may be agreed on a project by project basis, the investment being described as either a loan (repayable with an agreed fixed rate of interest) or an equity contribution.
- 4.6 Schemes would then be developed and the Council and Hill invest funding knowledge, skills and development expertise which are valued and included in the costs of the development. Once a scheme is completed the Council and Hill will share the resulting profits in proportion to the value each has invested (but generally 50/50). This structure allows the sharing of development risks and rewards.
- 4.7 Schemes may be taken forward directly by the RDP but are more likely to be through a separate Special Purpose vehicle (SPV) specifically set up to manage the delivery of the scheme. This latter approach will ring fence any development risks relating to the scheme and will also enable transparency in respect of scheme output delivery.

5 GOVERNANCE

- 5.1 It is proposed that the RDP will report on a six monthly basis to the Shareholder (Chief Executive) who will enable consideration of an appropriate report by the Licensing, Audit and General Purposes Committee.
- 5.2 More frequent updates to members will be provided through the Regeneration Steering Group previously established by Cabinet in May 2018 and Cabinet and Overview and Scrutiny Committee through the normal performance monitoring reports.

6 RISKS

- 6.1 There are limited risks arising directly from the recommendations in this report, however staff time and resources have been and will continue to be incurred over the next period.
- 6.2 All development comes with risks, however this report is not seeking project approvals, and the risks associated with such activity will be considered at that time. The risks profile will change once the business plan is approved, and sites transferred into the RDP. These will be monitored and mitigated through the RDP Board and Investment team and the Council's Regeneration Steering Group.
- 6.3 A further risk associated with establishing the Rushmoor Development Partnership could include a relationship breakdown and adverse publicity arising from such event.

7 FINANCIAL IMPLICATIONS

- 7.1 As part of the process identified, Hill Investment Partnership Limited has committed to working at risk and to use its own resources to assist the Council during the due diligence period. The Council are also working at risk, but costs are currently being contained within existing and approved budgets.
- 7.2 Financial implications of projects will be identified as projects are developed.

8 LEGAL IMPLICATIONS

- 8.1 The Localism Act 2011, as recently confirmed by the case of Peters v Haringey describe the broad General Power of Competence which Local Authorities now have to participate and invest in arrangements, including LLPs, which councils regard as appropriate to produce long-term benefits for their communities.
- 8.2 The Council have a general duty, under S123 of the Local Government Act 1972 to realise "best consideration" when disposing of land, although that consideration can be accepted on a deferred basis, ie via accepting the "promise to pay" within a loan note.

- 8.3 Under the EU state aid regime, any monies lent or invested in a commercial venture should be undertaken on the basis of what a “market investor” might do, e.g. seeking to recover interest on loans and investing with a reasonable prospect of profit resulting.

9 CONCLUSIONS AND NEXT STEPS

- 9.1 The establishment of the Rushmoor Development Partnership (LLP) is an essential next step in providing the vehicle and access to expertise and other resources the Council needs to take forward a number of major sites in its regeneration programme. Once the Partnership is created the priority activity will then be to develop the business plan and projects and schemes for each site. This work will be carried out by the Rushmoor Development Partnership with the intention of a detailed business plan report being considered by Cabinet later in 2018. This report will also set out the details and timing of the disposal of the land within the regeneration area to the Rushmoor Development Partnership.
- 9.2 During this period the Council will continue with the agreed acquisition programme for properties within the regeneration areas.

10 RECOMMENDATIONS

- 10.1 The Council is recommended to:
- (i) proceed with the creation of the Rushmoor Development Partnership LLP and to authorise the Legal Services Manager/Corporate Legal Manager to enter into the following documents to enable and support the operation of the partnership
 - LLP Members Agreement
 - Power of Attorney
 - Loan Note deed(s)
 - LLP security agreement (Debenture)
 - Loan Note Exchange Agreement
 - (ii) confirm that the Council’s nominations to the Rushmoor Development Partnership (RDP) Board and Investment Team are as follows:
 - Partnership Board
 - Leader of the Council
 - Major Projects & Property Portfolio Holder
 - Executive Director
 - Investment Team
 - Executive Head of Property & Regeneration
 - Regeneration Delivery Manager
 - Project Accountant, Financial Services
 - (iii) Appoint the Chief Executive to act as the Council’s authorised representative as Shareholder

- (iv) Approve the governance and reporting arrangements as set out in paragraphs 5.1 and 5.2 of the report.

COUNCILLOR MARTIN TENNANT
PORTFOLIO HOLDER FOR MAJOR PROJECTS AND PROPERTY

Background documents:

Cabinet report – Appointment of an investment partner to support the Regenerating Rushmoor Programme 24 July 2018

Cabinet report – Regenerating Rushmoor Programme 29 May 2018

Cabinet report – Regeneration Programme 9 January 2018

FREETHS

Rushmoor Development Partnership LLP (“RDP”) Summary of Key Documents

Members Agreement

This is the principal agreement setting out the relationship between the parties and how RDP will operate (LLPs do not have a set of formal “articles” as a company does).

Key provisions, objectives and powers – primarily to deliver growth and regeneration in the Surrey and Hampshire areas including Aldershot and Farnborough as sub-regional centres, to maximise financial return, to achieve “targeted area development” and procure a return commensurate with investment and risk.

Management and operation of the LLP – all major decisions are to be made by the Investment Partnership Board which can have up to 8 members but initially 3 Council representatives and 2 Hill representatives.

To be quorate, an Investment Partnership Board meeting must have at least 2 Council and 1 Hill representative.

The Investment Team – deals with more day-to-day matters related to projects and have 3 representatives from each party.

General Duties – each party confirms that it will co-operate in the running of the LLP and notify the other of matters as they become aware and take steps to ensure meetings have a quorum (of not less than 2 Council and 1 Hill representatives).

Accounts – annual accounts are provided, including quarterly management accounts to each of Hill and the Council.

Capital Contributions – each party’s initial contribution is limited to £100, additional capital contributions may be made but equality should be protected. Typically, the LLP will obtain its working capital through borrowing, either from shareholders (covered via Loan Notes) or from third parties.

Land Transfer – there is a process for the Investment Partnership Board determining whether a site should be developed. The Council are required to consult the LLP concerning potential sale of sites under its ownership other than disposal to voluntary bodies, following which an exclusivity arrangement may be agreed.

Any site transfers will have to be in accordance with the Council's Section 123 duties to achieve best consideration, but payment will typically be by virtue of the issue of a Loan Note to the assessed value of the property.

Profit Shares – profits after deduction of all LLP costs are dealt with in accordance with the capital contributions, ie 50:50.

Investment Plan

The LLP operates in accordance with an Investment Plan with a 5 year duration, updated annually. Each project will not be signed off until a Project Plan has been adopted for that site, identifying the location of the site, the price, proposed use, budget, programme, anticipated income returns and whether it is proposed to create a specific Special Purpose Vehicle Company to carry out that project.

Disputes – either party can raise a dispute if the other party has either failed to honour the agreement or is insolvent. If a breach cannot be resolved, either the LLP is wound-up or the non-defaulting party can buyout shares at a value to be assessed by an independent valuer.

Assignment – neither party may transfer its interest to another party without the consent of the other LLP party, transfers connected with a reorganisation of local government are excluded from this, eg transfer into the hands of a Combined Authority.

Power of Attorney

In order to ensure that anybody signing documents on behalf of RBC as a member of RDP is properly authorised, it is suggested that a Power of Attorney be entered into naming the chosen individuals.

Loan Note

The Loan Note document is a record of monies loaned by either Hill or RBC into the LLP with a financial sum attached to it and a redemption date (eg 2038) by which the monies must be repaid. This will be used both as a way to recover the value of RBC land transferred to the LLP (as the LLP will have no free monies of its own), or monies which either party decides to invest within the LLP to help it facilitate developments.

Pre-payments – instalments of the Loan Note can be paid down at any time. It is anticipated that, in practice, as developments go forward Loan Notes will be repaid, as the terms of the Members Agreement require loans to be repaid in preference to profits being shared. When monies are paid, a revised Certificate is issued showing how much money is still outstanding.

The loan may attract interest, as agreed.

LLP Security Agreement / Debenture

The Debenture (or “Security Agreement”) provides formal security for the payment of monies due under a Loan Note. The base provision of the Debenture is that the LLP charges as security and is registered at Companies House against RDP. The Charge has the effect of charging sites as if there were a mortgage (against property listed in the Schedule) and all other assets such as rights to equipment, monies and goodwill. The Debenture is described as being a “Floating” Charge, but if the LLP were to be subject to an insolvency situation the Charge can convert to a “Fixed” Charge against the property. Additional security over sites cannot be created without the consent of the Security Trustee, nominated as Hill Investment Partnership Limited.

Loan Note Exchange Agreement

Because of the structure to be followed, for example with individual SPVs (“Special Purpose Vehicle Companies”) potentially being created to deal with the development of an individual site, the Loan Note Exchange Agreement allows loans granted to the SPV to be exchanged so that they are Charges over the assets of the LLP itself.

Stephen Pearson
Partner, Freeths

6 September 2018

APPENDIX 3

STRATEGIC TASKS & RESPONSIBILITIES - 2018				
		RBC/HIP	IP BOARD	INVESTMENT TEAM
Financial	Financial strength and solvency of IP		✓	
	Compliance with relevant tax & financial		✓	
	Set Budget		✓	
	Approve Budget		✓	
	Operating Expenditure (budgeted)			✓
	Operating Expenditure (unbudgeted)		✓	
	Capital Expenditure (budgeted)			✓
	Capital Expenditure (unbudgeted)		✓	
	Approve Bank Accounts and Signatories		✓	
	Administer Bank accounts and signatories			✓
	Produce Annual and Management Accounts			✓
	Approve Annual and Management Accounts		✓	
	Sale of land		✓	
	Purchase of land		✓	
Resources	Set up Suppliers Framework			✓
	Appoint consultants			✓
	Set up Work Package Tenders Framework and			✓
	Appoint work packages			✓
Business	Produce Investment Plan			✓
	Approve Investment Plan	✓	✓	
	Produce Project Plan			✓
	Approve Project Plans		✓	
	Material variation to any Project Plan		✓	
	Instruct start on site			✓
	Manage on site construction			✓
	Planning Application			✓
	Compliance with Members Agreement	✓	✓	✓
Shareholder	Receive reports from IP	✓		