REPORT TO:	**CABINET**
DATE:	**23 MARCH 2023**
TITLE:	**HARLOW INVESTMENT PARTNESHIP – APPROVAL OF SELECTION OF PARTNER AND PARTNERSHIP COMMENCMENT**
PORTFOLIO HOLDER:	**COUNCILLOR MICHAEL HARDWARE, PORTFOLIO HOLDER FOR REGENERATION & STRATEGIC GROWTH**
LEAD OFFICER:	**JAMES GARDNER – ASSISTANT DIRECTOR – REGENERATION (01279 446228)**

This is a Key Decision
It is on the Forward Plan as Decision Number I014431
Call-in Procedures may apply
This decision will all Wards.

RECOMMENDED that:

A Cabinet agrees for The Council to enter an Investment Partnership as a Limited Liability Partnership (LLP). The LLP would be 50:50 controlled by the Council and Selected Partner.

B Authority is delegated to the Chief Executive, in consultation with the Portfolio Holder for Strategic Growth and Regeneration, to agree and enter into a legal agreement for the LLP on behalf of The Council with the selected Partner.

C Authority is delegated to Harlow Council members of the Investment Partnership Board in line with the Harlow Regeneration Partnership Roles, Responsibilities and Approvals Document as set out in Appendix A.

REASON FOR DECISION

A To establish an Investment Partnership to bring forward the development of Council owned, and other, sites for Regeneration and Development and provide either Capital or Revenue financial returns against these investments.

B To deliver developments that contribute towards the overall Regeneration aspirations within Harlow Town Centre and the Neighbourhood areas.

BACKGROUND

1. The delivery of a Joint Venture partnership to contribute to the delivery of regeneration ambitions for Harlow was set out as a mid-term priority within the Harlow Council Corporate Strategy: 2021-2023.

2. In line with the recommendations set out in the Local Partnership's Construction Company Options Review (Appendix E), Senior officers have been investigating different forms of joint venture partnerships considering those currently being deployed by other authorities as well as alternative models. The conclusion of this work is that a form of public private partnership known as an Investment Partnership (IP) is a model that would be the most appropriate approach for the Council to secure its regeneration objectives for Harlow from the potential redevelopment of suitable owned sites.

3. All other models explored require the Council to identify the value of the site or programme of sites in advance of procuring a partner to provide works and services. The IP allows for greater flexibility and control by the Council in that it can choose which sites it wishes to take forward through the IP and which sites may lend themselves to different approaches and/or with different partners or selected contractors.

4. Sites that may be considered for inclusion within a partnership of this type include land holdings within the town centre such as Post Office Road as well as parcels within the neighbourhood areas such as garage sites.

5. The strengths, and benefits of the Investment Partnership model for the Council are as follows:

    a) The Council retains control throughout given the requirement for both partners to agree all significant matters.

    b) Provides a flexibility to meet changing market requirements, changes to programme and Council community social and strategic objectives since this is a long-term partnership rather than for a specific site or sites.

    c) The partnership is strategic in character with Council objectives embedded in both the LLP Agreement and Partnership's Business Plan. Sites are taken forward in a strategic programme with joint development opportunities allowing the Council to reinvest their development profit to support sites with viability issues or to otherwise generate income.

    d) The IP partner holds the planning risk by cash-flowing the planning costs on mixed tenure developments.

    e) Risk and reward is shared with the partner on joint development with the Council securing 50% of the development profit.

f) The Council can choose which schemes it puts into the partnership and when – it can therefore control the extent of the risk and reward it chooses to take on a scheme-by-scheme basis.

g) The Council can choose the financial (i.e. capital or revenue or both) objectives it requires from a scheme.

h) The Council can choose to veto a scheme before it proceeds .

Partner Selection Process

6. The Council commissioned Freeth's LLP to provide advice on the Partner Selection Process, specifically including:

    a) The Council's powers to enter into the proposed arrangement.

    b) Any procurement implications involved in the selection of a partner.

    c) Good practice considerations more generally in selecting a partner.

    d) Advice on the proposed model.

7. A Selection Process and scoring outcome is detailed in Appendix B, C & D.

Proposed Investment Partnership Operations

8. The Council will set up a joint venture with a partner as a Limited Liability Partnership (LLP). The LLP would be 50:50 controlled by the Council and the Partner.

9. The Council can choose to invest land parcels/buildings with the Investment Partnership and the Partner then invests funding and its knowledge, skills and experience in realising the development. These inputs are valued (e.g. the Council's land is independently valued, s.123 compliant) and land can be input on a site by site basis.

10. The Council and the Partner approve each scheme on a development appraisal basis and once developed the parties share the development profit equally.

11. This model allows the sharing of the development risks and reward between the Council and its Partner. The Council retains discretion as to how it would like to redirect or reinvest its share of the development profits.

12. Under the model the Council can choose which scheme it wishes to invest in through the IP and the Council or the Partner can veto whether a scheme proceeds or not following formal development appraisals.

13. The Council retains control of the freehold of land and its value until development conclusion and furthermore can choose whether it requires the freehold to remain with the Council as part of the tenure basis.

14. The Council can choose to provide funding and resources as an investment into the IP for both operational purposes and cost recovery through each scheme.

15. The IP will be named the Harlow Regeneration Partnership (HRP) and constitute a separate legal entity. It will be entitled to hold assets and incur liabilities in its name and for its own account, subject to governance criteria and relevant HDC approvals.

Governance and Structure

16. The Investment Partnership will be overseen by a Board made up of equal representation from the Council and the Partner.

17. It is proposed that the Board would have eight members – four representatives from the Council and four from the Partner. Each partner has one collective single vote.

18. For avoidance of doubt, decision-making is on the basis of consensus, this means that if there is no agreement between the parties on vote basis then a ‘deadlock’ position is experienced, and the option/motion does not proceed.

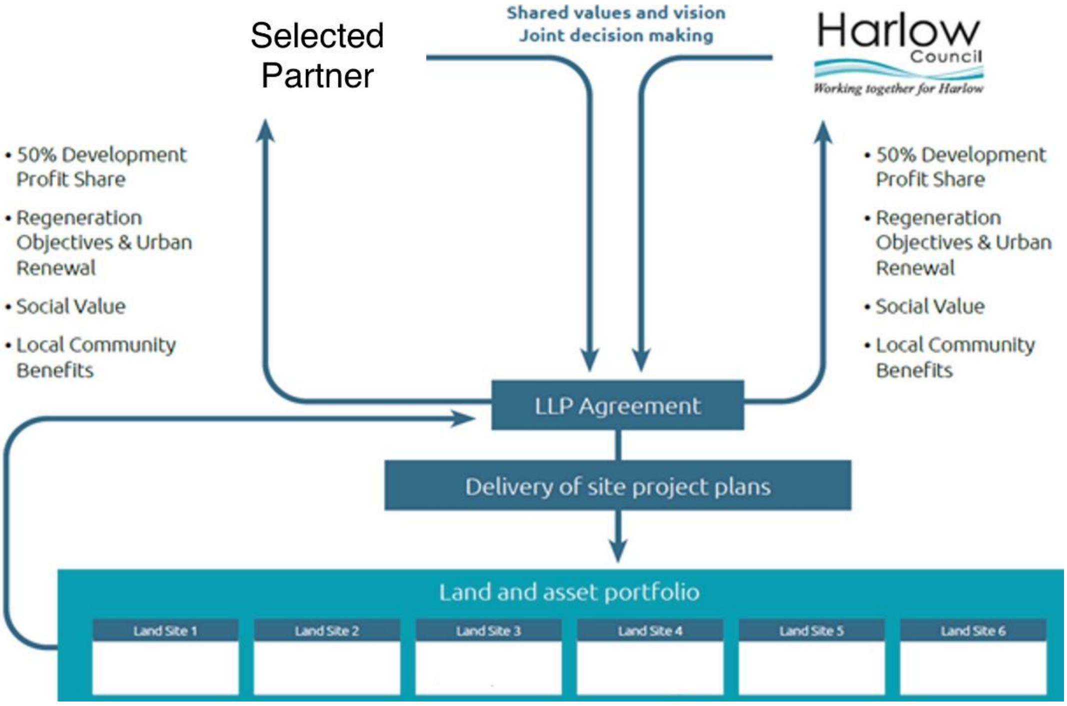
19. The Chair does not have a casting vote.

20. It is suggested that the Harlow Board Members are two Cabinet Members (recommended as Regeneration & Finance Members) and two relevant Senior Officers.

21. A further Investment Partner Representative from each partner will sit alongside the board to facilitate any additional discussions deemed prudent following any ‘deadlock’ positions. It is proposed that the Chief Executive will fulfil this capacity for Harlow.

22. The Governance, operational processes, strategic objectives and site investment and delivery programme will be set out in a LLP Business Plan, developed by the Investment Team in the first six months (a requirement set out in the LLP Agreement). The LLP Business Plan will be submitted for final approval to Cabinet ahead of adoption.

23. The diagram below summarises the structure of the IP.



24. The IP will be managed on a day-to-day basis by an Investment Team comprised of Council and Partner staff as required. The resource cost of each partner can be equally recovered as a rolled-up cost from completed mixed tenure or mixed-use schemes.

25. Once a scheme has been appraised and the Board approves the Project Plan, a separate special purpose vehicle (SPV) can be set up to manage the delivery of the scheme (more than one scheme can be delivered through a single SPV if they are small sites).

26. The purpose of setting up the SPVs is to contain any development risks relating to a scheme and to provide transparency in the outputs flowing from the delivery of different schemes bearing in mind that they, of course, will be completed at different times.

Risks

27. The IP model does not remove any of the usual risks associated with development. For example, site related risks such as contamination; risks around achievement of planning approval; build cost inflation etc.

28. The IP does allow these risks to be shared with the partner and to be effectively mitigated with the Council benefiting from the development skills, experience, knowledge, and staff capacity of the partner.

29. In terms of direct risks with the IP model these are as follows.

   a) Legal challenge to Selection of Partner: Legal advice as to the Selection Process was taken from specialist advisors and the selection process as detailed allows for transparent review of methodology where required. Whilst the Council was not required to undertake a process for such a selection, it is this robust undertaking that provides the mitigation for this risk.

   b) Return generated through the IP does not represent best value for the Taxpayer: Land invested by the Council into the IP will be valued by an independent valuer in line with Green Book Methodology. At any time, the Council can require the IP to test best value of any of its activities. As the Partner is set to share in up-lift in development value it is not in their interest not to work with the Council to jointly manage the efficient delivery of projects.

   c) The Council and its Partner do not agree to progress a scheme: The impact of this risk is that the cost of progressing the scheme to-date would be lost and there would be a delay in delivering the scheme. The mitigation is that it is not in the interest of either partner, without good reason, to prevent a scheme from progressing, as any aborted costs would be shared. The Council can of course decide to choose not to invest further sites in the IP.

Financial Implications

30. Land Value: As mentioned above the Council would invest sites into the IP. The sites will be independently valued at the point of input and the Council will be issued a ‘loan note’ to the value of the land. This would therefore satisfy the statutory requirement (S123) for the Council to ‘dispose’ of the land at best value. Once the land has been developed the IP will redeem the loan note from the development value.

31. Any other development value above the value of the Council’s land at input will be shared between the Council and the partner in proportion to the value of other inputs i.e. funding and staff costs. In the simplest example, if the Council inputs land to the value of £1m and the partner inputs funding and staff costs to the value of £1m and the resulting value of the new development is £2.4m, the Council will receive 50% of the up-lift in value i.e. £200,000, as will the partner.

32. Revenue Return – The Council will be able to require a revenue return as a return on the development value. For example, it can specify that some of the housing will be let at Intermediate Rents and forego any capital receipt should these properties have been sold.

33. Funding – The Council can choose to provide funding as part of its investment into the IP. It may want to do so if it can secure finance at better value than the

partner. This would be analysed at scheme appraisal stage and be part of the decision to proceed with a scheme.

34. Reinvesting Returns in the IP – The model would allow the Council to instruct that the IP retain some of the return on a scheme should it be helpful for the IP to have working capital to progress subsequent schemes.

35. Financial Capacity of Partner – The usual checks of financial capacity and current exposure of a partner will be undertaken as part of the due diligence before finalising an IP.

36. Corporation Tax – This is not payable by a LLP.

37. SDLT – Any SDLT liability will be assessed on a scheme-by-scheme basis.

Staffing Implications

38. Council staff experienced in the development process will be required to act on its behalf to set up the IP and to manage its interests as sites are input into the IP.

Equality and Poverty Implications

39. There are no direct equality and poverty implications in establishing an IP, but the redevelopment of individual sites and the effective realisation of the Council's land and property assets may release funding to assist the Council to pursue its equality and poverty policies.

Environmental Implications

40. There are no direct environmental implications in establishing an IP but there will be a specification for each redevelopment that addresses ten required environmental outcomes.

Procurement

41. Formal legal advice is that the establishment of an IP, the mechanism of establishment and the Selection Process.

NEXT STEPS

42. Following Cabinet Approval, a formal contract will be entered into with the Selected Partner in the establishment of an Investment Partnership on a LLP basis.

43. Harlow members of the IP Board will be selected.

44. Governance, operational processes, strategic objectives and site investment and delivery programme to be set out in an LLP Business Plan and submitted for final

approval to Cabinet ahead of adoption, with the July meeting targeted for submission.

IMPLICATIONS:

Strategic Growth and Regeneration
As contained in the report
Author: Andrew Bramidge, Chief Executive

Finance
Indicative financial implications are contained within the report. Further financial implications will follow once sites are established and specific Business plans are approved. All costs associated with selecting an investment partner having been funded through the existing Medium Term Financial Strategy.
Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Housing
As contained within the report.
Author: Andrew Murray, Director of Housing

Communities and Environment
As contained in the report.
Author: Jane Greer, Director of Communities and Environment

Governance
The proposed creation of an investment partnership and any resulting procurement and contract award has been facilitated and supported by specialist external legal advisors.
Author: Simon Hill, Director of Governance and Corporate Support

Appendices

Appendix A - Harlow Regeneration Partnership – Roles, Responsibilities and Approvals
Appendix B - Invitation to Submit Partnership Proposals
Appendix C - Partnership Proposal
Appendix D – Partner Selection Process
Appendix E – Construction Company Options Review

The appendices to this report are confidential as defined by paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Background Papers

None.

Glossary of terms/abbreviations used

None.