

Harlow Investment Partnership – Proposed Structure Amendment



Report to:	Cabinet
Date:	21 March 2024
Portfolio Holder:	Councillor Michael Hardware, Portfolio Holder for Economic Development
Lead Officer:	James Gardner, Assistant Director – Regeneration and Commercial Development (01279) 446449
Key Decision:	No
Forward Plan:	Forward Plan number I016703
Call In:	This item is subject to call in procedures
Corporate Priority:	Rebuild Our Town
Wards Affected:	Toddbrook Ward

Recommended that:

- A** Cabinet approves the amendment of the proposed company structure of the Harlow Investment Fund to adopt Limited Liability Partnership (LLP) arrangement.

Reason for decision

- A** To allow for an LLP structure to be adopted to by the Harlow Investment Fund to facilitate commencement of activities in line with the Cabinet Approval of February 21st 2021.

Other Options

- A** Retain originally proposed company structure in the form of Limited and General Partners arrangement as detailed within the Cabinet Report of 21 February 2021.

Background

1. Cabinet approval was provided in February 2021 (Appendix 1 - Harlow Investment Fund - Cabinet Report 250221) with the following recommendations:
 - a) In principle that the Council will invest £5 million in the Harlow Town Centre Investment Fund.
 - b) The Chief Executive, in consultation with the Leader of the Council, enters into an agreement to subscribe to purchase shares in the Harlow Investment Fund Limited Partnership and such other entities as may be required.
 - c) The Chief Executive, in consultation with the Leader of the Council, will nominate a representative to the Board of the General Partner.
 - d) Agreement of all operational matters and approval of the draft Board documents are delegated to the Chief Executive in consultation with the Leader of the Council.
2. Due to unexpected circumstances external to the Harlow Investment Fund, the partners were delayed in the development and completion of the contractual arrangements for the commencement of the fund.
3. The works recommenced in earnest in 2023 as little work had been done to move the Joint Venture (JV) forward until then. Since then, a great deal of work has been done to accelerate the JV with the focus now on bringing forward schemes.
4. The JV is separate from the Towns Fund, Levelling Up Fund and Harlow Regeneration Partnership work streams and comes in addition to those. However, it is likely that the JV will be able to deliver regeneration in one of the Opportunity Areas as detailed in the Town Centre Masterplanning Framework.

Issues/Proposals

5. Since the original decision to establish an investment JV for Harlow town centre, a change in approach to the use by local authorities of limited liability partnerships (LLPs) has meant that the council (and partners) can now adopt a more straight-forward approach.
6. The original proposal for a £50million investment fund, contributed to by Homes England, Harlow Council, Essex County Council, and Places for People, remains.
7. The amounts of funding each member is putting in also remains the same.
8. The council will have the same level of control over decisions, albeit that it will be directly through the board of the LLP, rather than through a more complex model of limited partners (silent) and a general partner (made up of the four investment partners).

9. It will be important to ensure that the reserve matters can adequately protect the council's interests and give it sufficient influence over the activities of the LLP.
10. This is no different to the original model proposed.
11. There will still be a requirement to appoint a commercial manager, and potentially a more informal arrangement for development manager dictated on a scheme-by scheme basis.
12. The details for those appointments are still a matter of negotiation.
13. The parties, as was always the case, will also agree on exit provisions for the different members.
14. Below is a table that sets out the nature and impact of the differences between the originally proposed structure and the LLP arrangement.

	Original proposal submitted to Cabinet	LLP Structure
Purpose	A proposed £50 million fund which will contribute to the development of a vibrant, safe, social and connected Town Centre for Harlow.	No change.
Partners	Harlow District Council (the Council), Homes England (HE), Places for People (PfP) and Essex County Council (Essex).	No change.
Funding	The Council will invest £5 million (10 percent of the overall equity) into the Harlow Town Centre Investment Fund. HE will invest £20 million (40 percent of the overall equity) as will PfP. Essex will invest £5 million. Investment will be done via loan notes.	No change other than the vehicle in which the funding will be sitting (as per the structure section below, there is no longer a requirement for the Council to purchase ten £1 shares in the general partner).
Structure	The Harlow Investment Fund was going to	The structure of the Fund has been

	<p>be a Limited Partnership with the Council's Chief Executive and the Council's Leader nominating a representative to the Board of the General Partner.</p> <p>A Limited Partnership being a relationship between the partners regulated by a partnership agreement rather than a legal entity itself. Limited Partnerships consist of 'limited partners' and a 'general partner'. The Council, HE, PfP and Essex were to be limited partners – silent investors in relation the partnership's day to day management. The general partner would have been a company limited by shares created specifically for the purpose of the JV. Each partner would have purchased £1 of shares in the general partner for each percentage of their initial investment (therefore the Council would have had ten £1 shares).</p> <p>The Fund would then create project specific Special Purpose Vehicles (SPVs) through which development projects would be undertaken. The general partner would then loan the money onto the SPVs for each project by way of loan notes.</p> <p>The equity return would be payable as dividends via the share equity and not via the loan notes.</p>	<p>simplified and will now be a Limited Liability Partnership (LLP). This means that the Fund will be a legal entity.</p> <p>The partners will all be members of the LLP and there will be a membership agreement which governs the relationship between the partners.</p> <p>At board level, each partner will have a proportionate number of representatives to their investment (the Council and Essex having 1 representative and HE and PfP having 2).</p> <p>There is no change to the concept of project specific SPVs other than the fact that they would also be LLPs as opposed to companies limited by shares.</p> <p>There is no longer a need for 'limited partners' nor a 'general partner' and so therefore the Council will not need to purchase ten £1 shares in a general partner at set up.</p> <p>Generally, any profits will be recycled within the LLP to fund further projects however there will be the option for the members to determine to make distributions of profit by unanimously approving the same as a member protection matter.</p>
Decision making	Decisions regarding the running of the	Decision making will happen within

	<p>Fund were to be taken at the Board of the general partner and each of the partners would have appointed one director onto the Board. There were to be reserved matters and shareholder reserved matter provisions to ensure a requirement for unanimity for some decisions regardless of the investment of each of the partners.</p> <p>Shareholder level decisions of the general partner would be proportionate to investment.</p>	<p>the LLP – either at board level or at member level. Each partner will be equal members but then board representatives will be proportionate to investment. The Council will have 1 board representative. There will still be reserved matters and member reserved matters. This does mean a change in the potential for direct influence of the board because both HE and PFP have larger investments and therefore more representation on the board. This will be balanced through tight control mechanisms on board level decisions.</p>
<p>Commercial Manager and Development Manager</p>	<p>Suitably qualified person(s) to be appointed to act as Commercial Manager and Development Manager on behalf of the partners. They will be responsible for identifying opportunity sites and developing proposal papers for the approval in line with investment criteria set by the board and delivered as part of an annual investment plan.</p> <p>The Commercial Manager and the Development Manager will be asked to identify sites which meet the criteria of the Fund overall, and to minimise risk to the investors through the decisions they make on behalf of the Fund.</p>	<p>No change.</p>
<p>Returns on Investment / Fund</p>	<p>It is proposed that a longer-term return will</p>	<p>No change in principle. The</p>

<p>Expectations</p>	<p>be achieved through re-investment of the proceeds of sale.</p> <p>The partners have set a series of investment criteria, against which eligible projects will be tested.</p>	<p>investment criteria currently being agreed between the partners has detailed further upon the investment criteria previously submitted to Cabinet, considering cost modelling and residual land values.</p>
<p>Risk</p>	<p>General risks associated with any investment – risk mitigation includes:</p> <ul style="list-style-type: none"> - Partners taking proper advice; - Legal, commercial and economic input prior to establishing the Fund; - Project SPVs to ring-fence risk; - The Council will have a nominee on the Board of the general partner; and - Blended approach to investments. <p>Conflict of interest risk – risk mitigation includes:</p> <ul style="list-style-type: none"> - Three of the four partners are public sector organisations who seek to act in the public interest; - Investment principles to ensure priorities are aligned; and - Alignment of corporate priorities and strategic objectives between the partners. 	<p>No change other than to the structure whereby the Council will be a member of the LLP and so the overall risk mitigation strategy remains the same.</p>

<p>Exiting the Fund</p>	<p>The participation of HE in the Fund is restricted by law to where there is market failure. Therefore, once the Fund has achieved its purpose and dealt with market failure, HE will be required to withdraw its investment. Therefore, it is likely that HE will exit the Fund on completion of all investments or after a period of seven years. At the end of this period it is anticipated that the partners have the following options:</p> <ul style="list-style-type: none"> - HE's equity stake in the fund is acquired by an external entity acceptable to the remaining partners; - Other partners acquire the value of HE's equity at fair market value; or - The winding up of the Fund. <p>At the end of the 7 year initial period, the Council will have the option to:</p> <ul style="list-style-type: none"> - Continue (potentially with the addition of a private sector entity should HE withdraw); - Sell to shares to other shareholders. - Shareholders agree to a formal winding up the Fund and distribute the proceeds in line with the agreed dividends in return for the share equity. 	<p>No change other than the structure – there will no longer be a company limited by shares and so therefore where the term 'Shareholder' is used, this will change to 'Member'.</p>
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Implications

Equalities and Diversity

There are no implications linked to the decisions requirement in the report as is purely a legal framework matter.

Climate Change

There are no implications linked to the decisions requirement in the report as is purely a legal framework matter.

Communities and Environment

None specific in relation to the proposed changes in legal structure set out in the report.
Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Finance

There are no changes resulting from the recommendations set out in this report to the financial structures of the LLP or more specifically the proposed financial contributions.
Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Governance and Corporate Services

The revisions to the Governance arrangements are set out within the table within the main report and now mean that the members agreement specifies the relationship. The Council will have proportionate representation linked to the level of investment which is equitable given the differing levels of investment. Governance within the Council will have Cabinet oversight.
Author: Simon Hill, Director of Governance and Corporate Services

Strategic Growth and Regeneration

The establishment of this fund will provide an opportunity and mechanism for funding significant regeneration schemes in Harlow Town Centre, which will contribute to the wider aspirations for renewal and redevelopment.
Author: James Gardner, Assistant Director – Regeneration and Commercial Development

Appendices

Appendix 1 - Harlow Investment Fund - Cabinet Report 250221

Background Papers

Harlow Investment Fund - Cabinet Report 250221
Town Centre Masterplanning Framework

Glossary of terms/abbreviations used

LLP - Limited Liability Partnership
ECC – Essex County Council
HE – Homes England

PFP – Places for People
JV – Joint Venture